



Trackside Delivery Agreement

Digital Systems Program

Contract Number IPD-19-7822A

Transport for NSW (ABN 18 804 239 602) (**TfNSW**)
Siemens Mobility Pty Ltd (ABN 39 625 304 556) (the **Contractor**)

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Date: 28 September 2020

Recitals

- A TfNSW is a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW). TfNSW is responsible for the delivery of, among other things, the major rail and infrastructure upgrades in NSW.
- B TfNSW is undertaking a program known as the Digital Systems Program (**Program**) to implement a system to replace legacy signalling and train control on the Network with a modern, intelligent, internationally proven, integrated rail signalling system utilising an onboard and trackside ETCS Level 2 system operating in conjunction with a Traffic Management System, and automatic train operations grade of automation 2 for use on the Network (including the Rollingstock).
- C The Trackside Subsystem will be deployed in stages procured under Statements of Work. The scope of Statement of Work 1 is the deployment of the Trackside Subsystem in the SOW 1 Deployment Area.
- D The Program involves multiple Packages of trackside, train-borne and control systems to be undertaken contemporaneously by Other Contractors and Rail Transport Entities, as well as interfaces between various Subsystems. It is critical to the success of the Program and delivery of the overall System that all Packages, including the Trackside Packages, are delivered in an integrated and seamless manner. TfNSW wishes to work with the Contractor, Other Contractors and Rail Transport Entities in a spirit of collaboration and cooperation in connection with the Program.
- E On 28 June 2019, TfNSW issued a Request for Proposal (**RFP**) seeking suppliers to deliver a Trackside Package under a Trackside Delivery Agreement, and to provide maintenance and support under a TLS Agreement. In reliance on the Contractor's response to the RFP, and other representations made by the Contractor to TfNSW during the RFP Process, TfNSW has decided to engage the Contractor on the terms of the Transaction Documents.

The parties agree as follows:

Part A Nature of relationship

1 Conditions

1.1 Commencement of Agreement

- (a) Subject to paragraph (b), this Agreement does not commence until each of the Conditions Precedent has been satisfied or waived by TfNSW in accordance with this clause 1.
- (b) The following clauses and Schedules of this Agreement commence on the Execution Date: 1 (Conditions), 32 (Governance), 33 (Resolution of Matters), 35 (Probity Events and Conflicts of Interest), 37 (Intellectual Property), 38 (TfNSW Data), 40 (Confidentiality), 41 (Privacy), 42 (Government Disclosure), 58 (Termination), 61 (Representations and warranties), 63 (Liability), 65 (Notices), 66 (Machinery of Government), 67 (General), Schedule 1 (Definitions and Interpretation), Schedule 2 (Agreement Details), Schedule 18 (Issue Resolution Procedure) and Schedule 19 (Dispute Resolution Procedure).

1.2 Commencement of SOWs

A SOW does not commence until each SOW Condition Precedent has been satisfied or waived by TfNSW in accordance with this clause 1.

1.3 TfNSW's discretion

Each Condition is for the sole benefit of TfNSW and may only be waived by TfNSW by notice to the Contractor.

1.4 Satisfaction of Conditions

- (a) The Contractor must satisfy each Condition on or before the relevant Cut Off Date.
- (b) The Contractor must promptly notify TfNSW if it discovers that any Condition is satisfied or becomes incapable of being satisfied.
- (c) TfNSW will notify the Contractor of the date on which it is satisfied that all Conditions have either been satisfied or waived by TfNSW.

1.5 Failure to satisfy Conditions

- (a) If any Condition is not satisfied or waived on or before the relevant Cut Off Date, then:
 - (i) TfNSW may, by notice to the Contractor, terminate this Agreement or SOW (as applicable);
 - (ii) the Contractor indemnifies and must keep indemnified the TfNSW Indemnified Persons against all Loss suffered or incurred by the TfNSW Indemnified Persons arising out of or in connection with the failure of any Condition (other than the Conditions Subsequent listed in paragraphs (c) and (d) of Part B of Item 2 of Schedule 2 (Agreement Details)) to be so satisfied to the extent that the failure does not arise as a result of an act or omission of TfNSW; and

- (iii) the Contractor will not be entitled to bring any Claim against TfNSW or the TfNSW Indemnified Persons arising out of or in connection with the failure of the Condition to be so satisfied.
- (b) If TfNSW terminates:
 - (i) this Agreement under paragraph (a)(i), this Agreement has no further effect and neither party is liable to the other, except under clause 1.5(a) or in respect of liabilities accrued prior to the date of termination; or
 - (ii) a SOW under paragraph (a)(i), that SOW has no further effect and neither party is liable to the other in respect of that SOW, except under clause 1.5(a) or in respect of liabilities accrued prior to the date of termination.

2 Term

2.1 Term

Subject to clause 1.1 (Commencement of Agreement), this Agreement commences on the Commencement Date and, unless otherwise terminated in accordance with this Agreement or extended by TfNSW in accordance with clause 2.3 (Extensions), continues until the later of:

- (a) the expiry of the Initial Term;
- (b) the expiry of any Extended Term;
- (c) the completion of all of the Contractor's Activities (including any Defect Liability Periods) under each SOW; and
- (d) the end of the Disengagement Period.

2.2 Initial Term

The Initial Term of this Agreement is from the Commencement Date until the date that falls twenty (20) Years after the date on which the Contractor commences provision of services under the TLS Agreement (**Initial Term**).

2.3 Extensions

- (a) TfNSW may, by providing at least six (6) months' notice to the Contractor prior to the end of the Initial Term or the then current Extended Term:
 - (i) subject to paragraphs (b) and (c), renew this Agreement for one or more periods of up to ten (10) Years each from the date of expiry of the Initial Term or the then current Extended Term, as applicable; or
 - (ii) elect not to renew this Agreement, in which case this Agreement will expire in accordance with clause 2.1 (Term).
- (b) The total duration of all Extended Terms must not exceed ten (10) Years from the end of the Initial Term.
- (c) Any renewal by TfNSW under paragraph (a)(i) must be for a minimum of twenty-four (24) months.

- (d) The Contractor must provide:
 - (i) at least nine (9) months' notice to TfNSW prior to the end of the Initial Term, or the then-current Extended Term, requesting TfNSW to advise whether it intends to renew this Agreement in accordance with paragraph (a)(i); and
 - (ii) notice to TfNSW immediately upon the Contractor becoming aware of Sydney Trains having decided to exercise its right to extend the TLS Agreement.
- (e) Unless agreed otherwise between the parties, the terms and conditions (including as to pricing) applicable to each Extended Term will be the same terms and conditions as at the expiry of the Initial Term or previous Extended Term, as relevant.

2.4 SOWs

Each SOW commences on the SOW Commencement Date and, unless otherwise terminated in accordance with this Agreement, continues until the later of:

- (a) TfNSW's written confirmation of completion of all of the Contractor's Activities under that SOW; and
- (b) the expiry of all Defects Liability Periods relevant to that SOW.

3 Engagement

3.1 Objectives

- (a) As one of the suppliers of a Trackside Package, the Contractor has a lead role in supporting TfNSW to implement a System that meets (amongst other things) the BRS and the SRS, and as a result achieves the following objectives for the Program, to:
 - (i) enable growth on the Network to meet forecast growth;
 - (ii) improve service reliability on the Network;
 - (iii) enable increased capacity on the Network of up to thirty (30) trains per hour;
 - (iv) enable dynamic systems so that disruption and incidents on the Network can be managed faster, reducing delays caused by Network incidents and disruptions;
 - (v) provide more accurate service information to customers and enable availability of real-time customer information;
 - (vi) facilitate financially sustainable maintenance and operation of the Network, reducing 'whole of life' cost to maintain signalling technology and incidence of signalling asset failure;
 - (vii) replace end-of-life assets in a way that minimises capital costs and Network disruption;
 - (viii) minimise the cost of replacing Network assets; and

- (ix) minimise the need for, and impact of, possessions,
(together, the **Objectives**).
- (b) The Contractor acknowledges that:
 - (i) its Trackside Subsystem is only one component of the System and cannot be delivered or implemented in isolation from the other components of the System;
 - (ii) it is critical to the success of the Program that all Subsystems, including the Trackside Subsystem, are delivered in an integrated and seamless manner, so as to ensure the successful delivery of the overall System; and
 - (iii) it will perform its obligations under this Agreement in the manner which best supports and enables TfNSW in achieving the Objectives.
- (c) For clarification, the Objectives and this clause 3.1 are not intended to:
 - (i) alter the plain meaning of the specific terms and conditions of this Agreement; or
 - (ii) impose obligations on TfNSW or the Contractor that are not otherwise provided for in this Agreement.

3.2 No Exclusivity

- (a) The Contractor acknowledges that it is not being appointed as an exclusive or preferred supplier of Trackside Packages, the Trackside Subsystem or any component of it, or of the Works in respect of any part of the System or Network, and that TfNSW may at any time perform or supply any components or elements of a Trackside Package, the Trackside Subsystem or related Works itself, or procure them from a Third Party, including an Other Contractor. For clarity, TfNSW may procure from an Other Contractor trackside and signalling equipment that is the same as or similar to the equipment which TfNSW may procure from the Contractor under this Agreement or the TLS Agreement. The Contractor further acknowledges that multiple trackside and signalling and control systems may be operated on different parts of the Network.
- (b) Other than as set out in a SOW, nothing in this Agreement requires TfNSW to, nor represents that TfNSW will, acquire any particular goods or services from the Contractor or guarantees a minimum value or volume of goods or services.

3.3 Interface with Other Arrangements with Contractor

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

4 Structure of Agreement

4.1 Elements

- (a) This Agreement consists of the following parts:
 - (i) any Special Conditions set out in a SOW (in respect of that SOW only);
 - (ii) clauses 1 (Conditions) to 67 (General);
 - (iii) any Schedule other than those identified in paragraphs (iv) or (v);
 - (iv) Schedule 3 (System Definition and Requirements);
 - (v) Schedule 4 (Process Requirements (PR));
 - (vi) any SOWs (excluding any Special Conditions, Concept Design, Attachment B (Approach to Delivery) or Contractor's Program included in a SOW);
 - (vii) excluding the Information Documents and Materials, any document to the extent incorporated by reference in:
 - (A) a clause of this Agreement;

- (B) a Schedule to this Agreement; or
 - (C) a SOW, other than as identified in paragraph (vi); and
 - (viii) for each SOW (and in respect of that SOW only), the relevant Concept Design, Attachment B (Approach to Delivery) and Contractor's Program (if any),
- as varied through any Variation (the **Agreement**).
- (b) The Contract Specifications consist of the following parts:
- (i) the Mandatory Requirements other than the Standards;
 - (ii) any non-compliances with the Trackside Subsystem SSRS or the Standards explicitly identified as such in section 5.9.2 (Trackside Subsystem Requirement Specification (SSRS)) of the relevant SOW (in respect of that SOW only);
 - (iii) the Standards;
 - (iv) the System Definition and Requirements;
 - (v) the PR;
 - (vi) any other specifications or requirements relating to the Contractor's Activities as set out in this Agreement, and any other documents relating to the Trackside Subsystem or Contractor's Activities referenced in this Agreement, including any Project Plans developed by TfNSW (excluding any such documents that form part of the Contractor's Solution); and
 - (vii) the Contractor's Solution,
- as varied through any Variation (**Contract Specifications**).
- (c) The System Definition and Requirements consist of the following parts:
- (i) the Trackside Subsystem SSRS and the parts of the Trackside Subsystem ISDs that relate to works to be performed by, or otherwise impose obligations on, the Contractor;
 - (ii) the SRS;
 - (iii) the OCD and the MCD;
 - (iv) TfNSW's System Architecture Description;
 - (v) the BRS; and
 - (vi) the Technical Glossary,
- as varied through any Variation (**System Definition and Requirements**).
- (d) The Contractor's Solution consists of the following parts:
- (i) the Designs; and

- (ii) each of the other documents relating to the Trackside Subsystem provided or developed by or on behalf of the Contractor pursuant to this Agreement or the TLS Agreement, including as required by any SOW or the PR, including the Project Plans, where those documents have become a Confirmed Document,

as varied through any Variation (**Contractor's Solution**).

4.2 Order of precedence

- (a) Subject to paragraph (f), if there is any ambiguity, discrepancy or inconsistency between the parts of this Agreement set out in clause 4.1(a), then the part listed earlier within that clause will prevail to the extent of that ambiguity, discrepancy or inconsistency.
- (b) Subject to paragraph (f), if there is any ambiguity, discrepancy or inconsistency between the parts of the Contract Specifications set out in clause 4.1(b), then the part listed earlier within that clause will prevail to the extent of that ambiguity, discrepancy or inconsistency.
- (c) If there is any ambiguity, discrepancy or inconsistency between the parts of the System Definition and Requirements set out in clause 4.1(c), then that ambiguity, discrepancy or inconsistency will be resolved by applying clause 6.1(e).
- (d) Subject to paragraph (f), if there is an inconsistency, ambiguity or discrepancy between two or more of the documents that together comprise the Contractor's Solution, then:
 - (i) the Designs will prevail over the other Technical Documents to the extent of that ambiguity, discrepancy or inconsistency;
 - (ii) the version of any Design that was Confirmed later in time will prevail to the extent of any ambiguity, discrepancy or inconsistency with another Design; and
 - (iii) the version of any Technical Document that was Confirmed later in time will prevail to the extent of any ambiguity, discrepancy or inconsistency with another Technical Document.
- (e) If there is any ambiguity, discrepancy or inconsistency between any Project Plan developed by TfNSW (including the Significant Project Plans referred to in Appendix 07 to the PR) and any Project Plan developed by the Contractor, then (subject to clause 5.3(b)) the Project Plan developed by TfNSW will prevail to the extent of the inconsistency.
- (f) To the extent that any part or provision of the Contractor's Solution imposes higher standards, greater responsibilities and/or additional requirements on the Contractor than any other part of this Agreement, the Contract Specifications or the System Definition and Requirements, the Contractor must satisfy and meet those higher standards, greater responsibilities and/or additional requirements unless TfNSW otherwise Directs in writing.

4.3 Statements of Work

- (a) This Agreement is structured as a framework agreement under which TfNSW may engage the Contractor to supply Works and/or Assets from time to time under one or more SOWs.
- (b) Each SOW forms part of this Agreement and the clauses and Schedules to this Agreement apply to each SOW. Additional terms and conditions specific to the supply of different types of Works and/or Assets may be set out in a SOW or in different Schedules which apply only for specific Works and/or Assets.

4.4 Prior work

The Contractor agrees that:

- (a) any work in connection with the Contractor's Activities carried out by the Contractor prior to the Execution Date (including, for the avoidance of doubt, all work carried out by the Contractor during the ECI Process and under and in connection with the ECI Agreement) will be deemed to be part of the Contractor's Activities and governed by this Agreement; and
- (b) the Intellectual Property Rights in any items designed, developed, supplied, delivered, provided, produced, tested or commissioned by the Contractor during the ECI Process are assigned or licensed in accordance with clause 37 (Intellectual Property) as if those items were items designed, developed, supplied, delivered, provided, produced, tested or commissioned under this Agreement.

4.5 Effect of Assumptions

Any assumptions identified, itemised, listed or implied in any one or more of the documents constituting the Contractor's Solution, in a Statement of Work or otherwise have no effect on this Agreement. Despite any drafting within those documents stating or implying that any part of those documents is based on any particular assumption or assumptions, the only assumptions which are recognised and have any effect under the terms of the Agreement are those listed in Attachment N (Assumptions) to the relevant SOW.

Part B Rollout Program

5 Staged Delivery, New SOWs and Variations

5.1 SOW 1 Deployment Area

- (a) TfNSW intends to implement the Trackside Subsystem progressively by Deployment Areas.
- (b) As of the Execution Date, TfNSW is only engaging the Contractor to provide the Contractor's Activities for the SOW 1 Deployment Area, as described in Statement of Work 1.

5.2 Future work

- (a) If TfNSW wishes to engage the Contractor to deploy the Trackside Subsystem in, or obtain any goods or services in respect of, a Future Deployment Area, the process set out in section 3 (Future Deployments and Future Project Work) of Schedule 7 (New SOWs and Variation Procedures) applies.
- (b) If TfNSW wishes to engage the Contractor to perform any Future Project Work under a New SOW, such services shall be provided as Future Project Work following the process set out in section 3 (Future Deployments and Future Project Work) of Schedule 7 (New SOWs and Variation Procedures).
- (c) Other than as specified in a Statement of Work or a Work Order under the TLS Agreement, the intention is that:
 - (i) supply and implementation of Major Enhancements and Upgrades will be performed as Future Project Work under this Agreement;
 - (ii) prior to commencement of the TLS Agreement, supply and implementation of Minor Enhancements and Updates will be performed as Future Project Work under this Agreement (with Updates supplied and implemented at no additional cost); and
 - (iii) after commencement of the TLS Agreement, supply and implementation of Minor Enhancements and Updates will be performed under the TLS Agreement.
- (d) Without limiting clause 3.2 (No Exclusivity), TfNSW makes no representation or commitments with respect to:
 - (i) whether any Future Deployment Areas or Future Project Work will be implemented or procured;
 - (ii) the number of Deployment Areas which may be awarded to the Contractor;
 - (iii) whether any, or how many, Future Deployment Areas or how much Future Project Work may be awarded to the Contractor; or
 - (iv) the process by which TfNSW procures goods or services in respect of Future Deployment Areas and Future Project Work.
- (e) The Contractor acknowledges that:

- (i) TfNSW is under no obligation to acquire Trackside Equipment or any Works from the Contractor except as agreed in a SOW;
 - (ii) any Future Deployment Area or Future Project Work may be awarded to Other Contractors or any Third Party;
 - (iii) TfNSW's approach to procurement of Future Deployment Areas and Future Project Work may change from time to time; and
 - (iv) TfNSW may at any time acquire equipment equivalent to the Trackside Equipment or any Works from any Third Party, including in connection with the Trackside Packages, provided that the Contractor will not be liable for the performance of any such equipment and the impact this may have on the operation of the Trackside Subsystem.
- (f) Without prejudice to paragraph (d), TfNSW may, in assessing whether to procure any Future Deployment Areas or Future Project Work from the Contractor, take into account various aspects of the Contractor's past performance which may include:
- (i) whether the Contractor performed the Contractor's Activities so as to meet or exceed the requirements of this Agreement;
 - (ii) the Contractor's management of resources and costs;
 - (iii) the Contractor's overall behaviour, including its level of compliance with the Collaboration Principles and the Interface Requirements; and
 - (iv) an assessment of performance against any metrics or criteria adopted by TfNSW for the purposes of assessing the Contractor's performance.

5.3 Variations

If:

- (a) either party wishes to:
 - (i) other than in accordance with clause 5.2 (Future Work), alter, vary, modify, omit, increase or decrease the existing scope of the Contractor's Activities under a SOW;
 - (ii) amend the timeframe for performance of the Contractor's Activities or a TfNSW Dependency under a SOW, the Integrated Program or the Contractor's Program;
 - (iii) change the Contract Specifications or any part of them; or
 - (iv) vary the terms of this Agreement (including any Schedule) or any SOW; or
- (b) TfNSW provides a new Project Plan, or modifies an existing Project Plan, after the relevant SOW Execution Date, and:
 - (i) the new or modified Project Plan is inconsistent with any Contractor Project Plans Confirmed prior to the new or modified Project Plan being provided to the Contractor;

- (ii) compliance with the new or modified Project Plan would require the Contractor to alter, vary, modify, omit, increase or decrease the existing scope of the Contractor's Activities under the relevant SOW; and
 - (iii) the Contractor has advised TfNSW of such inconsistency within a reasonable period of the new or modified Project Plan being provided and has provided details of the impact that compliance with the new or modified Project Plan would have on the existing scope of the Contractor's Activities, and TfNSW has nonetheless required the Contractor to comply with the new or modified Project Plan; or
- (c) any other variation occurs that is stated to be subject to the Variation Procedures, (each, a **Variation**), the parties must comply with the relevant process set out in section 4 (Variations) or section 6 (Changes in Laws, Approvals and Standards) of Schedule 7 (New SOWs and Variation Procedures) as applicable.

6 Supply obligations

6.1 Scope of obligations

- (a) For each SOW, the Contractor must:
 - (i) deliver the Trackside Subsystem so as to meet the Contract Specifications and so that it is fit for its intended purpose;
 - (ii) perform all of the Contractor's Activities in respect of that SOW:
 - (A) in accordance with the SOW, this Agreement and the Contract Specifications; and
 - (B) in a manner which is consistent with supporting the achievement of the Objectives, and the delivery of a System that meets the Contract Specifications; and
 - (iii) without limiting the obligations under clauses 13 (Programming) and 14 (Timing obligations), ensure that all Milestones relevant to that SOW are achieved by their Milestone Date.
- (b) If something that is required to be done, supplied or procured in order to deliver the Trackside Subsystem in accordance with this Agreement is not expressly identified as a TfNSW Dependency in this Agreement, then that thing must be done, supplied or procured by the Contractor. Notwithstanding anything to the contrary, to the extent that a TfNSW Dependency requires the provision of any commercial in confidence or other confidential material or any other Materials that TfNSW, a Stakeholder or Other Contractor does not have the rights or the ability to provide to the Contractor, TfNSW may redact or otherwise remove such content prior to providing the relevant item to the Contractor.
- (c) Without prejudice to paragraphs (a) and (b), and subject to anything to the contrary in the Contract Specifications or the relevant SOW, in respect of each SOW for the deployment of the Trackside Subsystem by the Contractor in the SOW 1 Deployment Area and each Future Deployment Area, the Contractor must perform, and the Contractor's Activities include, the performance of, all tasks, activities and services required to:

- (i) design, develop, configure, build, supply, install, test, validate and commission (to the extent applicable) the Trackside Subsystem (including all auxiliary elements that the Contractor is required to supply in accordance with this Agreement);
- (ii) supply the Trackside Subsystem, including:
 - (A) all Trackside Equipment;
 - (B) those components referred to in paragraph (d);
 - (C) all Tools listed in the relevant SOW;
 - (D) any required test equipment and training materials (including simulators) as listed in the relevant SOW;
 - (E) any other related hardware and Software (and applicable or related documentation) as required to meet the Contract Specifications; and
 - (F) (where necessary) localisation activities required to support operation of the Trackside Subsystem on the Network as required to meet the Contract Specifications;
- (iii) perform all data designs and associated testing for the relevant Deployment Area;
- (iv) perform stage works design and implementation, inclusive of alterations to existing systems (e.g. interlockings and electrical) to enable overlay of the ETCS L2 Signalling with existing signalling;
- (v) install the Trackside Subsystem on the Network in the relevant Deployment Area, including centralised components in equipment rooms or other locations as appropriate;
- (vi) provide and support the Trackside Subsystem components and Trackside Equipment required to facilitate testing at an integration test facility nominated by TfNSW in Sydney;
- (vii) interface and connect the Trackside Subsystem to other systems, networks and components as part of the System, as identified in the Contract Specifications, including through co-operation, interface and collaboration with Interface Contractors and Rail Transport Entities (including as described in the Interface Requirements) subject to TfNSW providing the Contractor with any tools, Software and a licence to use any Intellectual Property Rights required to undertake such activities where such tools, Software and licence are listed as a TfNSW Dependency;
- (viii) design, develop, configure, build, supply, install, test, validate and commission (to the extent applicable) modifications to interfacing interlockings;
- (ix) design, develop, configure, build, supply, install, test, validate and commission (to the extent applicable) interfaces to point machines and any other retained elements for migration;

- (x) alter the existing power supply and alarms at Delivery Locations to meet the System Definition and Requirements;
 - (xi) alter the existing environmental conditioning requirements at relevant Delivery Locations to meet the System Definition and Requirements;
 - (xii) successfully complete all Acceptance and Verification Activities required to demonstrate to TfNSW's reasonable satisfaction that the Trackside Subsystem meets the requirements of this Agreement, including the Contract Specifications, including as further described in clauses 10 (Verification) and 11 (Acceptance);
 - (xiii) support and participate in integration and operational testing for the Program and System generally, including entry into service;
 - (xiv) support and maintain the Trackside Subsystem prior to the commencement of services under the TLS Agreement, including as further described in clause 22 (Project Delivery Support);
 - (xv) perform all activities necessary to achieve commissioning and operational readiness of the Trackside Subsystem;
 - (xvi) support the decommissioning of redundant assets, including:
 - (A) booking out of use;
 - (B) disconnection of signal power; and
 - (C) covering of redundant signals and removal of redundant train stop arms;
 - (xvii) obtain all Approvals in respect of the Trackside Subsystem (excluding those Approvals, the obtainment of which are TfNSW Dependencies), including any necessary type approval (or equivalent process as set out in the Assurance and Governance Plan), including as further described in clause 43.2 (Contractor to obtain and maintain Approvals);
 - (xviii) otherwise support the achievement of the Objectives and meet the Contract Specifications;
 - (xix) comply with the Contractor's obligations, and perform such tasks, activities and services, as would be reasonably expected of an AEO; and
 - (xx) achieve Provisional Acceptance and Final Acceptance of the Trackside Subsystem in accordance with this Agreement.
- (d) The Contractor acknowledges and agrees that key components of the Trackside Subsystem to be delivered by the Contractor include (as further defined in the Contract Specifications):
- (i) key management centre (KMC);
 - (ii) interlockings (IXL);
 - (iii) technicians terminals;

- (iv) radio block centres (RBC);
 - (v) train detection system (including counting heads, evaluators etc.);
 - (vi) lineside equipment unit (LEU) (depending on Level 1 interface functionality);
 - (vii) any necessary cabling (including data and power cabling);
 - (viii) points interface;
 - (ix) balises;
 - (x) block marker boards and other trackside signage (including fixed plates);
 - (xi) integrations with Interfacing Systems as required; and
 - (xii) except as listed as a TfNSW Dependency, any necessary preparation or preliminary work to support any of the above.
- (e) Where this Agreement requires the Contractor to comply with the System Definition and Requirements, the Contractor's obligation is to:
- (i) comply with the SSRS and the parts of the ISDs that relate to works to be performed by, or otherwise impose obligations on, the Contractor; and
 - (ii) ensure that the Trackside Subsystem supports and is consistent with the achievement of all of the objectives and requirements contained in the following documents:
 - (A) the BRS;
 - (B) TfNSW's System Architecture Description;
 - (C) the OCD and the MCD; and
 - (D) the SRS.
- (f) TfNSW acknowledges that nothing in clause 6.1(e)(ii) expands the scope of the Contractor's obligations to deliver the requirements of the SSRS and the parts of the ISDs that relate to works to be performed by, or otherwise impose obligations on, the Contractor.

6.2 All Work included

- (a) The Contractor:
- (i) warrants it has allowed for the provision of;
 - (ii) must undertake and provide; and
 - (iii) will not be entitled to make, and TfNSW will not be liable upon, any Claim except as otherwise provided for in this Agreement, relating to the provision of,

any Contractor's Equipment, labour, materials and other work necessary to execute the Contractor's Activities, whether or not expressly mentioned in this

Agreement or anticipated by the Contractor, and agrees that all such Contractor's Equipment, labour, materials and work forms part of the Contractor's Activities.

- (b) Save to the extent that the relevant SOW states that such details or requirements are not required to be supplied by the Contractor or lists them as a TfNSW Dependency, omissions of details or requirements relating to the Trackside Subsystem or the Contractor's Activities which:
 - (i) are customarily provided or performed in connection with, or incidental or ancillary to the provision or performance of, works and services in the nature of the provision of the Trackside Subsystem and the Contractor's Activities; or
 - (ii) are required to be performed under the ASA Charter,

will not relieve the Contractor from performing such omitted details or requirements, and they must be performed as if fully and correctly set forth and described in this Agreement and the relevant SOW and will not be considered to be a Variation, EOT Event or Compensation Event.

6.3 Standards of service

- (a) The Contractor:
 - (i) must use and supply workmanship:
 - (A) of the standard prescribed in this Agreement, and to the extent it is not so prescribed, of a standard consistent with Industry Best Practice for work of a nature similar to the Contractor's Activities; and
 - (B) which is fit for purpose;
 - (ii) must use and supply materials (including the Assets and Contractor's Equipment) which are:
 - (A) suitable, new (at the point at which they are first tested or supplied for use in connection with the Program) and comply with the requirements of the Agreement, and to the extent not fully described in the Agreement, which are of a standard consistent with Industry Best Practice; and
 - (B) safe and of merchantable quality, which are fit for their purpose and consistent with the nature and character of the Contractor's Activities;
 - (iii) despite any other provision in this Agreement to the contrary, must ensure that no other services or facilities, including the existing ETCS Level 1 services on the Network, are:
 - (A) damaged or destroyed; or
 - (B) disconnected, disrupted, interfered with or interrupted,
 by reason of the performance of the Contractor's Activities, without prior approval by TfNSW;

- (iv) must regularly consult with TfNSW during the performance of the Contractor's Activities and use all reasonable efforts to inform itself of the requirements of TfNSW and, subject to paragraph (b), perform the Contractor's Activities in accordance with those requirements;
 - (v) must implement a quality assurance and management system in accordance with, and otherwise perform their obligations relating to quality assurance as defined in, the PR; and
 - (vi) must allow TfNSW access to the quality assurance and management system of the Contractor and its Subcontractors.
- (b) Where compliance with any requirements of TfNSW under clause 6.3(a)(iv) would require a Variation under clause 5.3 (Variations), the Contractor must, prior to complying with those requirements and in any event within ten (10) Business Days of becoming aware of such requirements, give TfNSW a notice stating that compliance with the requirements requires a Variation. If the Contractor issues such a notice, TfNSW must:
- (i) issue a Variation Request, requiring the Contractor to provide a Variation Proposal in accordance with section 4 (Variations) of Schedule 7 (New SOWs and Variation Procedures), in which case the Contractor must not comply with the requirements unless either TfNSW has Directed it to do so in accordance with section 5 (Directions to Proceed) of Schedule 7 (New SOWs and Variation Procedures) or has approved the Variation Proposal in accordance with Schedule 7 (New SOWs and Variation Procedures);
 - (ii) issue a Direction to Proceed in accordance with section 5 (Directions to Proceed) of Schedule 7 (New SOWs and Variation Procedures);
 - (iii) notify the Contractor that it does not accept that compliance with the requirements requires a Variation, in which case the Contractor:
 - (A) must comply with the requirements; and
 - (B) will be entitled to treat such notice as an Issue for the purposes of clause 33 (Resolution of Matters); or
 - (iv) notify the Contractor that TfNSW does not require the Contractor to comply with the requirements.

6.4 Collaboration

- (a) The Contractor acknowledges that both TfNSW and certain other Rail Transport Entities have in place agreements, and may enter into further agreements, with a number of Other Contractors for the provision of goods and/or services in relation to the Program.
- (b) In order for TfNSW and other Rail Transport Entities to receive the full benefit of the System and the Program, the Contractor must cooperate and coordinate its performance of the Contractor's Activities with TfNSW, Other Contractors, any other Third Parties involved in the delivery of the Program and the Stakeholders.
- (c) The Contractor acknowledges that it is intended that the parties, together with the System Integrator, the TMS Supplier, and such Key Subcontractors, Other

Contractors and Stakeholders as determined by TfNSW from time to time (the **Collaboration Participants**), operate under and in accordance with:

- (i) collaboration principles which set out the basis on which the Collaboration Participants will collaborate and cooperate during the Program, and which will form the basis of an agreed collaboration charter and agreed ways of working to be developed between the Collaboration Participants and TfNSW during the delivery phase of the Program; and
- (ii) the Digital Systems Team Charter,

(together with the agreed collaboration charter and ways of working, once developed, the **Collaboration Principles**). The version of the Collaboration Principles in force as of the Execution Date is set out in Schedule 14 (Collaboration Principles).

6.5 Compliance with Directions

- (a) Subject to paragraph (c), the Contractor must comply with the Directions of TfNSW and, where required by TfNSW or where the Contractor's Activities involve any issue of safety or security (in which case, in respect of that issue of safety or security only), the Directions of other Rail Transport Entities.
- (b) Except where this Agreement provides otherwise (including in relation to Directions to Proceed), a Direction may be given orally. TfNSW will, as soon as reasonably practicable, confirm or procure the confirmation of (where a Direction is given by another Rail Transport Entity) any oral Direction in writing where requested by the Contractor in writing to do so. For clarity, any written Direction (or any confirmation of an oral Direction in writing) will be provided to the Contractor's Representative as soon as reasonably practicable.
- (c) Where the Contractor considers that any Direction, not expressed to be a Direction to Proceed under section 5 (Directions to Proceed) of Schedule 7 (New SOWs and Variation Procedures), constitutes or involves a Variation or would otherwise entitle the Contractor to any Claim (including under or in respect of the TLS Agreement), the Contractor must, prior to complying with the Direction and in any event within ten (10) Business Days of receiving such Direction, give TfNSW a notice stating that it considers the Direction to constitute or involve a Variation or otherwise entitle the Contractor to any Claim. If the Contractor issues such a notice, TfNSW must:
 - (i) issue a Variation Request, requiring the Contractor to provide a Variation Proposal in accordance with section 4 (Variations) of Schedule 7 (New SOWs and Variation Procedures), in which case the Contractor must not comply with the Direction unless either TfNSW has Directed it to do so in accordance with section 5 (Directions to Proceed) of Schedule 7 (New SOWs and Variation Procedures) or has approved the Variation Proposal in accordance with Schedule 7 (New SOWs and Variation Procedures);
 - (ii) confirm the Direction by issuing a Direction to Proceed in accordance with section 5 (Directions to Proceed) of Schedule 7 (New SOWs and Variation Procedures);
 - (iii) notify the Contractor that it does not accept that the Direction constitutes or involves a Variation or entitles the Contractor to any Claim, in which case the Contractor:

- (A) must comply with the Direction; and
 - (B) will be entitled to treat such notice as an Issue for the purposes of clause 33 (Resolution of Matters); or
- (iv) withdraw the Direction, or procure the withdrawal of the Direction (where a Direction is given by another Rail Transport Entity), by notice to the Contractor.
- (d) The Contractor will not be entitled to make, and TfNSW will not be liable upon, any Claim against TfNSW or any Stakeholder (including under or in respect of the TLS Agreement) arising in connection with a Direction by TfNSW, including a Claim for Variation, for an extension of time or that the Direction is a Compensation Event, that is not expressly identified in a notice provided by the Contractor to TfNSW in accordance with paragraph (c).
- (e) Notwithstanding any provisions of the Collaboration Principles which encourage open and efficient communication, the Contractor acknowledges that TfNSW remains the “principal” and “customer” in respect of the Program and that (save as otherwise provided in this clause 6.5) no other person (including the System Integrator) has the power or authority to issue Directions, make decisions or issue requests on behalf of or as agent of TfNSW. If it is ever not clear as to whether or not a Direction or decision has been made by TfNSW, the Contractor must consult with TfNSW to resolve that matter.
- (f) Without limiting the foregoing, if there is any conflict between a Direction or notice given to the Contractor by TfNSW and that given by another Rail Transport Entity, the Contractor must notify TfNSW of such conflict as soon as practicable after becoming aware of it. TfNSW will notify the Contractor of the resolution of the conflict as soon as practicable and the Contractor must comply with the Directions, instructions or notices specified in TfNSW’s notice.

7 Development, submission and Review of Document Deliverables

7.1 Obligation to develop and supply Document Deliverables

- (a) If the Contractor is required to develop, supply or update any Document Deliverables, the Contractor must develop the Document Deliverables in accordance with this clause 7, and so that once developed or updated and implemented they meet the requirements of this Agreement, including:
 - (i) the Contract Specifications;
 - (ii) the requirements in any SOW under which the Document Deliverable is being developed, supplied or updated; and
 - (iii) any Direction to Proceed.
- (b) The Contractor acknowledges that the Document Deliverables will be developed or updated through a consultative, progressive and staged process that will:
 - (i) involve, amongst other things, consultation between Stakeholders, the Contractor, Other Contractors and TfNSW; and

- (ii) enable TfNSW, Stakeholders and Other Contractors to review and comment on relevant aspects of the Document Deliverables as they are developed or updated.

7.2 Review Procedures

- (a) Unless TfNSW agrees otherwise, the Contractor must prepare and submit the following types of Document Deliverables for Review:
 - (i) Document Deliverables that require Review in accordance with Appendix 02 (Schedule of Deliverables) to the PR;
 - (ii) any Document Deliverables (in addition to those identified in paragraph (i) above) which are required to fully evidence that:
 - (A) the Agreement requirements and all Contract Specifications:
 - are satisfied by the design of the Trackside Subsystem;
 - will be and have been implemented by the manufacture and/or construction of the Trackside Subsystem; and
 - in each case have been Verified;
 - (B) all Defects have been investigated and rectified;
 - (C) hazards and risks in relation to, or in connection with, the Contractor's Activities have been mitigated so far as is reasonably practicable;
 - (D) configuration changes have been fully implemented;
 - (E) the process required for Review of Document Deliverables identified in this Agreement and the PR have been followed; and
 - (F) Contractor's Program commitments have been undertaken and successfully completed;
 - (iii) Document Deliverables that are listed as Document Deliverables for submission in any Project Plan;
 - (iv) Document Deliverables that are required to operate the NSW Rail Assets;
 - (v) Document Deliverables that are updated or amended, having previously achieved a Confirmed Document status; and
 - (vi) without limiting paragraph (i), all other Document Deliverables that are otherwise required to be submitted to TfNSW for Review and/or approval under this Agreement, the PR or a SOW, including those Document Deliverables required to be submitted by the Contractor as part of its obligations as an AEO.
- (b) The Contractor must submit the above Document Deliverables to TfNSW or the Reviewing Party (as applicable) for Review:
 - (i) in accordance with the:

- (A) Milestones;
 - (B) relevant SOW;
 - (C) Contractor's Program;
 - (D) Contract Specifications;
 - (E) Design Development Requirements (as applicable); and
 - (F) Review Procedures; and
- (ii) in each case:
- (A) on or before the time required in the documents referred to in paragraph (b)(i); and
 - (B) where no specific time is so provided, allowing a reasonable time period to enable the Reviewing Party to Review the Submitted Documents and for the Contractor to implement any updates to the Document Deliverables as contemplated by clause 7.3 (Updating of Document Deliverables), without any delay to the progress of the Contractor's Activities.
- (c) Where the Document Deliverable being submitted under paragraph (a) is Design Documentation which must have Approval prior to being implemented, the Contractor must (when submitting the Document Deliverable to TfNSW for Review) submit evidence (to the reasonable satisfaction of TfNSW) of the relevant Approval.

7.3 Updating of Document Deliverables

- (a) The Contractor must:
- (i) review and, if necessary, update each Document Deliverable to take account of events or circumstances which will, or may, affect the Contractor's Activities relevant to the Document Deliverable, including:
 - (A) where the correction of Defects in Assets necessitates an amendment to any Document Deliverable;
 - (B) if TfNSW notifies the Contractor that any Document Deliverable does not comply with the requirements of this Agreement;
 - (C) New SOWs;
 - (D) any Variations, Enhancements, Updates or Upgrades; and
 - (E) Changes in Law, Changes in Standards or Changes in Approvals (where the Contractor is required to implement and comply with the Change in Law, Change in Standard or Change in Approval (as applicable) in accordance with section 6 (Changes in Laws, Approvals and Standards) of Schedule 7 (New SOWs and Variation Procedures));
 - (ii) promptly submit each updated Document Deliverable to TfNSW for Review;

- (iii) except as agreed in a Variation, or as required to ensure that the Document Deliverable is consistent with this Agreement, not update any Document Deliverable in a manner which:
 - (A) makes any Rail Transport Entity's, any Stakeholder's or any Other Contractor's obligations, responsibilities or activities in connection with the Program more onerous or more costly; or
 - (B) increases any liability or potential liability of any TfNSW Indemnified Person in connection with the Program; and
- (iv) unless agreed otherwise with TfNSW, ensure that any updated Document Deliverables:
 - (A) impose standards, levels of service, scope and requirements that are equal to, greater than or higher than those imposed by; and
 - (B) provide an equal or greater level of detail than,

the previous versions of the Document Deliverables.
- (b) If, at any time:
 - (i) any Document Deliverable does not comply with the requirements of this Agreement; or
 - (ii) the Contractor has not updated any Document Deliverable in accordance with the requirements of paragraph (a),then TfNSW may by notice request that the Contractor amend or update the Document Deliverable specifying the:
 - (iii) reasons why the Contractor must update the Document Deliverable (or why the Document Deliverable does not comply with this Agreement); and
 - (iv) time within which the Contractor must update the Document Deliverable (which must be reasonable, having regard to the amount of work required),and the Contractor must:
 - (v) amend or update the Document Deliverable as requested by TfNSW to comply with the requirements of this Agreement; and
 - (vi) submit the amended or updated Document Deliverable to TfNSW for Review within the time specified under paragraph (iv).

7.4 Project Plans

- (a) The intended purpose of the Project Plans includes:
 - (i) in respect of Project Plans to be developed or updated by the Contractor, to demonstrate to TfNSW that the Contractor has the understanding, capacity and capability at all times to perform the Contractor's Activities safely and in accordance with the requirements of this Agreement;

- (ii) to help ensure that the Trackside Subsystem complies with the requirements of this Agreement;
 - (iii) to help define responsibilities, resources and processes for planning, performing and verifying that the Contractor's Activities satisfy the requirements of this Agreement; and
 - (iv) to help allow TfNSW to understand how the Contractor will achieve the performance outcomes and objectives specified in this Agreement and otherwise fulfil its obligations under this Agreement.
- (b) The Contractor must:
 - (i) develop, submit for Review and implement the Project Plans in accordance with the requirements of this Agreement (including the PR);
 - (ii) where an Initial Project Plan exists, ensure that the Project Plans are based on the Initial Project Plans; and
 - (iii) not reduce or otherwise decrease the requirements set out in the Initial Project Plans in any Project Plans required under this Agreement.
- (c) Despite the content of the Initial Project Plans, the Contractor acknowledges that it bears absolutely all risks howsoever they may arise as a result of the use by the Contractor of, or the reliance by the Contractor upon, the Initial Project Plans in performing the Contractor's Activities and that such use and reliance will not affect any of its obligations under this Agreement.
- (d) Without limiting any requirements set out in a SOW or elsewhere in this Agreement, the Contractor must keep the Project Plans up-to-date in accordance with and at the times specified in the PR, or where no timeframe is specified, at such times as required by TfNSW from time to time.
- (e) Without limiting any other provision of this Agreement, the Contractor must:
 - (i) subject to paragraph (ii), implement and comply with, and ensure that the Subcontractors comply with, each Project Plan; and
 - (ii) subject to the PR and section 7 (Compliance with Submitted Documents) of Schedule 8 (Review Procedures), not use any plan unless it is a Project Plan that is a Confirmed Document.

7.5 Reports

The Contractor must provide to TfNSW each of the Reports, in accordance with and at the times specified in this Agreement, the PR, Schedule 16 (Reports) or the SOW, or where no timeframe is specified, monthly.

7.6 Information requests

The Contractor must give TfNSW reasonable advance notice if the Contractor requires any information, materials, documents or instructions from TfNSW to carry out the Contractor's Activities in accordance with this Agreement. The Contractor acknowledges and agrees that, unless expressly provided to the contrary in this Agreement:

- (a) TfNSW will not be obliged to provide any information, materials, documents or instructions requested by the Contractor;
- (b) TfNSW will not be obliged to provide any information, materials, documents or instructions requested by the Contractor by any particular time;
- (c) provision of such information, materials, documents or instructions will not be a TfNSW Dependency; and
- (d) if TfNSW does not provide the relevant information, materials, documents or instructions, the Contractor will not be entitled to:
 - (i) delay the progress of any part of the Contractor's Activities; or
 - (ii) make, and TfNSW will not be liable upon, any Claim against TfNSW, including a Claim for an extension of time or that the failure constitutes a Compensation Event.

7.7 Copies of Document Deliverables

- (a) The Contractor must, for the purpose of enabling the proper use of any Works or Assets, provide to TfNSW at least one soft copy of the Document Deliverables via TfNSW's chosen collaboration and document management tool as notified to the Contractor from time to time.
- (b) All Document Deliverables must be:
 - (i) in fully text searchable computer readable form (or in such other form as agreed with TfNSW from time to time) and without any security restrictions;
 - (ii) written in the English language;
 - (iii) of a reasonable standard in terms of its presentation, accuracy and scope; and
 - (iv) the most current and up-to-date version available.
- (c) If, for any reason, the Contractor replaces, amends or updates any Document Deliverable, the Contractor must provide free to TfNSW such number of copies of the replaced, amended or updated Document Deliverable (or the amendments to the Document Deliverable) as is necessary to update TfNSW's existing Document Deliverables within twenty (20) Business Days (or within a shorter period as reasonably specified by TfNSW) of the replacement, amendment or update.

8 Sites and Physical Works

8.1 Physical Works Schedule

Without prejudice to the Contractor's general obligation to deliver the Contractor's Activities in accordance with clause 6 (Supply obligations) and this Agreement, if the Contractor's Activities include the performance of Physical Works, the Contractor must, in addition, execute the Contractor's Activities in accordance with Schedule 10 (Physical Works) and the terms of Schedule 10 (Physical Works) apply in connection with all Physical Works.

8.2 Delivery Locations

- (a) The Contractor must not, without TfNSW's prior consent:
 - (i) perform any of the Contractor's Activities from, at or in any locations other than the Delivery Locations; or
 - (ii) allow a Key Person to perform any of the Contractor's Activities from, at or in any locations other than the Delivery Locations for which the relevant Key Person is approved to perform the Contractor's Activities.
- (b) For the purposes of paragraph (a), the Delivery Locations include those Rail Transport Entity Sites, as advised by TfNSW from time to time, where Contractor Personnel are co-located with TfNSW Personnel for the purposes of performing the Contractor's Activities.
- (c) If the Contractor wishes to obtain TfNSW's consent to perform any of the Contractor's Activities from any locations other than the Delivery Locations, or to change the Delivery Location from where a Key Person is approved to perform the Contractor's Activities, the Contractor must:
 - (i) provide TfNSW with any information that TfNSW reasonably requires in order to assess the proposed location; and
 - (ii) co-operate with TfNSW, any Government Authority or any relevant Rail Transport Entity in relation to any information requested by TfNSW, that Government Authority or that Rail Transport Entity as to the nature and operations of any proposed location.
- (d) The Contractor must, prior to, during and after the implementation of any change in Delivery Location, work with TfNSW to mitigate any risks to TfNSW relating to the performance of the relevant Contractor's Activities from the Delivery Location.

8.3 Co-location

The Contractor must co-locate (including at Rail Transport Entity Sites) with TfNSW Personnel and the personnel of Other Contractors, such Contractor Personnel as are required by any SOW for the period set out in the SOW.

8.4 Location requirements

Without limiting any other provision of this Agreement:

- (a) all facilities and accommodation provided by TfNSW to the Contractor are only to be used by the Contractor for the purpose of performing the Contractor's Activities under this Agreement;
- (b) all furnishings provided by TfNSW to the Contractor will be standard furnishings (e.g. desks, chairs, file cabinets, desk phone and similar items) of the same quality and number that it normally provides to its staff; and
- (c) the Contractor must provide all the equipment needed to perform the Contractor's Activities, including mobile phones and desktop or laptop computers for all Contractor Personnel.

8.5 Access by the Contractor to Rail Transport Entity Sites

- (a) At least twenty (20) Business Days (or such longer period as may be required under this Agreement or any TfNSW Policy with respect to particular Delivery Locations) prior to commencing work on, or requiring access to, a Rail Transport Entity Site (including the Rail Corridor) (or such other period of time as TfNSW may agree), the Contractor must:
 - (i) notify TfNSW of the date the Contractor proposes to commence such work or require such access and the expected duration of the work on, or access to, that Rail Transport Entity Site;
 - (ii) unconditionally deliver to TfNSW an access indemnity in substantially (as determined by TfNSW) the form of Schedule 34 (Form of Access Indemnity) (**Access Indemnity**), fully executed by the Contractor; and
 - (iii) in respect of each Track Possession, comply with Schedule 10 (Physical Works) and the PR in respect of that Track Possession.
- (b) The Contractor may only access Rail Transport Entity Sites as reflected in the relevant SOW, a Direction or the Contractor's Program.

8.6 Conditions of access

- (a) The Contractor must:
 - (i) only access a Rail Transport Entity Site for the purposes approved in advance by TfNSW;
 - (ii) obtain all necessary Approvals and consents (excluding those Approvals, the obtainment of which are TfNSW Dependencies) prior to performing work on a Rail Transport Entity Site, including any Approvals specific to a particular Rail Transport Entity;
 - (iii) comply with all Approvals and consents applicable to a Rail Transport Entity Site to which the Contractor seeks or has access (provided that in the case of Approvals and consents obtained by TfNSW, the Contractor is notified, or otherwise aware, of the conditions applicable to those Approvals or consents);
 - (iv) comply with the access requirements relating to that Rail Transport Entity Site, as notified to it by the relevant Rail Transport Entity from time to time;
 - (v) comply with any workplace, health and safety rules or requirements of the relevant Rail Transport Entity;
 - (vi) comply with all reasonable requirements of the relevant Rail Transport Entity;
 - (vii) where it has Control of a Rail Transport Entity Site, control access to, and ensure public safety on, all or such part (as the case may be) of the Rail Transport Entity Site (as applicable);
 - (viii) not contact any of the Rail Transport Entities (other than TfNSW) without prior approval from TfNSW, unless otherwise expressly permitted by this Agreement;

- (ix) ensure the Contractor's Activities are performed safely so as to protect persons and property and to avoid causing destruction or damage to property or harm to persons; and
 - (x) comply with all other conditions of access set out in a SOW, a Direction or the Contractor's Program.
- (b) The Contractor acknowledges and agrees that:
 - (i) it may not be given exclusive access to any of the Rail Transport Entity Sites;
 - (ii) a Rail Transport Entity may engage other contractors or consultants to perform other work on the Rail Transport Entity Sites;
 - (iii) a Rail Transport Entity may remove any unauthorised person from the Rail Transport Entity Sites at any time; and
 - (iv) the Rail Transport Entity Sites are areas where the Rail Transport Entities carry on their business and the Contractor is not entitled to make a Claim for any delay or disruption to the Contractor (including a claim for an extension of time or compensation) caused by a Rail Transport Entity carrying on business on that Rail Transport Entity Site except under and in accordance with clauses 15.3 (Extension of Time) and 15.6 (Compensation Events) to the extent that such delay or disruption is an EOT Event or Compensation Event.
- (c) The Contractor:
 - (i) must make good any damage to the Rail Transport Entity Sites caused by any act or omission of the Contractor or its Associates; and
 - (ii) indemnifies and must keep the TfNSW Indemnified Persons indemnified against any Loss or Claim suffered or incurred as a result of, or in connection with, any adverse effect or interference resulting from a breach of this clause 8.6 or any other wilful misconduct, reckless or negligent act or omission of the Contractor or its Associates relating to access to or occupation of a Rail Transport Entity Site. The Contractor must promptly notify TfNSW of any such adverse effect or interference.
- (d) Without limiting any other obligation under this Agreement, the Contractor must notify TfNSW immediately upon it becoming aware of any actual or suspected security breach or Security Incident:
 - (i) at a Delivery Location; or
 - (ii) related to or affecting the Works, the Assets, the Trackside Subsystem, the System or the Program.

8.7 Working areas at Rail Transport Entity Sites

- (a) The Contractor acknowledges and agrees that working areas, and areas for the stacking or storage of Contractor's Equipment, at Rail Transport Entity Sites may be nominated by the relevant Rail Transport Entity from time to time. The Contractor must not perform work, or permit the Contractor's Equipment to be stacked or stored, outside of the areas so nominated.

- (b) The Contractor must arrange and place all the Contractor's Equipment at a Rail Transport Entity Site in positions approved by the relevant Rail Transport Entity.
- (c) The Rail Transport Entities will not be responsible for the safe-keeping of any of the Contractor's Equipment. The Contractor may provide any security measures it considers necessary to ensure the safe-keeping of any of the Contractor's Equipment at a Rail Transport Entity Site, subject to the relevant Rail Transport Entity's approval.
- (d) The Rail Transport Entities may check the contents of Contractor vehicles and vessels entering or leaving a Rail Transport Entity Site.
- (e) The Contractor must keep all working areas, and areas for the stacking or storage of the Contractor's Equipment, at a Rail Transport Entity Site clean and tidy and free of refuse, and must clean up no less often than at the end of each day.

8.8 TfNSW's Right to Access

- (a) Subject to clauses 8.9 (Access by TfNSW to Contractor Sites) and 8.10 (TfNSW not in Control), the Contractor must:
 - (i) manage the Contractor's Activities to ensure that any interference or inconvenience to the business of the Rail Transport Entities and Stakeholders are kept to an absolute minimum, and comply with any Direction of TfNSW in respect of such management;
 - (ii) ensure the Contractor's Activities are performed so that there is no legal nuisance and minimal disturbance and inconvenience is caused to owners, users, tenants or occupiers of the Delivery Locations and land adjoining the Rail Transport Entity Site, or use by the public, of the Delivery Location or land adjoining the Rail Transport Entity Site;
 - (iii) minimise disruption or inconvenience to others having a right of access to the Delivery Location or any other land or buildings above or adjacent to the Delivery Locations; and
 - (iv) at all times give TfNSW and any person authorised by TfNSW access to the Delivery Locations.
- (b) The Contractor must ensure that any person to whom the Contractor gives access complies with the requirements of this clause 8.

8.9 Access by TfNSW to Contractor Sites

- (a) TfNSW and any person authorised by TfNSW may, at any time after reasonable notice to the Contractor, have access to any part of the Contractor Sites for any purpose related to the Program, subject to normal safety and security constraints as notified by the Contractor to TfNSW.
- (b) TfNSW must ensure that the Contractor is not impeded in performing the Contractor's Activities while exercising its right of access under this clause 8.9.

8.10 TfNSW not in Control

The Contractor and TfNSW acknowledge that nothing in this Agreement will be construed to mean or imply that TfNSW has any:

- (a) management or control over the Contractor's Activities or Control over the Contractor Sites; or
- (b) responsibility for any act or omission by the Contractor or its Subcontractors or agents in relation to a Delivery Location, including compliance or non-compliance with any relevant Mandatory Requirements, Approvals, Third Party Agreements or this Agreement.

8.11 Contractor's Equipment and Materials Removal

The Contractor must not remove from the Delivery Locations any:

- (a) significant materials or major items of Contractor's Equipment; or
 - (b) materials or Contractor's Equipment specified in any notice issued by TfNSW,
- without the prior written approval of TfNSW, which approval must not be unreasonably withheld.

9 Design

9.1 Obligation to conduct Design Activities

If the Contractor is required to:

- (a) conduct Design Activities in relation to an Asset; and/or
- (b) develop Design Documentation,

then the Contractor must conduct those Design Activities and/or develop those Design Documents in accordance with this clause 9 (Design), and so that once developed and implemented they meet the requirements of this Agreement, including the:

- (c) Design Development Requirements;
- (d) Contract Specifications; and
- (e) requirements of any SOW under which those Design Activities and/or Design Documentation are being supplied.

9.2 Design Documentation

- (a) This clause should be read in conjunction with other parts of this Agreement that relate to the development of Design Documents, including in particular:
 - (i) clause 7 (Development, submission and Review of Document Deliverables);
 - (ii) Schedule 8 (Review Procedures); and
 - (iii) the Design Development Requirements set out in the PR.
- (b) The Contractor agrees that the purpose of the Design Development Process is to:
 - (i) optimise the design of the Trackside Subsystem and the System; and

- (ii) develop, refine and finalise the Design Documentation through to Confirmed Documents.
- (c) The Contractor must conduct and manage, and must provide all resources required for the conduct of, all aspects of the Design Development Process.

9.3 Design Development Process overview

The Contractor must:

- (a) design, document and comply with the Systems Engineering Management Plan for the conduct of the Design Development Process;
- (b) except to the extent TfNSW agrees otherwise, ensure that the Design Documents are submitted for Review in the sequence and at the time described in the Systems Engineering Management Plan and, on submission, are developed to the level described in the Systems Engineering Management Plan;
- (c) except as set out in the Systems Engineering Management Plan or agreed by TfNSW in writing, develop the Design Documents through each Design Phase until it is a Confirmed Document;
- (d) for each Design Phase, as relevant:
 - (i) develop, consult on, submit for Review, respond to the Reviewing Party's comments on and refine the Design Documents all in accordance with clause 9.4 (Design development coordinator obligations), the Design Development Requirements in the PR and the Review Procedures; and
 - (ii) facilitate and participate in the Design Presentations contemplated in clause 9.6 (Design Presentations) and the interactions with Stakeholders and Other Contractors contemplated under the Design Development Requirements in the PR; and
- (e) in developing Design Documents for Review, ensure that the input of TfNSW (and, where applicable, other Stakeholders and Other Contractors arising from prior interactions contemplated under the Design Development Requirements in the PR) is addressed.

9.4 Design development coordinator obligations

- (a) The Contractor must:
 - (i) without prejudice to its obligations under Schedule 17 (Governance and Management), convene and manage meetings with TfNSW in respect of the design of the Trackside Subsystem;
 - (ii) convene and manage all Design Presentations;
 - (iii) manage the submission of the Design Documents to TfNSW or the Reviewing Party (as applicable) in accordance with the Review Procedures and the Project Plans; and
 - (iv) otherwise consult with TfNSW throughout the Design Development Process,

in accordance the Systems Engineering Management Plan, the Contractor's Program and this clause 9.

- (b) If the Contractor does not properly co-ordinate the submission of Design Documents (whether due to the level of development, content, or timing of submission or otherwise not being in accordance with the Systems Engineering Management Plan or this Agreement):
 - (i) TfNSW or the Reviewing Party (as applicable) may require the Contractor to re-submit the nominated Design Documents in a compliant and co-ordinated way within a time period determined by TfNSW; and
 - (ii) the Contractor will not be entitled to make, and TfNSW nor any Stakeholder will be liable upon, any Claim in respect of any resulting delay.

9.5 Collaborative Design

- (a) The Contractor must coordinate and attend one or more initial collaborative design meetings with TfNSW to:
 - (i) commence planning of the Design Development Process; and
 - (ii) discuss and develop:
 - (A) appropriate protocols and processes for the submission of Design Documents to TfNSW for Review;
 - (B) a nominal schedule for Design Development Presentations and meetings with Stakeholders and Other Contractors; and
 - (C) appropriate protocols and processes for conducting the meetings and recording their outcomes.
- (b) The Contractor must fully support any design working group established by or on behalf of TfNSW (**Design Working Group**), including by ensuring attendance of and participation in the group of such number of suitably qualified Contractor Personnel as required by TfNSW from time to time. The objectives of the Design Working Group will be to:
 - (i) facilitate discussion on all design issues relating to the Trackside Subsystem;
 - (ii) informally exchange information regarding the development of the design of the Trackside Subsystem including, when appropriate:
 - (A) the manner in which and times by which the Design Documentation is to be completed;
 - (B) numbers, names and outlines of the content of documentation packages which will be submitted;
 - (C) types of documents to be included in each package;
 - (D) approximate numbers of drawings to be included in each package; and

- (E) names of Government Authorities and other persons having jurisdiction over matters which may be relevant to each package;
 - (iii) set direction for future design processes and schemes;
 - (iv) meet regularly but in any event as required to keep TfNSW informed regarding the progress of the Design; and
 - (v) consider TfNSW's feedback on the design process.
- (c) It is not intended that the Design Working Group will:
 - (i) avoid, replace or supplant the operation of clause 7 (Development, submission and Review of Document Deliverables) or Schedule 8 (Review Procedures); or
 - (ii) generate presentation materials for subsequent consideration and formal evaluation.
- (d) Without limiting any other provision of this Agreement, nothing which occurs during a Design Working Group meeting or as part of the process for such meetings will:
 - (i) relieve the Contractor of its obligations, or constitute a waiver of any of TfNSW's rights, under this Agreement; or
 - (ii) be constructed as a Direction or notice by TfNSW to do or not to do anything, and the parties confirm that all discussions, debates, disagreements and resolutions on any matters raised at meetings of the Design Working Group are only for the purpose of satisfying the objectives in paragraph (b) and will not give rise to any obligation on the part of the Contractor to comply with anything which TfNSW or TfNSW's advisors say or do as part of the process for such meetings.
- (e) TfNSW is entitled to invite and have Third Parties (and their consultants) attend and participate in Design Working Group meetings.

9.6 Design Presentations

- (a) The Contractor must organise, manage and undertake, in collaboration with TfNSW, Stakeholders and Other Contractors, appropriate meetings (**Design Presentations**):
 - (i) within ten (10) to fifteen (15) Business Days after the submission of the Design Documentation to TfNSW for Review; and
 - (ii) otherwise at the request of TfNSW (acting reasonably),

and in all cases, at convenient times to facilitate attendance by the Stakeholders and other relevant Third Parties.
- (b) The Contractor must give TfNSW and other proposed attendees no less than ten (10) Business Days' notice of the conduct of a Design Presentation, stating the date and time of the Design Presentation.

- (c) At each Design Presentation, the Contractor must make available sufficient members of the Designer's Team (as determined appropriately by the Contractor) and any other person reasonably requested by TfNSW, to demonstrate:
 - (i) the approach adopted for design, standards to be adopted, and assumptions made;
 - (ii) the approach to interfaces with:
 - (A) other Subsystems and the Interfacing Systems;
 - (B) existing structures and the surrounding environment;
 - (C) Rail Transport Entities; and
 - (D) Other Contractors and Interface Contractors;
 - (iii) the status of review of the Design Documentation by the relevant Government Authorities;
 - (iv) how the current proposed Design Documentation reflects the Concept Design; and
 - (v) the interrelationship with other design elements of the Assets.
- (d) The Contractor must include in each Design Presentation such materials as are reasonably required for TfNSW (and any other persons TfNSW reasonably requires) to understand and comment on the concepts and details the subject of the Design Presentations.
- (e) Without prejudice to the foregoing provisions of this clause 9.6, the Contractor must also attend design coordination meetings when requested to do so by TfNSW, including for the purpose of identifying, reviewing, coordinating or resolving any matters of common interest between the Contractor and Other Contractors.
- (f) The purpose of the Design Presentations is:
 - (i) for the Contractor to present the content and intent of the relevant Design Documentation to TfNSW after TfNSW has first had reasonable opportunity to familiarise itself with the Design Documentation;
 - (ii) to give TfNSW the opportunity to provide input into the development of the Design Documentation by participating in a consultative process between the Contractor, Stakeholders, Other Contractors, and any nominated Associate of the Contractor, TfNSW, Stakeholders and Other Contractors; and
 - (iii) to enable TfNSW to obtain a better understanding of, and to query, the Contractor's approach to the Trackside Subsystem before completion of TfNSW's review.

9.7 Concept Design

- (a) The Contractor acknowledges and agrees that:

- (i) prior to the SOW Commencement Date for Statement of Work 1 it prepared a Concept Design for the initial Design Activities;
- (ii) prior to the SOW Commencement Date for each New SOW involving Design Activities it may be required to prepare a Concept Design relevant to the Design Activities to be performed under that SOW;
- (iii) the Contractor must, as part of the Contractor's Activities for each SOW in respect of which a Concept Design is prepared, continue to develop the relevant Concept Design:
 - (A) into the Preliminary Design;
 - (B) thereafter, into the Detailed Design;
 - (C) thereafter, into the Approved for Construction Design; and
 - (D) thereafter, into the Designs produced as a result of the Test Readiness Review or the System Verification Review,

so that each is fit for purpose and otherwise complies with the requirements of this Agreement;

- (iv) it bears absolutely all risks howsoever they may arise as a result of the use by the Contractor of, or the reliance by the Contractor upon, the relevant Concept Design in performing the Contractor's Activities under the SOW, and that the use and reliance on the Concept Design will not limit any of its obligations under this Agreement; and
- (v) the Contractor is responsible for, and assumes the risk of, any Loss it suffers or incurs arising out of or in connection with:
 - (A) the design, manufacture, supply and installation of the Trackside Subsystem in accordance with the Concept Designs costing more than or taking longer than anticipated; and
 - (B) any differences between the Concept Design(s) and the Trackside Subsystem that is actually required to satisfy the requirements of this Agreement (ignoring for this purpose any differences which are the subject of a Variation) and irrespective of any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to the Concept Design(s).

(b) The Contractor:

- (i) must not depart from the Concept Designs in the development of the Preliminary Designs, the Detailed Designs, the Approved for Construction Designs or the Designs produced as a result of the Test Readiness Review or the System Verification Review without the prior consent of TfNSW; and
- (ii) acknowledges and agrees that TfNSW may refuse to provide the consent referred to in paragraph (b)(i) if, in TfNSW's reasonable opinion, a departure proposed by the Contractor to the design of the Trackside Subsystem set out in the Concept Design is not consistent with the design intent of the Concept Design or the Contract Specifications.

10 Verification

10.1 Obligation to conduct Verification Activities

- (a) The level of Verification Activities required for each of the SOW 1 Deployment Area, Future Deployment Areas and Future Project Work will be specified in the Verification Plan.
- (b) If the Contractor is required to conduct Verification Activities then the Contractor must carry out the Verification Activities in accordance with this Agreement, including:
 - (i) clause 6 (Supply obligations);
 - (ii) this clause 10;
 - (iii) the Verification Plan, Verification Procedure and Verification Program;
 - (iv) the Testing and Commissioning Plan;
 - (v) the Contract Specifications; and
 - (vi) the requirements of any SOW under which the Verification Activities are being performed.
- (c) TfNSW (and its nominees, including the System Integrator) may, but are not obliged to, attend and witness the conduct of all Verification Activities.
- (d) TfNSW may Direct that any part of an Asset not be covered up or made inaccessible during Verification Activities without TfNSW's prior written consent.

10.2 Integration and operational testing

The Contractor acknowledges and agrees that supporting integration, operational testing and validation of the System forms part of the Verification Activities for the Trackside Subsystem, and this clause 10 applies accordingly (**System Verification**).

10.3 Defects discovered as a result of testing, review or Verification

If, as a result of any test, review or Verification (including any System Verification), any Defect is identified, the Contractor must track, report on, manage and rectify the Defect in accordance with clause 23 (Defect Rectification) and reconduct the test, review or Verification as soon as practicable, including regression testing.

10.4 Additional Verification Activities

- (a) At any time, on giving the Contractor reasonable notice, TfNSW may carry out, or Direct the Contractor to carry out, additional Verification Activities beyond those contemplated in the Verification Plan, Verification Procedure and the Verification Program, SOW, or Contractor's Program (**Additional Verification Activities**).
- (b) The Contractor must provide all reasonable assistance required by TfNSW in relation to any Additional Verification Activities.

- (c) On completion of Additional Verification Activities, the Contractor must promptly make good the work Verified (including as required by clause 10.3 (Defects discovered as a result of testing, review or Verification)) so that it fully complies with this Agreement.

10.5 Costs of Verification

- (a) Notwithstanding anything to the contrary, the Contractor is responsible for, must pay its own costs of, and will not be entitled to charge TfNSW any Fees in respect of, supporting, participating in or conducting any Verification Activity to the extent that any Verification Activity:
 - (i) involves retesting, review or Verification of:
 - (A) an Asset, including the Trackside Subsystem, or other item within the scope of the Contractor's Activities that is subject to Verification, where that Asset or item has previously failed any Verification Activity; or
 - (B) the System, any Subsystem or Interfacing System where the System, Subsystem or Interfacing Subsystem has failed a Verification Activity due to a Defect in an Asset, including the Trackside Subsystem, or other item within the scope of the Contractor's Activities; or
 - (ii) is an Additional Verification Activity:
 - (A) required to be performed as a result of Assets or Work covered up or made inaccessible by the Contractor without the prior written approval of TfNSW (with procedures relating to this process to be developed during the Design Review Process and finalised as part of the Detailed Design Review);
 - (B) in respect of Contractor's Activities undertaken to correct or overcome a Defect; or
 - (C) where the results of the Additional Verification Activity show that:
 - the Contractors' Activities have not been performed in accordance with this Agreement; or
 - there is a Defect.
- (b) The Contractor is responsible for and indemnifies (and must keep indemnified) each TfNSW Indemnified Person for their costs and any additional costs claimed or incurred by any Other Contractor or Interface Contractor in:
 - (i) retesting, reviewing or verification of:
 - (A) an Asset, including the Trackside Subsystem, or other item within the scope of the Contractor's Activities that is subject to Verification, where that Asset or item has previously twice failed any Verification Activity; or
 - (B) the System, any Subsystem or Interface Subsystem, where the System, Subsystem or Interface Subsystem has twice failed a Verification Activity due to any Defect in an Asset, including the

Trackside Subsystem, or other item within the scope of the Contractor's Activities; or

- (ii) an Additional Verification Activity:
 - (A) required to be performed more than twice as a result of Assets or Work covered up or made inaccessible by the Contractor without the prior written approval of TfNSW (with details of this process to be developed during the Design Review Process and finalised as part of the Detailed Design Review);
 - (B) in respect of Contractor's Activities undertaken more than twice to correct or overcome a Defect; or
 - (C) where the results of the Additional Verification Activity show on more than two occasions that:
 - the Contractors' Activities have not been performed in accordance with this Agreement; or
 - there is a Defect.

11 Acceptance

11.1 Acceptance

If the Contractor is required to present the Trackside Subsystem (or any part of it) for Acceptance (including as part of testing for the System) or the Contractor must achieve Acceptance of any Milestone, then the Contractor must do so in accordance with this Agreement, including:

- (a) clause 6 (Supply obligations);
- (b) this clause 11 (Acceptance);
- (c) the Systems Engineering Management Plan;
- (d) the Contract Specifications; and
- (e) the requirements of any SOW under which the Acceptance is being performed.

11.2 Acceptance of Document Deliverables

For Milestones that relate to Document Deliverables that are subject to Review:

- (a) the Contractor must submit the Document Deliverable for Review in accordance with this Agreement, including the Review Procedures; and
- (b) in addition to any other applicable Acceptance Criteria, Acceptance of the Milestone will only be achieved when all relevant Document Deliverables required for that Milestone achieve 'Confirmed' status.

11.3 Provisional Acceptance of the Trackside Subsystem

- (a) If a SOW requires Provisional Acceptance, then the Contractor must present the Trackside Subsystem for Provisional Acceptance:

- (i) no later than the date specified in the SOW as the Milestone Date for Provisional Acceptance; and
 - (ii) in sufficient time for the Trackside Subsystem to reach Provisional Acceptance and Final Acceptance no later than the dates specified in the SOW as the Milestone Dates for Provisional Acceptance and Final Acceptance.
- (b) The Contractor must provide TfNSW with:
 - (i) a notice at least one (1) month and five (5) Business Days prior to the date on which the Contractor proposes to first present the Trackside Subsystem for Provisional Acceptance advising of the proposed date and time on which the Contractor proposes to first present the Trackside Subsystem for Provisional Acceptance; and
 - (ii) not less than five (5) Business Days' notice of the date and time when it proposes to re-present the Trackside Subsystem for Provisional Acceptance where the Trackside Subsystem has previously been the subject of a Rejection Certificate under paragraph (f).
- (c) The Contractor may present the Trackside Subsystem for Provisional Acceptance earlier than the date specified in the SOW as the Milestone Date for Provisional Acceptance, but TfNSW is not obliged to undertake activities to determine whether the Provisional Acceptance Criteria in respect of the Trackside Subsystem have been met or issue a Provisional Acceptance Certificate in respect of the Trackside Subsystem before the relevant date specified in the SOW as the Milestone Date for Provisional Acceptance.
- (d) The Contractor must provide TfNSW with all documents, details and other information that TfNSW may reasonably require in order to determine whether the Provisional Acceptance Criteria for the Trackside Subsystem have been satisfied.
- (e) If the Trackside Subsystem meets the Provisional Acceptance Criteria for the Trackside Subsystem, TfNSW will issue a Provisional Acceptance Certificate:
 - (i) identifying the date of Provisional Acceptance; and
 - (ii) listing any Minor Defects that the Contractor is required to rectify in accordance with clause 11.7 (Defects on Acceptance).
- (f) If the Trackside Subsystem does not meet the Provisional Acceptance Criteria for the Trackside Subsystem, TfNSW may issue a Rejection Certificate to the Contractor, identifying the items which must be rectified before Provisional Acceptance may occur.
- (g) TfNSW must notify the Contractor under paragraph (e) or (f) (as applicable), within ten (10) Business Days after the date when the Contractor submits its request for Provisional Acceptance, providing that all the information reasonably required to support the full and proper assessment by TfNSW is contained within the original submission. Where further information is required and requested by TfNSW in order to support a full and proper assessment, a further five (5) Business Days will be added to the initial ten (10) Business Day period for each further supporting submission of information by the Contractor.

- (h) Upon receipt of a Rejection Certificate the Contractor must promptly rectify the items set out in the Rejection Certificate and any other rectification works that are necessary to ensure the Trackside Subsystem meets the Provisional Acceptance Criteria for the Trackside Subsystem.
- (i) On satisfactory completion of all of those works implemented under paragraph (h):
 - (i) the Contractor must notify TfNSW;
 - (ii) the Contractor must resubmit the Trackside Subsystem for Provisional Acceptance on the date and time set out in the notice given under paragraph (i); and
 - (iii) paragraphs (a) to (i) will continue to apply until TfNSW issues a Provisional Acceptance Certificate for the Trackside Subsystem in accordance with paragraph (e).

11.4 Final Acceptance of the Trackside Subsystem

- (a) If a SOW requires Final Acceptance, then the Contractor must present the Trackside Subsystem for Final Acceptance by the date specified in the SOW as the Milestone Date for Final Acceptance or such later date as may be notified by TfNSW.
- (b) The Contractor must provide TfNSW with all documents, details and other information that TfNSW may reasonably require in order to determine whether the Final Acceptance Criteria for the Trackside Subsystem have been satisfied.
- (c) If the Trackside Subsystem meets the Final Acceptance Criteria for the Trackside Subsystem, TfNSW will issue a Final Acceptance Certificate for the Trackside Subsystem:
 - (i) identifying the date of Final Acceptance; and
 - (ii) listing any Minor Defects that the Contractor is required to rectify in accordance with clause 11.7 (Defects on Acceptance).
- (d) If the Trackside Subsystem does not meet the Final Acceptance Criteria for the Trackside Subsystem, TfNSW may issue a Rejection Certificate to the Contractor, identifying the items which must be rectified before Final Acceptance may occur.
- (e) TfNSW must notify the Contractor under paragraph (c) or (d) (as applicable), within ten (10) Business Days after the date when the Contractor submits its request for Final Acceptance, providing that all the information reasonably required to support the full and proper assessment by TfNSW is contained within the original submission. Where further information is required and requested by TfNSW in order to support a full and proper assessment, a further five (5) Business Days will be added to the initial ten (10) Business Day period for each further supporting submission of information by the Contractor.
- (f) Upon receipt of a Rejection Certificate the Contractor must promptly rectify the items set out in the Rejection Certificate and any other rectification works that are necessary to ensure the Trackside Subsystem meets the Final Acceptance Criteria for the Trackside Subsystem.
- (g) On satisfactory completion of all of those works implemented under paragraph (f):

- (i) the Contractor must notify TfNSW;
- (ii) the Contractor must resubmit the Trackside Subsystem for Final Acceptance on the date and time set out in the notice given under paragraph (i); and
- (iii) paragraphs (d) to (g) will continue to apply until TfNSW issues a Final Acceptance Certificate in accordance with paragraph (c).

11.5 Acceptance of other Milestones

- (a) For any Milestone other than Provisional Acceptance or Final Acceptance:
 - (i) the Contractor must notify TfNSW at least five (5) Business Days prior to the date upon which the Contractor anticipates meeting the Acceptance Criteria for the Milestone;
 - (ii) TfNSW will, within five (5) Business Days of receipt of a notice under paragraph (i), review the relevant Contractor's Activities the subject of that notice, and notify the Contractor that:
 - (A) the Acceptance Criteria for the Milestone have been met, and stating the date on which Acceptance of the Milestone has been achieved; or
 - (B) the Acceptance Criteria for the Milestone have not been met, and providing a list of items that are apparent and which must be completed (including the correction of any Defects) before Acceptance of the Milestone will be achieved; and
 - (iii) where the Contractor receives a notice under paragraph (ii)(B), then the Contractor must continue to perform the relevant Contractor's Activities so as to meet the Acceptance Criteria for the Milestone and thereafter notify TfNSW when it considers it has met the Acceptance Criteria for the Milestone, following which paragraph (ii) and this paragraph (iii) will continue to apply until TfNSW issues a notice under paragraph (ii)(A).
- (b) If the Contractor fails to give a notice required under paragraph (a)(i) or (a)(iii), TfNSW may at any time and for any reason issue a notice under paragraph (a)(ii)(B) for the relevant Milestone.

11.6 Effect of Certificates

- (a) A Provisional Acceptance Certificate is final and binding on the parties for the purposes only of establishing the date on which Provisional Acceptance occurred.
- (b) A Final Acceptance Certificate is final and binding on the parties for the purposes only of establishing the date on which Final Acceptance occurred.

11.7 Defects on Acceptance

- (a) It is a condition of Provisional Acceptance and Final Acceptance that the Trackside Subsystem is free from all Defects, other than Defects to which paragraph (b) applies and (if applicable) in respect of which TfNSW has approved a Draft Defect Rectification Plan.
- (b) Without prejudice to clauses 23.2 (Defect Rectification) and 23.3 (Batch Defects), TfNSW may, in respect of any:

- (i) Defect, if the Contractor fails to rectify the Defect within a reasonable timeframe specified by TfNSW, advise the Contractor that TfNSW will accept the Asset, or any part thereof, despite the Defect. In such a situation, the Fees will be reduced by the amount determined by TfNSW which represents the higher of the cost of correcting the Defect (or the relevant part of it) and the diminution in the value to TfNSW of the relevant Asset;
- (ii) Defect, if the Contractor fails to rectify the Defect within a reasonable timeframe specified by TfNSW, rectify the Defect itself or have a Third Party do so. In such situation clause 23.5 (Defect Rectification by Rectifying Party) applies; and/or
- (iii) Minor Defect, advise the Contractor that such Minor Defect is not required to be rectified prior to achievement of Provisional Acceptance or Final Acceptance (as applicable), in which case:
 - (A) the Contractor must provide TfNSW with a draft plan identifying the proposed schedule for the rectification of those Minor Defects by the Contractor to occur after achievement of Provisional Acceptance or Final Acceptance (as applicable) (**Draft Defect Rectification Plan**); and
 - (B) if TfNSW rejects the Draft Defect Rectification Plan:
 - TfNSW must provide its written reasons for the rejection; and
 - the Contractor must resubmit the Draft Defect Rectification Plan (and this paragraph (b)(iii) will reapply until TfNSW approves the Draft Defect Rectification Plan).
- (c) For clarity, at the point at which TfNSW approves the Draft Defect Rectification Plan it will become a Defect Rectification Plan and the Contractor must implement and comply with the Defect Rectification Plan.

12 Commissioning and Operational Readiness

- (a) If the Contractor is required to perform commissioning or operational readiness activities as part of the Contractor's Activities, then the Contractor must do so in accordance with this Agreement, including:
 - (i) clause 6 (Supply obligations);
 - (ii) this clause 12 (Commissioning and Operational Readiness);
 - (iii) the Testing and Commissioning Plan;
 - (iv) the Operational Readiness Plan;
 - (v) the Operational Integration and Operational Readiness Plans; and
 - (vi) the Contract Specifications.
- (b) The Contractor acknowledges that where commissioning and operational readiness activities are part of the Contractor's Activities under a SOW, those



activities must be completed as a condition precedent to Final Acceptance of the Trackside Subsystem under that SOW.

Part C Timing

13 Programming

13.1 Purpose

The intended purpose of the Contractor's Program is to:

- (a) demonstrate to TfNSW that the Contractor has the understanding, capacity and capability at all times to perform the Contractor's Activities safely and in accordance with the requirements of this Agreement (including the Contract Specifications);
- (b) allow TfNSW to understand how the Contractor will achieve the performance outcomes and objectives specified in this Agreement and otherwise fulfil its obligations under this Agreement;
- (c) maintain consistency with the Integrated Program and enable the coordination of the Contractor's Activities with the activities of Other Contractors and Rail Transport Entities; and
- (d) define responsibilities, resources and processes for planning, performing and verifying that the Contractor's Activities satisfy the requirements of this Agreement (including the Contract Specifications) and the overall Program.

13.2 Compliance

The Contractor must:

- (a) without limiting clauses 14.1 (Rate of Progress) or 14.2 (Milestones), perform the Contractor's Activities in accordance with the Contractor's Program and, to the extent not inconsistent with the Contractor's Program, the Integrated Program;
- (b) subject to clause 13.3(d), not unreasonably depart from the current version of the Contractor's Program that have been Reviewed by TfNSW; and
- (c) regularly advise on progress against the Contractor's Program at the Delivery Management Meeting and in any event at least monthly (including identifying any slippage against the Contractor's Program).

13.3 Updating the Contractor's Program

(a) The Contractor must:

- (i) when Directed to do so by TfNSW, submit to TfNSW for Review a copy of the specific detailed program(s) which the Contractor is following and schedules for the Contractor's Activities within five (5) Business Days of receipt of such a Direction;
- (ii) update, revise and submit the Contractor's Program to TfNSW for Review to allow for events or circumstances which will or may affect the Contractor's Activities, including:

(A) where:

- the Contractor is granted an extension of time to any Milestone Date under clause 15.3 (Extension of Time) (but excluding claims for extensions of time to any Milestone which have been submitted by the Contractor to the extent that they have not been granted by TfNSW); or
 - TfNSW grants an extension to a Milestone Date pursuant to clause 15.4 (Discretion to extend Milestone Dates); or
- (B) the Contractor chooses to compress the Contractor's Activities or otherwise accelerate progress pursuant to clause 14.4 (Compression by Contractor),
- within seven (7) Business Days (or such longer period as agreed between the parties);
- (iii) without prejudice to paragraph (a)(ii), update, revise and submit the Contractor's Program to TfNSW for Review either monthly or as required by the PR (whichever is more frequent), including so as to reflect delays to non-critical activities, the actual progress made by the Contractor, any Variations and any other changes to the Contractor's Activities;
 - (iv) prepare and provide for TfNSW's information only versions of all Contractor's Programs prepared in accordance with paragraph (a)(ii) that also allow for those claims for an extension of time to any Milestone submitted by the Contractor in accordance with clause 15.3 (Extension of Time) but which TfNSW has not yet responded to or approved; and
 - (v) comply with the requirements of TfNSW and its other obligations under this Agreement in preparing and using the Contractor's Program.
- (b) Subject to paragraph (d), when updating the Contractor's Program, the Contractor must ensure that the updated Contractor's Program:
- (i) where possible, still achieves the Milestones by the Milestone Dates (subject to any agreed Variation or extension of time approved under clause 15.3 (Extension of Time)) and, where that is not possible, shows the forecast dates for achieving the Milestones against the Milestone Dates required by this Agreement;
 - (ii) where possible, remains consistent with the Integrated Program (subject to a Variation being agreed where the current version of the Integrated Program is materially inconsistent with the Contractor's Program) and the PR, and, where that is not possible, shows the forecast dates against the dates required by the Integrated Program and PR;
 - (iii) complies with the Interface Requirements and Collaboration Principles;
 - (iv) imposes standards, levels of service, scope and requirements on the Contractor that are equal to, greater than or higher than those imposed by and provide an equal or greater level of detail than the previous version of the Contractor's Program; and
 - (v) does not make any Rail Transport Entities' or any Other Contractor's responsibilities in respect of the Program any more onerous than was previously the case (subject to any agreed Variation or any extension of time approved under clause 15.3 (Extension of Time)).

- (c) Any updated Contractor's Program must be submitted to TfNSW for Review and is not binding until Confirmed.
- (d) Subject to any agreed Variation or any extension of time approved under clause 15.3 (Extension of Time)), any updates made by the Contractor to the Contractor's Program (notwithstanding that the Contractor's Program may become Confirmed) will not:
 - (i) limit the Contractor's obligations under this Agreement including pursuant to clauses 13.2 (Compliance), 14.1 (Rate of Progress) or 14.2 (Milestones);
 - (ii) impact the Contractor's obligation to achieve Acceptance of each Milestone by its relevant Milestone Date; or
 - (iii) change a Milestone Date.

13.4 TfNSW may request updates

If, at any time the:

- (a) Contractor's Program does not comply with the requirements of this Agreement; or
- (b) Contractor has not updated the Contractor's Program in accordance with the requirements of clause 13.3 (Updating the Contractor's Program),

TfNSW may by notice request that the Contractor amend or update the Contractor's Program and the Contractor must:

- (c) amend or update the Contractor's Program as requested by TfNSW to comply with the requirements of this Agreement (including clause 13.3 (Updating the Contractor's Program)); and
- (d) submit the amended or updated Contractor's Program to TfNSW for Review within the time specified by TfNSW (or if no time is specified, within five (5) Business Days of request).

14 Timing obligations

14.1 Rate of Progress

- (a) The Contractor must:
 - (i) continuously and diligently progress the Contractor's Activities;
 - (ii) proceed with the Contractor's Activities with due expedition and without delay; and
 - (iii) perform the Contractor's Activities in accordance with any timing requirements set out in this Agreement.
- (b) Without limiting clause 55 (Suspension) or the Contractor's rights under the SOP Act, the Contractor must not suspend the progress of the whole or any part of Contractor's Activities except where permitted or required under this Agreement.

14.2 Milestones

Without limiting anything in this clause 14 (Timing obligations), the Contractor must:

- (a) perform its obligations under each SOW in accordance with the timeframes specified in that SOW, the Contractor's Program and, to the extent not inconsistent with the Contractor's Program, the Integrated Program; and
- (b) achieve Acceptance of each Milestone by its relevant Milestone Date.

14.3 Directions as to rate of progress

- (a) TfNSW may, by notice expressly stated to be pursuant to this clause 14.3, Direct in what order and at what time the various stages or parts of the Contractor's Activities must be performed. No Direction by TfNSW will constitute a Direction under this clause 14.3 unless the Direction is in writing and expressly states that it is a Direction under this clause 14.3.
- (b) If the Contractor can reasonably comply with a Direction given under paragraph (a), the Contractor must do so. If the Contractor cannot reasonably comply, the Contractor must promptly notify TfNSW, giving reasons. If, following receipt of such notice, TfNSW confirms a Direction under paragraph (a), the Contractor must (following the conclusion of the process in clause 14.6 (Conditions Precedent)) comply with such Direction, in which case:
 - (i) if the Direction affects the Contractor's ability to meet a Milestone by the Milestone Date, the Contractor will be entitled to submit a claim for an extension of time under clause 15.3 (Extension of Time); and
 - (ii) if the Direction causes the Contractor to incur additional costs or expenses in the performance of the Contractor's Activities, the Contractor will be entitled to claim compensation in accordance with clause 15.6 (Compensation Events).

14.4 Compression by Contractor

- (a) If the Contractor chooses to compress the Contractor's Activities or otherwise accelerate progress (other than under clause 14.5 (Acceleration by TfNSW)):
 - (i) the Contractor acknowledges that TfNSW may not be able to, and will not be obliged to, take any action to assist or enable the Contractor to achieve the compressed or accelerated activities;
 - (ii) the time for carrying out the obligations of TfNSW will not be affected;
 - (iii) the Contractor does so at its own cost and risk;
 - (iv) the Contractor will not be entitled to make, and TfNSW will not be liable upon, any Claim, arising out of or in connection with any such compression; and
 - (v) any such compression will not constitute an EOT Event or a Compensation Event.
- (b) Without prejudice to the Contractor's obligations under clause 13.3(a)(ii), the Contractor must, within five (5) Business Days of electing to compress the

Contractor's Activities or otherwise accelerate progress under paragraph (a), immediately notify TfNSW of the same and advise TfNSW of any likely effects the election has on the Contractor's Activities, Milestone Dates and the Contractor's Program.

14.5 Acceleration by TfNSW

- (a) TfNSW may at any time Direct the Contractor to accelerate the Contractor's Activities for any reason. No Direction by TfNSW will constitute a Direction under this clause 14.5 unless the Direction is in writing and expressly states that it is a Direction under this clause 14.5.
- (b) If the Contractor can reasonably comply with a Direction given under paragraph (a), the Contractor must do so. If the Contractor cannot reasonably comply, the Contractor must promptly notify TfNSW, giving reasons. If, following receipt of such notice, TfNSW confirms a Direction under paragraph (a), the Contractor must (following the conclusion of the process in clause 14.6 (Conditions Precedent)) comply with such Direction, in which case the Direction will constitute a Compensation Event.

14.6 Conditions Precedent

- (a) Prior to complying with any Direction provided pursuant to clause 14.3 (Directions as to rate of progress) or 14.5 (Acceleration by TfNSW) (unless otherwise Directed by TfNSW), the Contractor must:
 - (i) give TfNSW an estimate of the costs that the Contractor reasonably considers that it would incur in taking all such necessary measures, applying the Pricing Principles in section 3 of Schedule 11 (Pricing Terms);
 - (ii) allow TfNSW sufficient time to consider the Contractor's cost estimate and to either:
 - (A) re-confirm (by way of notice) its Direction under clause 14.3 (Directions as to rate of progress) or 14.5 (Acceleration by TfNSW) (as applicable); or
 - (B) withdraw its Direction under clause 14.3 (Directions as to rate of progress) or 14.5 (Acceleration by TfNSW) (as applicable); and
 - (iii) provide supporting evidence for its cost estimate, following the review of which TfNSW may either re-confirm (by way of notice) its Direction under clause 14.3 (Directions as to rate of progress) or 14.5 (Acceleration by TfNSW) (as applicable) or withdraw its Direction under clause 14.3 (Directions as to rate of progress) or 14.5 (Acceleration by TfNSW) (as applicable).
- (b) TfNSW may at any time by notice withdraw any Direction given by it under clause 14.3 (Directions as to rate of progress) or 14.5 (Acceleration by TfNSW) (as applicable) or issue a Direction to Proceed under section 5 (Directions to Proceed) of Schedule 7 (New SOWs and Variation Procedures).
- (c) Without prejudice to the Contractor's obligations under clause 13.3(a)(ii), the Contractor must submit within ten (10) Business Days of receiving a Direction under clause 14.3 (Directions as to rate of progress) or 14.5 (Acceleration by TfNSW) (as applicable), or such longer period as reasonably agreed by the

parties, a revised Contractor's Program for Review by TfNSW. The Contractor must set out any likely effects the Direction has on the Contractor's Activities, the Fees, Milestone Dates and the Contractor's Program.

15 Delay, extension of time and compensation

15.1 Risk of Delay

- (a) The Contractor acknowledges and agrees that it has made and will make adequate allowances in the Contractor's Program for:
 - (i) all Hold Points and Witness Points;
 - (ii) those parts of the Contractor's Activities that may only be performed during a Track Possession, and the timing and availability of Track Possessions as set out in the relevant SOW; and
 - (iii) the high degree of interface, interaction, and integration of the Contractor's Activities with work being (or to be) performed by Other Contractors, Interface Contractors and relevant Rail Transport Entities, including during any systems integration testing, commissioning and operational readiness phase or activities,

and that it has built and will continue to build sufficient contingency into the Contractor's Program to mitigate the impacts of paragraphs (i) to (iii).

- (b) The Contractor must constantly avoid (and must take all reasonable steps to avoid) delay in the performance of the Contractor's Activities.
- (c) Except as expressly provided for in clause 15.3 (Extension of Time) and clause 15.6 (Compensation Events), the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Contractor's Activities and performance of its obligations under this Agreement both before and after any Milestone Date.
- (d) If the Contractor becomes aware of any issue or delay, or likely issue or delay which will, or is likely to, affect the Contractor's Activities, the delivery of the Program or the Contractor's ability to meet a Milestone Date (including the occurrence of an EOT Event or Compensation Event), then the Contractor must follow the process set out in clause 33 (Resolution of Matters) and Schedule 18 (Issue Resolution Procedure) unless TfNSW agrees otherwise.

15.2 Liquidated Damages

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]



Gilbert + Tobin



15.3 Extension of Time

- (a) If and to the extent that the Contractor is or will be delayed in meeting a Milestone under a SOW by the relevant Milestone Date due to the occurrence of an EOT Event in respect of that SOW then, subject to paragraphs (b), (c) and (e), the Contractor may be entitled to an extension of time to the relevant Milestone Date in accordance with this clause 15.3.
- (b) Each of the following is a condition precedent to the Contractor receiving an extension of time:
 - (i) save in respect of a Direction given by TfNSW under clause 14.3(a) where such a Direction constitutes an EOT Event, the relevant delay or EOT Event giving rise to the delay has not been caused by the Contractor's failure to comply with the Collaboration Principles or the Interface Requirements;
 - (ii) save in respect of a Direction given by TfNSW under clause 14.3(a) where such a Direction constitutes an EOT Event, unless the parties agree otherwise, the Contractor has followed and continues to follow the process set out in clause 33 (Resolution of Matters) and has provided an Initial Early Warning Notice and, where required, a Detailed Early Warning Notice within the timeframes set out in, and that meet the requirements of, section 2 (Issue Resolution Procedure) of Schedule 18 (Issue Resolution Procedure);
 - (iii) save in respect of a Direction given by TfNSW under clause 14.3(a) where such a Direction constitutes an EOT Event, the cause and extent of the delay is beyond the reasonable control of the Contractor;
 - (iv) the Contractor is actually, or will be, delayed in achieving a Milestone Date, by reason of the occurrence of the EOT Event; and
 - (v) the Contractor has not been given a Direction to compress under clause 15.5 (Compression by TfNSW) with respect to the whole of the period of delay which is the subject of the Claim by the Contractor for an extension of time.
- (c) If any of the conditions precedent in paragraph (b) are not satisfied:
 - (i) no extension of time is required to be granted or approved;
 - (ii) TfNSW will not be liable upon any Claim by the Contractor for an extension of time; and
 - (iii) the Contractor cannot make any Claim against TfNSW for an extension of time,

arising out of or in connection with the EOT Event giving rise to the delay or the delay involved.

- (d) Subject to paragraph (e) and (where applicable) clauses 15.5(c) and 15.5(d), if the conditions precedent in paragraph (b) have been satisfied and, having followed the process set out in clause 33 (Resolution of Matters) and Schedule 18 (Issue Resolution Procedure), TfNSW has agreed or the process in Schedule 19 (Dispute Resolution Procedure) has determined that the relevant Milestone Date should be extended, the relevant Milestone Date will be extended by a reasonable period determined by TfNSW or in accordance with the determination as a result of the process in Schedule 19 (Dispute Resolution Procedure), as applicable, and notified to the Contractor within twenty-one (21) days after the later of:
- (i) conclusion of the process set out in clause 33 (Resolution of Matters) and Schedule 18 (Issue Resolution Procedure);
 - (ii) determination pursuant to the process in Schedule 19 (Dispute Resolution Procedure), if applicable; and
 - (iii) where TfNSW has given the Contractor a Direction to compress under clause 15.5(a) and subsequently issued a notice under clause 15.5(c) withdrawing the Direction to compress given under clause 15.5(a), the date of issue of the notice under clause 15.5(c).
- (e) TfNSW will reduce any extension of time to the relevant Milestone Date it would otherwise have determined under this clause 15.3 to the extent that the Contractor or its Associates:
- (i) in respect of a Direction given by TfNSW under clause 14.3(a) where such a Direction constitutes an EOT Event, failed to comply with the Collaboration Principles or the Interface Requirements;
 - (ii) in respect of a Direction given by TfNSW under clause 14.3(a) where such a Direction constitutes an EOT Event, had control over the cause or extent of the delay;
 - (iii) has been given a Direction to compress under clause 15.5 (Compression by TfNSW) with respect to a part only of the period of delay which is the subject of the Claim by the Contractor for an extension of time;
 - (iv) failed to use, and to continue to use, all reasonable endeavours to mitigate the effects of the delay and work and co-operate with the Rail Transport Entities and Interface Contractors to mitigate the extent and impact of the delay;
 - (v) subject to clause 3.3(b), contributed to the delay or the EOT Event giving rise to the delay, including under any other arrangement between the Contractor or a Related Body Corporate of the Contractor and any Rail Transport Entity; or
 - (vi) failed to take all reasonably practicable steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.
- (f) Other than as a result of a Directed Variation or as described in a Variation agreed between the parties, this clause 15.3 and clause 15.6 (Compensation Events) sets out the Contractor's sole and exclusive rights and remedies in relation to EOT Events and any disruption or delay, including as may be caused or contributed to by TfNSW, any Stakeholder or any Interface Contractor, and the Contractor waives all rights at Law to claim any relief from its obligations under this Agreement as a

result of such events otherwise than in accordance with this clause 15.3 and clause 15.6 (Compensation Events).

15.4 Discretion to extend Milestone Dates

- (a) Notwithstanding that the Contractor is not entitled to or has not claimed an extension of time, TfNSW may at any time, grant an extension to a Milestone Date by giving notice to the Contractor with express reference to this clause 15.4. For clarity, any adjustments to dates set out in project or program plans (including the Contractor's Program), even if Reviewed by TfNSW, will not constitute an extension to the Milestone Date unless this paragraph is complied with by TfNSW.
- (b) TfNSW has no obligation to exercise its discretion under paragraph (a) to grant, or to consider whether it should grant, an extension to a Milestone Date and is not required to exercise this discretion for the benefit of the Contractor.
- (c) Without prejudice to the Contractor's obligations under clause 13.3(a)(ii), the Contractor must submit, within ten (10) Business Days of the grant of an extension to a Milestone Date under paragraph (a), a revised Contractor's Program for Review by TfNSW. The Contractor must set out any likely effects the extension has had on the Contractor's Activities, Milestone Dates and the Contractor's Program.

15.5 Compression by TfNSW

- (a) Without prejudice to TfNSW's rights under clause 14.5 (Acceleration by TfNSW), if:
 - (i) the Contractor makes a claim under clause 15.3 (Extension of Time); or
 - (ii) there is otherwise delay in connection with the Program,

TfNSW may Direct the Contractor to compress the Contractor's Activities, including by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay, which may include taking the measures necessary in order to achieve a Milestone by the relevant Milestone Date. No Direction by TfNSW will constitute a Direction under this clause 15.5 unless the Direction is in writing and expressly states that it is a Direction under this clause 15.5.

- (b) Prior to commencing any such compression (unless otherwise Directed by TfNSW), the Contractor must:
 - (i) give TfNSW an estimate of the costs that the Contractor reasonably considers it would incur in taking all such necessary measures, applying the Pricing Principles in section 3 of Schedule 11 (Pricing Terms); and
 - (ii) allow TfNSW sufficient time to consider the Contractor's cost estimate and to either:
 - (A) re-confirm (by way of notice) its Direction under paragraph (a);
 - (B) withdraw its Direction under paragraph (a); or
 - (C) require the Contractor to provide supporting evidence for its cost estimate, following the review of which TfNSW may either (by way of notice) re-confirm its Direction under paragraph (a) or withdraw its Direction under paragraph (a). TfNSW may give such a Direction

whether or not the cause of delay, including any delay for which the Contractor has made its claim under clause 15.3 (Extension of Time), entitles the Contractor to an extension of time.

- (c) TfNSW may at any time:
 - (i) by notice withdraw any Direction given by it under paragraph (a), after which:
 - (A) where clause 15.5(a)(i) applies, the Contractor will be entitled to any extension of time equivalent to that which it may otherwise have been entitled pursuant to its claim made under clause 15.3 (Extension of Time). Any such extension will be determined having regard to the effect which the compression or acceleration of the Contractor's Activities taken by the Contractor prior to the withdrawal of the Direction has had on mitigating the delay which is the subject of the claim for an extension of time made by the Contractor under clause 15.3 (Extension of Time); or
 - (B) where clause 15.5(a)(ii) applies, the Contractor may, if there is an EOT Event, be entitled to an extension of time by making a claim in accordance with clause 15.3 (Extension of Time); or
 - (ii) issue a Direction to Proceed under section 5 (Directions to Proceed) of Schedule 7 (New SOWs and Variation Procedures).
- (d) If TfNSW gives the Contractor a Direction to compress under paragraph (a) and it only applies to part of a delay, the Contractor's entitlement to any extension of time under clause 15.3 (Extension of Time), will be reduced to the extent of the Direction to compress.
- (e) Subject to paragraph (d), if TfNSW gives a Direction to the Contractor under paragraph (a):
 - (i) the Contractor will be entitled to be paid the lesser of the:
 - (A) amount that the Contractor would be entitled to on a Unit Rate basis under Schedule 11 (Pricing Terms); and
 - (B) the cost estimate (if any) provided by the Contractor pursuant to paragraph (b); and
 - (ii) the Contractor will not be entitled to make, and TfNSW will not be liable upon, any Claim arising out of, or in connection with, the delay and the Direction, other than for the amount it is entitled to under this paragraph (e).
- (f) TfNSW's rights to Liquidated Damages under this Agreement for a failure by the Contractor to achieve a Milestone by any relevant Milestone Date will not be affected by TfNSW giving the Contractor a Direction to compress under this clause 15.5.

15.6 Compensation Events

- (a) If and to the extent that a Compensation Event directly causes the Contractor to incur additional Loss, costs or expenses in the performance of the Contractor's Activities or (where the Compensation Event relates to Reliance Material) the TLS

Activities, then, subject to paragraphs (b), (c) and (d), the Contractor will be entitled to:

- (i) claim compensation calculated in accordance with the Pricing Principles in section 3 of Schedule 11 (Pricing Terms); and/or
 - (ii) where the Compensation Event relates to Reliance Material, additionally submit a TLS Impact Statement for purposes of an Adjustment Event under section 3.1.1 of Schedule 15 (Pricing Terms) to the TLS Agreement.
- (b) Each of the following is a condition precedent to the Contractor receiving compensation pursuant to this clause:
- (i) save in respect of a Direction to accelerate under clause 14.5 (Acceleration by TfNSW) or a Direction given by TfNSW under clause 14.3(a) where such a Direction constitutes a Compensation Event, the relevant additional Loss, costs or expenses have not been caused by, and the Compensation Event has not otherwise been caused by, the Contractor's failure to comply with the Collaboration Principles or the Interface Requirements;
 - (ii) save in respect of a Direction to accelerate under clause 14.5 (Acceleration by TfNSW) or a Direction given by TfNSW under clause 14.3(a) where such a Direction constitutes a Compensation Event, unless the parties agree otherwise, the Contractor has followed and continues to follow the process set out in clause 33 (Resolution of Matters) and has provided an Initial Early Warning Notice and, where required, a Detailed Early Warning Notice within the timeframes set out in, and that meets the requirements of, section 2 of Schedule 18 (Issue Resolution Procedure);
 - (iii) save in respect of a Direction to accelerate under clause 14.5 (Acceleration by TfNSW) or a Direction given by TfNSW under clause 14.3(a) where such a Direction constitutes a Compensation Event, the cause and extent of the Compensation Event is beyond the control of the Contractor; and
 - (iv) where the Compensation Event relates to Reliance Materials, the Contractor has provided TfNSW with a TLS Impact Statement in accordance with section 8 (TLS Impact Statement) of Schedule 7 (New SOWs and Variation Procedures).
- (c) If any of the conditions precedent in paragraph (b) are not satisfied:
- (i) no compensation in respect of the Compensation Event is required to be granted or approved;
 - (ii) TfNSW will not be liable upon any Claim by the Contractor; and
 - (iii) the Contractor cannot make any Claim against TfNSW,
- arising out of or in connection with the Compensation Event.
- (d) TfNSW will reduce any compensation payable in respect of the relevant Compensation Event to the extent that the Contractor or its Associates:
- (i) failed to use, and to continue to use, all reasonable endeavours to mitigate the effects of the Compensation Event and work and co-operate with the Rail

Transport Entities and Interface Contractors to mitigate the extent and impact of the Compensation Event and any associated costs and expenses;

- (ii) subject to clause 3.3(b), contributed to the Compensation Event, including under any other arrangement between the Contractor or a Related Body Corporate of the Contractor and any Rail Transport Entity; or
 - (iii) failed to take all reasonably practicable steps necessary both to preclude the cause of the Compensation Event and to avoid or minimise the consequences and costs and expenses associated with the Compensation Event.
- (e) Subject to paragraph (f), this clause 15.6 sets out the Contractor's sole and exclusive financial rights and remedies in relation to Compensation Events and any costs or expenses arising as a consequence of them, including as may be caused or contributed to by TfNSW, any Stakeholder or any Interface Contractor. Notwithstanding any other provision of this Agreement (including any provision of this Agreement entitling the Contractor to an increase in the Fees for additional costs, or to the payment of additional costs), the amounts payable pursuant to paragraph (a) will be a limitation upon TfNSW's liability to the Contractor for any delay, disruption or additional costs or expenses that:
- (i) the Contractor encounters in performing the Contractor's Activities; and
 - (ii) arises out of, or in connection with, the Compensation Event,
- and the Contractor will not be entitled to make, nor will TfNSW be liable upon, any Claim in these circumstances other than for the amount which is payable by TfNSW in accordance with paragraph (a).
- (f) Paragraph (e) does not apply in relation to:
- (i) a Directed Variation;
 - (ii) a Variation agreed between the parties;
 - (iii) any increase in Fees or costs or expenses recoverable in accordance with Schedule 11 (Pricing Terms) other than as a result of the Compensation Event;
 - (iv) personal injury (including sickness or death) caused by or contributed to by any act or omission of TfNSW or Sydney Trains; or
 - (v) damage to or loss or destruction of real or personal property (other than the Assets) belonging to or operated by the Contractor or its Associates, caused by or contributed to by any act or omission of TfNSW or Sydney Trains.

15.7 Time is not set at large

Neither the:

- (a) failure of TfNSW to grant an extension of time to a Milestone Date in accordance with clause 15.3 (Extension of Time) or at all; or

- (b) the existence of an Issue or a Dispute between TfNSW and the Contractor as to the Contractor's entitlement to, or the extent of, any extension of time to a Milestone Date,

will cause a Milestone Date to be set at large or prevent TfNSW from subsequently exercising its discretion under clause 15.4 (Discretion to extend Milestone Dates).

15.8 General

The Contractor acknowledges:

- (a) the importance of complying with its obligations under clauses 13 (Programming) and 14 (Timing obligations); and
- (b) that extensions of time will only be granted in accordance with this clause 15 (Delay, extension of time and compensation).

Part D Supply of Assets

16 Supply of Assets

16.1 Terms of Supply

If the Contractor is required to supply any Assets under this Agreement (including under a SOW), those Assets must be supplied in accordance with this Agreement, including:

- (a) clause 6 (Supply obligations);
- (b) this Part D (Supply of Assets);
- (c) the Contract Specifications; and
- (d) the relevant SOW.

16.2 Specified Products

Where a specific manufacturer's product is specified in the Contract Specifications (or elsewhere, whether in this Agreement or otherwise):

- (a) the Contractor:
 - (i) will not be entitled to make, and TfNSW will not be liable upon, any Claim arising out of or in connection with the specification of that manufacturer's product; and
 - (ii) remains liable for all its warranties and complying with all its obligations under this Agreement; and
- (b) TfNSW makes no representation as to the:
 - (i) quality of the specified product;
 - (ii) availability of the specified product; or
 - (iii) creditworthiness of the manufacturer of the specified product.

17 TfNSW Supplied Items

The Contractor:

- (a) agrees that, in respect of Supplied Items, the Contractor (save to the extent stated otherwise in a SOW):
 - (i) warrants that it has reviewed the Contract Specifications and any relevant specification, and made whatever other enquiries and investigations it considers necessary relating to each of the Supplied Items and is satisfied that they satisfy, and will allow the Contractor to satisfy, the requirements of this Agreement;
 - (ii) will not be entitled to make, and TfNSW will not be liable upon, any Claim arising out of, or in connection with, any Supplied Item except to the extent

provided under clause 15.3 (Extension of Time) or clause 15.6 (Compensation Events) if a Supplied Item is a TfNSW Dependency that is not made available by the date required under this Agreement; and

- (iii) is not relieved from and remains liable for complying with, all of its obligations under this Agreement, despite TfNSW making available the Supplied Items;
- (b) agrees, in respect of Supplied Items, the *Sale of Goods Act 1923* (NSW) does not apply and (save to the extent stated otherwise in a SOW) TfNSW makes no representation as to the quality, performance, merchantability or fitness of the Supplied Items;
- (c) must at its own risk transport each Supplied Item to the Delivery Locations; and
- (d) must, where required under a SOW, incorporate each Supplied Item into the Works as part of the Contractor's Activities.

18 Title and risk

18.1 Ownership and title

- (a) Subject to paragraphs (b) to (d) and clause 37 (Intellectual Property):
 - (i) TAHE owns the Network and NSW Rail Assets, including those in respect of which the Contractor's Activities will be provided by the Contractor; and
 - (ii) to the extent ownership of Assets supplied by the Contractor under this Agreement does not vest automatically with TAHE, TfNSW will own all Assets, with the intent that ownership will then be vested in TAHE.
- (b) Title to and property in all Assets supplied by the Contractor under this Agreement will vest (free of all Security Interests and Third Party rights) progressively in TfNSW or TAHE (as applicable) on the earlier of:
 - (i) payment for;
 - (ii) delivery to a Rail Transport Entity Site of; and
 - (iii) installation on the Network or in the Trackside Subsystem of,such items in accordance with this Agreement.
- (c) If the Contractor adds to, or replaces, any Asset (including use of the Contractor's Spares Inventory), title to and property in the added or replaced Asset will vest in TfNSW free of Security Interests and Third Party rights upon the earlier of delivery or installation.
- (d) This clause 18.1 does not apply to Software or Assigned IP.

18.2 Risk

- (a) Without limiting clause 22 (Project Delivery Support), risk in:
 - (i) an Asset remains with the Contractor until:

- (A) for Assets that are to be installed on the Network (other than Spares), installation has been completed and the Contractor ceases to have exclusive possession and control over the Delivery Location where the relevant Asset has been installed; and
- (B) for Spares and for Assets that are not to be installed on the Network, delivery by the Contractor of the Assets into the actual care, custody and control of TfNSW or a Rail Transport Entity,

and reverts to the Contractor immediately upon the Asset coming into the care, custody or control of the Contractor:

- (C) by virtue of the Contractor being given exclusive possession and control over the Delivery Location where the relevant Asset has been installed, until such time as the Contractor ceases to have exclusive possession and control over that Delivery Location;
 - (D) by virtue of physical possession of the Asset being delivered back to the Contractor, until such time as the Assets are returned into the actual care, custody and control of TfNSW or a Rail Transport Entity;
 - (E) under any clause of this Agreement dealing with the rectification of Defects, until such time as the Assets are returned into the actual care, custody and control of TfNSW or a Rail Transport Entity; or
 - (F) under any clause of this Agreement dealing with the maintenance or support of the Assets, until such time as the Assets are returned into the actual care, custody and control of TfNSW or a Rail Transport Entity; and
- (ii) the Supplied Items passes to the Contractor upon delivery or collection of the Supplied Items to or by the Contractor and remains with the Contractor until such time as the Supplied Items are returned into the care, custody and control of a Rail Transport Entity, an Other Contractor or an Interface Contractor (as applicable).

(b) The Contractor:

- (i) without prejudice to its general obligations with respect to insurance as set out in clause 64 (Insurance), is responsible for the insurance of the Supplied Items and Assets whilst it has risk in those items;
- (ii) must take all reasonable precautions to prevent loss of or damage to the Supplied Items and Assets, including as may result from theft, misuse or vandalism, when the Contractor has care, custody and/or control of them for the purposes of the Contractor's Activities;
- (iii) must provide safe storage and protection for the Supplied Items and Assets when the Contractor has care, custody and/or control of them for the purposes of the Contractor's Activities; and
- (iv) indemnifies and must keep indemnified the TfNSW Indemnified Persons against any loss of or damage to the Supplied Items and Assets which occurs or is caused whilst the risk in those things is with the Contractor, including in accordance with this clause 18.2.

18.3 Damage and reinstatement

- (a) Without prejudice to any other provisions of this Agreement, including clauses 22 (Project Delivery Support) and 24.4 (Business Continuity and Disaster Recovery) and Schedule 21 (Business Continuity and Disaster Recovery), if any destruction, loss or damage occurs to any thing:
- (i) during any period when the Contractor bears risk for that thing under clause 18.2 (Risk);
 - (ii) during the period when the Contractor has care of that thing under clause 22.1 (Care of the Works); or
 - (iii) where that destruction, loss or damage is otherwise caused by an act or omission of the Contractor or any of its Associates,
- then, the Contractor must:
- (iv) continue to comply with this Agreement;
 - (v) promptly provide notice to TfNSW of any material destruction, loss or damage and any required repair, replacement, reinstatement or remediation and the action being taken including the estimated time that action will take;
 - (vi) consult with TfNSW about the programming of any works needed to effect the relevant repair, replacement, reinstatement or remediation;
 - (vii) subject to paragraph (b) and clause 23.4(a), promptly repair, replace, reinstate or remedy the destruction, loss or damage;
 - (viii) keep TfNSW informed of the progress of any repair, replacement, reinstatement or remediation activities; and
 - (ix) without limiting any of the foregoing paragraphs, apply all proceeds received pursuant to any related insurance claims towards the cost of repair, replacement, reinstatement or remediation. For the avoidance of doubt, the Contractor's failure to claim in respect of such destruction, loss or damage under the Contractor Insurance Policies shall not constitute a waiver of the Contractor's liability in respect of such things.
- (b) TfNSW may elect to repair, replace, reinstate or remedy the destruction, loss or damage of any thing itself or to engage a Third Party to do so, either:
- (i) because the Contractor failed to or refused to repair, replace, reinstate or remedy the destruction, loss or damage to a satisfactory standard and within a satisfactory timeframe (determined by TfNSW, acting reasonably), in which case the Contractor must reimburse TfNSW for its and any Third Party's costs and expenses to repair, replace, reinstate or remedy the destruction, loss or damage; or
 - (ii) for operational efficiencies or other reasons, in which case the Contractor will not be required to reimburse TfNSW for its and any Third Party's costs and expenses under this paragraph.
- (c) For the avoidance of doubt, any replacement, making good or repair of an Asset or the Works required under paragraph (a)(vii) constitutes Works for the purposes of

this Agreement, and (subject to paragraph (d)(ii)) no additional amounts are, or will be, payable by TfNSW in respect of those Works other than the Fees.

- (d) Where the destruction, loss or damage contemplated by paragraph (a) arises from an Excepted Risk:
 - (i) the Contractor must only comply with paragraph (a)(vii) and (a)(viii) to the extent Directed by TfNSW; and
 - (ii) any such replacement, making good or repair of an Asset or Works under paragraph (a)(vii) in accordance with a Direction under (d)(i) will be treated as if it were a Variation.

18.4 Loss or damage to Third Party property

Without limiting any of the Contractor's other obligations or any rights or remedies of any TfNSW Indemnified Person:

- (a) where any loss of or damage to real or personal property of a Third Party occurs arising out of, or in connection with, the carrying out by the Contractor of the Contractor's Activities or a failure by the Contractor to comply with its obligations under this Agreement, the Contractor must promptly repair any such loss or damage;
- (b) if the Contractor fails to carry out any repair work under paragraph (a), TfNSW may carry out such work and all costs, losses and damages so suffered or incurred by TfNSW will be a debt due and payable from the Contractor to TfNSW; and
- (c) the Contractor must immediately notify TfNSW upon receipt of any letter of demand or notice of claim from or on behalf of any Third Party or any writ, summons, proceedings, impending prosecution or inquest and immediately forward a copy of any such documents to TfNSW.

19 Spares

19.1 Obligation to supply

- (a) The Contractor must supply and manage the procurement, use, maintenance and replacement of Spares required to ensure that it is able to perform the Contractor's Activities in accordance with the Asset Management System and this Agreement.
- (b) All Spares provided under this Agreement must be:
 - (i) new;
 - (ii) the same model and version (i.e. like for like) of those components installed or to be installed in the relevant Deployment Area under the relevant SOW; and
 - (iii) fit for purpose and otherwise comply with the requirements of this Agreement.

19.2 Management of inventory

Spares and Consumables Strategy

- (a) The Contractor must create and submit for Review a Spares and Consumables Strategy in accordance with the PR which includes details of the minimum stock of Spares required to be held:
 - (i) by the Contractor for the performance of the Contractor's Activities in accordance with this Agreement and performance of the 'TLS Activities' (as that term is defined in the TLS Agreement) under the TLS Agreement (as further described in clause 13.2(b) of the TLS Agreement) (**Contractor's Spares Inventory**); and
 - (ii) by Sydney Trains as the customer under the TLS Agreement for the maintenance of the Trackside Subsystem (**Customer's Maintenance Spares Inventory**).
- (b) Unless otherwise agreed, the Spares and Consumables Strategy must be updated and re-submitted for Review under this Agreement for each New SOW. The Spares and Consumables Strategy will also be updated under the TLS Agreement.
- (c) At a minimum, the Contractor's Spares Inventory and the Customer's Maintenance Spares Inventory must include the types and quantities of Spares set out in each SOW.

Customer's Maintenance Spares Inventory and Customer's Damage Spares Inventory

- (d) In respect of the SOW 1 Deployment Area, the Contractor must supply and deliver the Spares listed in the:
 - (i) Customer's Maintenance Spares Inventory in the Confirmed Spares and Consumables Strategy developed by the Contractor under Statement of Work 1; and
 - (ii) Customer's Damage Spares Inventory set out in Statement of Work 1.
- (e) In respect of each Future Deployment Area, the Contractor must supply and deliver any additional Spares listed in the Customer's Maintenance Spares Inventory in the Confirmed Spares and Consumables Strategy updated under this Agreement for each New SOW over and above those Spares previously delivered by the Contractor under each preceding SOW.
- (f) The Contractor must supply and deliver the Spares contemplated in paragraphs (d) and (e) to TfNSW at the Rail Transport Entity Sites in metropolitan Sydney nominated in the relevant SOW prior to Acceptance of the "System Provisional Acceptance (System)" Milestone under that SOW.

Contractor's Spares Inventory

- (g) The Contractor must establish, store and maintain the Contractor's Spares Inventory such that it is:
 - (i) sufficient for the Contractor to meet its obligations under this Agreement, including performing Corrective Maintenance Services within the timeframes required under the relevant Statement of Work;
 - (ii) sufficient for the Contractor to meet its obligations under the TLS Agreement, including:

- (A) replenishing the Customer's Maintenance Spares Inventory at a rate which reflects the anticipated mean time between failures as set out in the Confirmed Spares and Consumables Strategy; and
 - (B) performing the TLS Activities in accordance with the Services Schedule under the TLS Agreement; and
- (iii) in accordance with the Asset Management Plan and the Confirmed Spares and Consumables Strategy and otherwise to ensure it complies with its warranties and requirements in respect of obsolescence under this Agreement and the TLS Agreement.
- (h) In respect of the SOW 1 Deployment Area, the Contractor must supply and deliver the Spares listed in the Contractor's Spares Inventory in the Confirmed Spares and Consumables Strategy developed by the Contractor under Statement of Work 1.
- (i) In respect of each Future Deployment Area, the Contractor must supply and deliver any additional Spares listed in the Contractor's Spares Inventory in the Confirmed Spares and Consumables Strategy updated under this Agreement for each New SOW over and above those Spares previously delivered by the Contractor under each preceding SOW.
- (j) The Contractor must supply and deliver the Spares contemplated in paragraphs (h) and (i) to a Contractor Site in metropolitan Sydney prior to Acceptance of the "Subsystem Provisional Acceptance (Trackside Subsystem)" Milestone under the relevant SOW.
- (k) Without limiting paragraph (g) or clause 34.2 (Audit and Inspection), in respect of the SOW 1 Deployment Area and each Future Deployment Area, if at any time between Acceptance of the "Subsystem Provisional Acceptance (Trackside Subsystem)" Milestone and Acceptance of the "System Provisional Acceptance (System)" Milestone for that Deployment Area the Contractor's Spares Inventory is not at the levels set out in the relevant Confirmed Spares and Consumables Strategy as contemplated in paragraphs (h) and (i), the Contractor must promptly notify TfNSW and restock such inventory to the levels set out in the relevant Confirmed Spares and Consumables Strategy within ten (10) Business Days (or such other period of time as the parties may agree).
- (l) Except for where the restocking of the Contractor's Spares Inventory is required as a result of an Excepted Risk, the Contractor must restock such inventory to the levels required under paragraph (g) at no expense to TfNSW.
- (m) If the Contractor's Spares Inventory has not been returned to the levels required by this Agreement within the timeframe set out in paragraph (k), the Contractor must pay to TfNSW an amount equal to the cost of restocking such inventory to the levels required, such amount to be a reduction in the Fees payable by TfNSW, until such time as the Contractor's Spares Inventory has been returned to the levels required by this Agreement.

General

- (n) The Contractor must ensure all Spares used in the performance of the Contractor's Activities are used, tested, commissioned, maintained and overhauled in accordance with the Asset Management Plan and the Confirmed Spares and Consumables Strategy.

- (o) The Contractor bears all risk in relation to the:
 - (i) availability, cost, quality, functionality, delivery, integration, fitness for purpose, Obsolescence (subject to clauses 24.2(c) and (d)) and maintenance of Spares; and
 - (ii) storage of Spares or returned items of Trackside Equipment which are in the care, custody or control of the Contractor.

19.3 Title

Title to and property in the Spares delivered or required to be delivered under this Agreement shall vest (free of all Security Interests and Third Party rights) progressively in TfNSW on the earlier of:

- (a) payment for; and
 - (b) delivery of,
- the Spares in accordance with this Agreement.

20 Asset Register

- (a) The Contractor must maintain an Asset Register that complies with the PR.
- (b) The Contractor must provide access to or a copy of the Asset Register required under paragraph (a) on request by TfNSW.
- (c) The Contractor must, as part of the delivery of Assets under this Agreement, tag and scan all Assets in accordance with the GS1 Global Traceability Standard.

21 PPSA

21.1 PPSA undertakings

- (a) If this Agreement and the transactions contemplated by it, operate as, or give rise to, a Security Interest in favour of a Rail Transport Entity:
 - (i) the Contractor must promptly do anything (including amending this Agreement or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Rail Transport Entity considers reasonably necessary under or as a result of the PPSA for the purposes of:
 - (A) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under the PPSA;
 - (B) ensuring that the Security Interest is continuously perfected and/or perfected by control and/or perfected in a way that will reduce as far as reasonably possible the risk of a Third Party acquiring an interest in any property the subject of the Security Interest, to the extent possible under the PPSA;

- (C) enabling that Rail Transport Entity to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or
 - (D) enabling that Rail Transport Entity to exercise rights in connection with the Security Interest and this Agreement;
 - (ii) that Rail Transport Entity's Security Interest attaches to any proceeds (including any proceeds within the definition of that term in the PPSA) derived, directly or indirectly, from any sale or dealing with the collateral that is the subject of the Security Interest or otherwise arising out of or relating to the collateral whether or not the sale or dealing is permitted under this Agreement;
 - (iii) the Contractor must not without the relevant Rail Transport Entity's prior consent, create, purport or attempt to create, or permit to exist any other Security Interest, however ranking over the collateral; and
 - (iv) the Contractor covenants not to assert any rights it would otherwise have under section 80(1) of the PPSA and it is intended specifically that any person to whom a Rail Transport Entity assigns some or all of its rights under a Transaction Document should have the benefit of this covenant.
- (b) The Contractor agrees that it will bear all costs and expenses:
- (i) that it incurs to comply with paragraph (a); and
 - (ii) incurred by a Rail Transport Entity for the purposes set out in paragraph (a) arising out of or in connection with a failure by the Contractor to comply with its obligations under this clause.
- (c) If Chapter 4 of the PPSA applies to the enforcement of the Security Interest the Contractor agrees that:
- (i) sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA will not apply to the enforcement of the Security Interest; and
 - (ii) the application of Part 4.2 of the PPSA is contracted out of if that part would apply by virtue of section 116(2) of the PPSA.
- (d) The Contractor:
- (i) acknowledges that to the maximum extent permitted by Law, it waives any right to receive a verification statement under the PPSA in respect of the Security Interest; and
 - (ii) undertakes it will not register a financing change statement without the prior written consent of TfNSW.
- (e) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPSA and that this clause constitutes a confidentiality agreement within the meaning of the PPSA.
- (f) The Contractor agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

21.2 PPSA procedures

- (a) Without limiting clause 21.1 (PPSA undertakings), if the Contractor holds any Security Interests in the Assets for the purposes of the PPSA by reason of entering into any supply or other arrangements with a Subcontractor, the Contractor agrees to implement, maintain and comply in all material respects with, procedures for the perfection of those Security Interests. These procedures must include procedures designed to ensure that the Contractor takes all steps to identify Security Interests in its favour and under the PPSA to perfect continuously any such Security Interest including all steps necessary:
 - (i) for the Contractor to obtain the highest-ranking priority possible in respect of the Security Interest (such as perfecting a purchase money security interest (as defined in the PPSA) or perfecting a Security Interest by control); and
 - (ii) to reduce as far as possible the risk of a Third Party acquiring an interest free of the Security Interest (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).
- (b) If requested by TfNSW, the Contractor must arrange at its expense an audit of the above PPSA procedures and provide the results of that audit to TfNSW.

21.3 PPSA warranties and indemnities

- (a) To the extent the PPSA applies to any goods, materials or other items supplied by the Contractor to TfNSW, the Contractor warrants that the supply of goods, materials or other items to TfNSW:
 - (i) does not breach any security agreement the Contractor has with a Third Party; and
 - (ii) is within the ordinary course of the Contractor's business.
- (b) The Contractor indemnifies and must keep indemnified the TfNSW Indemnified Persons against any Claims against, or Losses suffered or incurred by a TfNSW Indemnified Person 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 TfNSW by the Contractor infringing that Third Party's rights under the PPSA.

Part E Post-installation obligations

22 Project Delivery Support

22.1 Care of the Works

- (a) The Contractor acknowledges that until the Acceptance of the "System Provisional Acceptance (System)" Milestone for each Statement of Work:
 - (i) the Assets and Works provided under the relevant Statement of Work must be cared for and supported by the Contractor under this Agreement in order to ensure that they remain fit for purpose and continue to meet the Contract Specifications;
 - (ii) during the installation of an Asset (and until such installation is complete) and whilst performing Works in respect of an Asset (until such Works are complete) the Contractor must provide the storage and protection and put in place such other physical and technical measures and protections as are necessary to preserve the Assets and Works provided under the relevant Statement of Work; and
 - (iii) the Contractor:
 - (A) indemnifies and must keep indemnified each of the TfNSW Indemnified Persons in respect of any destruction, loss of or damage to any Assets or Works (excluding where caused by an Excepted Risk) provided under the relevant Statement of Work and anything entrusted to the Contractor by a Rail Transport Entity or brought onto any Delivery Location by a Subcontractor for the purpose of carrying out the Contractor's Activities;
 - (B) subject to paragraph (C) and clause 23.4(a), must promptly repair, replace, reinstate or remedy any destroyed, lost or damaged Asset or Works provided under the relevant Statement of Work or otherwise make good any destruction, loss or damage to which the indemnity in paragraph (A) applies or which is caused by an Excepted Risk; and
 - (C) where the destruction, loss or damage arises from an Excepted Risk, must only comply with paragraph (B) to the extent Directed by TfNSW.
- (b) Without prejudice to the Contractor's obligations under clauses 22.2 (Corrective Maintenance Services), 24.4 (Business Continuity and Disaster Recovery) and 61 (Representations and warranties), the Contractor must provide the care and support referred to in paragraph (a) in accordance with the terms of the relevant SOW and this Agreement.
- (c) For the avoidance of doubt, the care and support services and any replacement, making good or repair of an Asset or Works required under paragraph (a) constitute Works for the purposes of this Agreement, and (subject to paragraph (d)) no additional amounts are, or will be, payable by TfNSW in respect of those Works other than the Fees.
- (d) To the extent any replacement, making good or repair of an Asset or Works is required under paragraph (a)(iii)(C) as a result of an Excepted Risk, this

replacement, making good or repair in accordance with a Direction under paragraph (a)(iii)(C) will be treated as if it were a Variation.

- (e) The Contractor acknowledges that this clause 22.1 applies unaffected by the fact that an Asset or Works (or any part of them) may be in the control of any other person or on the site or premises of any other person.

22.2 Corrective Maintenance Services

- (a) Without limiting clause 18.3 (Damage and reinstatement) or 22.1 (Care of the Works), during the period during which the Contractor has care of the works under clause 22.1 (Care of the Works) the Contractor must notify TfNSW as soon as reasonably practicable, and, in any event, within twenty-four (24) hours after it becomes aware that Corrective Maintenance Services are required.
- (b) The Contractor's notice under paragraph (a) must set out:
 - (i) the Assets which requires the Corrective Maintenance Services (including Delivery Location and location on the Delivery Location);
 - (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 paragraph (a), TfNSW may, at any time during the period during which the Contractor has care of the works under clause 22.1 (Care of the Works), give the Contractor a written Direction to perform the Corrective Maintenance Services.
- (d) Each Direction must set out the:
 - (i) Corrective Maintenance Services required; and
 - (ii) time that TfNSW considers to be reasonable within which the Contractor must carry out the Corrective Maintenance Services.
- (e) For the avoidance of doubt, the support services set out in this clause constitute Works for the purposes of this Agreement, and, subject to clause 18.3(d)(ii) and clause 22.1(d), no additional amounts are, or will be, payable by TfNSW in respect of those support services other than the Fees set out in the relevant SOW.

22.3 Parts required for support services

- (a) Without limiting the Contractor's obligations under this Agreement, the Contractor must promptly notify TfNSW if any part or materials required to perform the support services under this Agreement are not available to the Contractor.
- (b) TfNSW may request that the Contractor to use parts and materials made available to the Contractor by TfNSW when performing the support services, which parts and materials will constitute Supplied Items. TfNSW makes no representation as to the quality, performance, merchantability or fitness of the parts or materials.

23 Defect Rectification

23.1 Obligation to manage and notify

Until the expiry of the relevant Defects Liability Period under a Statement of Work:

- (a) the Contractor must promptly notify TfNSW of all Defects in the Assets delivered under that Statement of Work discovered by the Contractor or of which it is aware; and
- (b) without limiting paragraph (a), the Contractor must track and manage all Defects in the Assets delivered under that Statement of Work using the failure reporting and corrective action system (FRACAS) developed, utilised and maintained in accordance with the PR.

23.2 Defect Rectification

- (a) This clause 23.2 applies in respect of any Defects in Assets discovered, or of which either party becomes aware, prior to the expiry of the applicable Defects Liability Period (including during any testing, Verification or review periods prior to Acceptance). For the avoidance of doubt, this clause 23.2 will continue to apply notwithstanding that the TLS Agreement has commenced and notwithstanding that the care of the works period under clause 22.1(a) has expired, if the relevant Defects Liability Period remains on foot.
- (b) Without limiting any of TfNSW's rights or remedies under this Agreement (including under clause 24.2 (Design Life)), subject to clause 23.4(a) the Contractor must promptly identify the root cause of and (subject to paragraph (h)) repair, replace or rectify any and all Defects in the Assets.
- (c) The Contractor must comply with its obligations to TfNSW's satisfaction (to be approved in writing) and in a manner that meets any Milestones or other timing and/or quality requirements under this Agreement and results in the Assets meeting the Contract Specifications.
- (d) Without prejudice to paragraphs (b) and (c), notwithstanding that the TLS Agreement may have commenced and may provide for Sydney Trains to perform some or all of the Physical Works required to maintain and support the Assets, where an Asset has already been installed on the Network, and the Defect rectification activities to be performed under this clause 23.2 require access to the Rail Corridor, TfNSW may require the Contractor to perform any Physical Works necessary with respect to such Defect rectification.
- (e) After the Contractor has repaired, replaced or rectified a Defect under paragraph (b), a new Defects Liability Period of equivalent length to the original Defects Liability Period will apply to the repaired, replaced or rectified Asset (or component thereof), commencing on the date such repair, replacement or rectification is approved by TfNSW in writing in accordance with paragraph (c), provided that the total duration of any and all Defects Liability Periods relating to an Asset (or a component of it) cannot exceed the DLP Cap.
- (f) For clarity, no Defect (nor any associated testing, Verification or review periods) will entitle the Contractor to any extension of time pursuant to clause 15.3 (Extension of Time) nor constitute a Compensation Event.

- (g) For clarity, the Contactor's obligation to rectify Defects pursuant to this clause 23.2 survives the expiry of any relevant Defects Liability Period in respect of all Defects discovered by it, or of which it becomes aware, prior to the expiration of the relevant Defects Liability Period.
- (h) Where any Defect in an Asset is discovered, or where either party becomes aware of a Defect, during the period following Acceptance of the "System Provisional Acceptance (System)" Milestone and until the expiry of the relevant Defects Liability Period for each Statement of Work, then if:
 - (i) that Defect is identified as being the result of a failure of a Rail Transport Entity to properly maintain the Asset as contemplated by the TLS Agreement, an Excepted Risk or as a result of use of the Asset in a manner inconsistent with this Agreement; and
 - (ii) the Contractor has not caused or contributed to the Defect (including by any failure to perform its obligations in accordance with the TLS Agreement),
 then:
 - (iii) the Defect will not be treated as a Defect under this Agreement, but will instead be treated as a 'Defect' (as that term is defined in the TLS Agreement) under the TLS Agreement;
 - (iv) the Contractor will be required to repair, replace or rectify the Defect under clause 18 (Defect Rectification) of the TLS Agreement; and
 - (v) the Contractor will be entitled to treat such failure under paragraph (h)(i) as an 'Excepted Risk' (as that term is defined in the TLS Agreement) under the TLS Agreement.

23.3 Batch Defects

- (a) This clause 23.3 applies in respect of any Batch Defects in Assets discovered, or of which either party becomes aware, prior to the expiry of the applicable Defects Liability Period (including during any testing, Verification or review periods prior to Acceptance). For the avoidance of doubt, this clause 23.3 will continue to apply notwithstanding that the TLS Agreement has commenced and notwithstanding that the care of the works period under clause 22.1(a) has expired, if the relevant Defects Liability Period remains on foot.
- (b) Without limiting any of TfNSW's rights or remedies under this Agreement (including under clause 24.2 (Design Life)), if at any time TfNSW notifies the Contractor that a Batch Defect affects or may affect any Assets, the Contractor:
 - (i) subject to clause 23.4(a), must, within such period as may reasonably be specified in such notice, rectify, repair or replace all such Assets;
 - (ii) must comply with its obligations to TfNSW's satisfaction (to be approved in writing) and in a manner that meets any Milestones or other timing and/or quality requirements under this Agreement and results in the Assets meeting the Contract Specifications; and
 - (iii) indemnifies and must keep indemnified the TfNSW Indemnified Persons in respect of all Loss incurred by a TfNSW Indemnified Person associated with

the rectification, repair or replacement of such Assets, including removal, storage and reinstallation costs.

- (c) Without prejudice to paragraph (b), notwithstanding that the TLS Agreement may have commenced and may provide for Sydney Trains to perform some or all of the Physical Works required to maintain and support the Assets, where an Asset has already been installed on the Network, and the Defect rectification activities to be performed under this clause 23.3 require access to the Rail Corridor, TfNSW may require the Contractor to perform any Physical Works necessary with respect to such Defect rectification.
- (d) Without limiting any of TfNSW's rights or remedies under this Agreement (including under clause 24.2 (Design Life)), TfNSW may, at its discretion after consultation with the Contractor, in respect of any Assets affected or which may be affected by Batch Defects, Direct the Contractor to:
 - (i) temporarily cease delivery, installation and/or commissioning of all such Assets until further Directions are provided by TfNSW, such Directions to be provided within a reasonable timeframe; or
 - (ii) permanently cease the delivery, installation and/or commissioning of all such Assets.
- (e) Without limiting any of TfNSW's rights or remedies under this Agreement (including under clause 24.2 (Design Life)), no exercise by TfNSW of its rights under paragraph (d) will:
 - (i) cause TfNSW to be in breach or repudiation of this Agreement;
 - (ii) entitle the Contractor to any compensation or payment for any undelivered Assets;
 - (iii) affect TfNSW's entitlement to Liquidated Damages;
 - (iv) require TfNSW to provide the Contractor with more time to perform its obligations under this Agreement; or
 - (v) entitle the Contractor to submit a claim for an extension of time pursuant to clause 15.3 (Extension of Time) or constitute a Compensation Event.
- (f) After the Contractor has repaired, replaced or rectified a Defect under paragraph (b), a new Defects Liability Period of equivalent length to the original Defects Liability Period will apply to the repaired, replaced or rectified Asset (or component thereof), commencing on the date such repair, replacement or rectification is approved by TfNSW in writing in accordance with paragraph (b)(ii), provided that the total duration of any and all Defects Liability Periods relating to an Asset (or a component of it) cannot exceed the DLP Cap.
- (g) For clarity, the Contractor's obligation to rectify Defects pursuant to this clause 23.3 survives the expiry of any relevant Defects Liability Period in respect of all Batch Defects discovered by it, or of which it becomes aware, prior to the expiration of the relevant Defects Liability Period.

23.4 General

- (a) If the Contractor is required to repair, replace, reinstate or remedy or rectify any destruction, loss or damage under clause 18.3(a)(vii) or clause 22.1 (Care of the Works), or to repair, replace or rectify a Defect in an Asset under clause 23.2(b) or 23.3(b):
 - (i) the Contractor may (after consulting with TfNSW) elect whether the Asset should be repaired, replaced or rectified;
 - (ii) the Contractor may determine how the repair, replacement or rectification is to be performed, subject to approval by TfNSW (which must not be unreasonably withheld); and
 - (iii) TfNSW may Direct the Contractor as to the times and dates for performing the relevant activities.
- (b) Subject to clause 23.2(h), the Contractor will not be entitled to an increase in the Fees, any additional payment from TfNSW or to recover any additional costs it may incur as a result of complying with its obligations to rectify Defects under this clause 23, including under any Statement of Work or Work Order under the TLS Agreement.
- (c) The Contractor must comply with all provisions of this Agreement with regard to repaired, replaced or rectified Assets.
- (d) If any Asset is recalled for any reason, the Contractor must:
 - (i) immediately advise TfNSW of the recall;
 - (ii) comply with all Mandatory Requirements relating to the recall;
 - (iii) if the recall relates to Assets already delivered to TfNSW, supply to TfNSW, within ten (10) Business Days (or such other timeframe as is agreed with TfNSW) of TfNSW's request, substitute Assets that will perform the functions and performance requirements described in this Agreement; and
 - (iv) pay all the costs (including those of TfNSW) associated with the recall and the replacement of any Asset and any associated testing, review and verification processes.
- (e) Neither TfNSW's rights, nor the Contractor's liability, whether under this Agreement or otherwise according to Law in respect of Defects, will be affected or limited by:
 - (i) the rights conferred upon TfNSW by this clause 23 or any other provision of this Agreement;
 - (ii) the failure by TfNSW to exercise any such rights; or
 - (iii) any instruction of TfNSW under this clause 23.

23.5 Defect Rectification by Rectifying Party

- (a) If the Contractor fails to comply with this clause 23, TfNSW may, without limiting any obligation or warranty of the Contractor (including under the TLS Agreement),

cause such work as is reasonably required to repair, replace or remedy any Defects to be performed by itself (or its Third Party nominee).

- (b) The Contractor acknowledges and agrees that:
- (i) it is responsible for liaising with, and obtaining from, any Rail Transport Entity any Track Possession that is necessary for the Contractor to:
 - (A) rectify Defects; or
 - (B) investigate and report in relation to any Defects; and
 - (ii) due to the operational needs of any Rail Transport Entity and/or other operational needs:
 - (A) the Contractor, in performing the activities set out in clause 23, may be obliged to work in an electrified environment;
 - (B) access may be limited, delayed and rescheduled from time to time; and
 - (C) the period of access may be compressed or limited to periods of line shutdown at night, on weekends or on public holidays.
- (c) Where TfNSW (or its Third Party nominee) (in this clause, the **Rectifying Party**) has or will be rectifying a Defect or any part of it under clause 11.7(b)(ii), or has or will perform any other works to overcome the Defect or any part of it, including under paragraph (a):
- (i) without limiting or otherwise affecting the Interface Requirements or Collaboration Principles, the Contractor must not impede the Rectifying Party from having sufficient access to the Delivery Locations to rectify the Defect or carrying out the works to overcome the Defect;
 - (ii) any Losses suffered or incurred by TfNSW or a Rectifying Party arising out of or in any way in connection with, the Rectifying Party rectifying the Defect or carrying out the works, will be a debt due from the Contractor to TfNSW; and
 - (iii) the Contractor acknowledges and agrees that, unless the Rectifying Party has acted in a manner that would give rise to an EOT Event or a Compensation Event:
 - (A) no act or omission by such Rectifying Party in rectifying a Defect or carrying out the works to overcome the Defect will, whether or not it causes any delay or disruption to the Contractor's Activities, constitute an EOT Event or Compensation Event;
 - (B) the Contractor is not entitled to make, and TfNSW will not be liable upon, any Claim by the Contractor arising out of or in any way in connection with:
 - the Rectifying Party rectifying the Defect or carrying out the works to overcome the Defect; or
 - any other act or omission of the Rectifying Party; and

- (C) rectification of a Defect or any works to overcome the Defect by a Rectifying Party does not relieve the Contractor or otherwise affect any of its obligations under this Agreement.

24 Through Life Support

24.1 Interface with the TLS Agreement

- (a) Unless set out otherwise in a Statement of Work, the:
- (i) TLS Agreement will commence on the Acceptance of the “System Provisional Acceptance (System)” Milestone under Statement of Work 1;
 - (ii) Contractor’s obligation to perform the TLS Activities in respect of the SOW 1 Deployment Area will commence at the point at which the TLS Agreement commences in accordance with paragraph (i); and
 - (iii) Contractor’s obligation to perform the TLS Activities in respect of each Future Deployment Area will commence on the Acceptance of the “System Provisional Acceptance (System)” Milestone under the Statement of Work relevant to that Future Deployment Area.
- (b) Unless:
- (i) agreed otherwise with TfNSW;
 - (ii) included in a Delivery Impact Statement;
 - (iii) expressly stated in this Agreement or the TLS Agreement; or
 - (iv) resulting from compliance with a Direction under the TLS Agreement, notified by the Contractor in accordance with clause 5.6(c) of the TLS Agreement,
- then:
- (v) TfNSW will not have any obligation or liability to the Contractor under this Agreement, and the Contractor will not in any manner whatsoever be entitled to an adjustment to the Fees under this Agreement, arising out of or in connection with any matter arising under the TLS Agreement;
 - (vi) save to the extent explicitly provided otherwise in Schedule 11 (Pricing Terms), the Contractor will be paid for its performance of the “TLS Activities” (as that term is defined in the TLS Agreement) under the TLS Agreement and not this Agreement;
 - (vii) the Contractor must not assert any defence in connection with a Claim made by TfNSW under this Agreement (including a Claim for an EOT Event or Compensation Event or obligation relating to a Milestone), or otherwise seek to avoid any obligation under this Agreement, relying on any matter arising from or connected with any act, omission or failure of the Contractor under the TLS Agreement (including any Defect or failure to remedy a Defect under the TLS Agreement); and

- (viii) the Contractor shall not be entitled to, and must not make, any Claim against TfNSW under or in connection with this Agreement (including any Claim regarding the responsibility for a Defect) in respect of any Loss or Claim brought against, suffered or incurred by the Contractor arising out of or in connection with any act, omission or failure of the Contractor or any of its Associates relating to the TLS Agreement (including any Defect or failure to remedy a Defect under the TLS Agreement).

24.2 Design Life

The Contractor acknowledges and agrees that:

- (a) TfNSW intends the System to have a lifespan of at least twenty (20) years from the entry into revenue service operation of the System in the first Deployment Area;
- (b) without limiting paragraph (c), the Contractor must select components of the Trackside Subsystem, including each item of Trackside Equipment, so that, as far as reasonably foreseeable, Spares or suitable, backwards compatible replacements are readily available for the Design Life of the Trackside Subsystem;
- (c) it must ensure that, in respect of each Deployment Area, all components of the Trackside Subsystem, including each item of Trackside Equipment, to be deployed or used in respect of that Deployment Area do not become Obsolescent within the seven (7) year period commencing on the date of Acceptance of the "Subsystem Provisional Acceptance (Trackside Subsystem)" Milestone under the relevant Statement of Work;
- (d) the Trackside Subsystem (and each component of it, including each item of Trackside Equipment):
 - (i) will not transition from operability to non-functionality or non-operability due to external reasons, other than on a temporary basis, during its Design Life;
 - (ii) will continue to be fully supported during its Design Life, whether by the original manufacturer or the Contractor, provided that where the Trackside Subsystem (or relevant component of it) is not supported by the original manufacturer the Contractor will only be deemed to satisfy the obligation in this paragraph (ii) where the Contractor has provided evidence on TfNSW's request and to TfNSW's reasonable satisfaction that the Contractor is able to support the relevant component in a manner no less detrimental to TfNSW than if the original manufacturer had been continuing to support the relevant component;
 - (iii) has been designed to continue to:
 - (A) operate in accordance with the applicable Contract Specifications; and
 - (B) be fit for purpose,

for its Design life, provided that where the Trackside Subsystem is being operated and maintained by an entity other than the Contractor or its Associates, the Contractor's liability will be reduced to the extent any failure of the Trackside Subsystem to meet the above requirements is caused by it not being operated and maintained in accordance with the operation and maintenance manuals supplied by the Contractor; and

- (iv) the Contractor will not be in breach of this obligation solely as a result of individual or isolated failures of components of the Trackside Subsystem (including Trackside Equipment) prior to the expiry of their Design Life, where the nature and frequency of such failures do not demonstrate a failure in the design of the relevant component in breach of this clause; and remain compatible and interoperable with the Interfacing Systems, assuming that:
 - (A) where the Interfacing Systems are Subsystems, those Interfacing Systems continue to comply with the SSRs and ICDs for those Interfacing Systems; and
 - (B) where the Interfacing Systems are not Subsystems, those Interfacing Systems continue to comply with the ICDs for those Interfacing Systems; and
- (e) where any component of the Trackside Subsystem, including any item of Trackside Equipment, has a Design Life that is less than the Design Life for the Trackside Subsystem, the design of the Trackside Subsystem must be such that end of life replacement is facilitated and undertaken with as low as possible disruption to the Network and no outages to the System or the Network unless scheduled in advance with TfNSW.

Whilst use of the term Design Life in this Agreement does not extend the Defects Liability Period for an Asset, there are obligations and warranties under this Agreement that extend for the Design Life of the Asset, breach of which would give rise to rights under this Agreement. TfNSW acknowledges that the Contractor is not obliged to remedy a breach of those obligations and warranties as a Defect under clause 23.2 (Defect Rectification) after the expiry of the Defect Liability Period.

24.3 Limitations

- (a) The Contractor waives any and all rights it may have under sections 14 and 16 of the *Limitation Act 1969* (NSW) and section 6.20 of the *Environmental Planning and Assessment Act 1979* (NSW) in respect of the Design Lives of the Assets where those Design Lives are for periods longer than those provided for in those Laws.
- (b) If the waiver referred to in paragraph (a) is held to be without effect or otherwise unenforceable, or if it is severed from this Agreement, the Contractor indemnifies and must keep the TfNSW Indemnified Persons indemnified at all times from and against all Loss that a TfNSW Indemnified Person may suffer or incur arising out of loss of the benefit of the waiver.
- (c) The indemnity in paragraph (b) is to continue and remain in full force and effect until the expiration of the last of the Design Lives of the Assets.
- (d) The parties agree that any action by TfNSW on the indemnity in paragraph (b) is not a "civil action for defective building work" for the purposes of section 6.20 of the *Environmental Planning and Assessment Act 1979* (NSW).

24.4 Business Continuity and Disaster Recovery

The Contractor must comply with the business continuity and disaster recovery requirements set out in Schedule 21 (Business Continuity and Disaster Recovery).

25 Technology evolution

25.1 General

- (a) TfNSW wishes to be a key partner and preferred customer of the Contractor and to be part of the journey with the Contractor in the development of its products and services.
- (b) Consistent with this approach, TfNSW:
 - (i) wishes to have visibility over and contribute to and make suggestions with respect to the Contractor's products/services roadmap;
 - (ii) wishes to share with the Contractor the benefit of any development work which it funds (in whole or part) and which is then incorporated into the Contractor's products/services roadmap or standard product offering;
 - (iii) will discuss with the Contractor the commercial terms on which future developments will be performed, including potential licencing/sharing of Intellectual Property Rights that it has funded or contributed to; and
 - (iv) expects to have access to future Upgrades of the Trackside Subsystem (including developments to the same that the Contractor makes at the request of other customers).
- (c) The Contractor must:
 - (i) do all things necessary to ensure that TfNSW benefits from access to the Contractor's knowledge assets developed and captured through the Contractor's work globally; and
 - (ii) perform its obligations under this Agreement in a manner consistent with TfNSW's expectations outlined in this clause 25.
- (d) The Contractor must use reasonable endeavours to ensure that any contract, arrangement or understanding that it enters into with any Third Party after the Execution Date does not prevent or restrict the Contractor from complying with any of its obligations in this clause 25.
- (e) The Contractor acknowledges that the technologies employed by TfNSW will continue to evolve and change over the Term. The Contractor must, at a minimum, ensure that the technologies used in the Trackside Subsystem remain consistent with the Contract Specifications.

25.2 Roadmap

- (a) The Contractor must provide to TfNSW its current product roadmap relating to the products and services it provides with respect to rail signalling, automated train operation and traffic and rail management solutions:
 - (i) every six (6) months; and
 - (ii) as soon as the Contractor provides an updated version of such roadmap to any of its other customers.

- (b) The Contractor must:
- (i) give TfNSW the option to participate in any user or advisory forums and research and development and other technical forums that it convenes which relate to the products and services it provides with respect to rail signalling, automated train operation and traffic and rail management solutions;
 - (ii) provide TfNSW with visibility of and the ability to input into and influence any changes to its product roadmap and to provide suggestions, comments or feedback to the Contractor in respect of its product roadmap; and
 - (iii) consider enhancements requested by TfNSW from time to time in its product roadmap if requested to do so by TfNSW.

25.3 Technology Evolution

- (a) Subject to paragraph (b), the Contractor must:
- (i) continually introduce and implement Technology Evolution to improve the Contractor's product portfolio and offerings, technological advancements and improvements, having regard to Industry Best Practice, and technology and processes that the Contractor or other companies offering products and services equivalent to the Contractor's Activities are using in similar solutions anywhere in the world;
 - (ii) monitor, analyse and report to TfNSW every six (6) months on new technology and emerging trends relating to rail signalling, automated train operation and traffic and rail management solutions, including any developments which the Contractor has created for itself or its other customers in respect of rail signalling, automated train operation and traffic and rail management solutions (or other solutions similar to the System);
 - (iii) identify any new solution that is likely to:
 - (A) improve the efficiency and effectiveness of the System, the Trackside Subsystem and/or the Contractor's Activities;
 - (B) result in cost savings or improved sustainability for TfNSW;
 - (C) improve the availability or quality of services in respect of the System or Trackside Subsystem;
 - (D) improve security relating to the System or Trackside Subsystem;
 - (E) reduce or mitigate risks in relation to the System or Trackside Subsystem; or
 - (F) improve the ability of TfNSW to fulfil its functions;
 - (iv) where requested by TfNSW, demonstrate how those new solutions could be implemented for TfNSW and what effect, if any, it would have on TfNSW including the potential costs and benefits to TfNSW; and
 - (v) provide any additional information regarding such Technology Evolution.

- (b) Without limiting the Contractor's obligations under this clause 25, nothing in this Agreement requires TfNSW to implement or adopt any new versions of goods or services, including new or replacement Trackside Equipment or new versions of Software that forms part of the Trackside Subsystem, and any failure or delay in TfNSW adopting any new versions of goods or services in no way diminishes or reduces the Contractor's obligations or warranties under this Agreement or the TLS Agreement.
- (c) The implementation of any Technology Evolution will be managed as Future Project Work under clause 5.2 (Future work). The Contractor acknowledges that TfNSW is not obliged to implement any Technology Evolution and may choose not to.

Part F Personnel

26 Contractor Personnel

26.1 Responsibility for Contractor Personnel

- (a) The Contractor must:
 - (i) maintain sufficient Contractor Personnel with sufficient skills to properly perform and manage the Contractor's Activities in accordance with this Agreement including all required activities related to programming, budgeting, inspecting, fault finding, repairing and maintaining for safety and serviceability;
 - (ii) ensure that the Contractor Personnel:
 - (A) comply with all of the Contractor's obligations under this Agreement; and
 - (B) do not represent themselves as being an employee, partner or agent of TfNSW;
 - (iii) provide prompt notice to TfNSW if any of the Contractor Personnel are unable to undertake work in respect of the Contractor's Activities and this unavailability is predicted to last longer than four (4) weeks and comply with any reasonable Direction given by TfNSW in that regard, including promptly providing a replacement suitable to TfNSW; and
 - (iv) provide to TfNSW on request a list of the Contractor Personnel with actual or proposed access to Rail Transport Entity Sites or TfNSW Systems.
- (b) The Contractor is responsible for all acts and omissions of the Contractor Personnel as if they were those of the Contractor.
- (c) The Contractor must pay all wages, salaries, benefits and entitlements and all income, payroll, sales and similar Taxes, in relation to all Contractor Personnel whether or not the liability results from the Contractor entering into this Agreement.

26.2 Engagement of Contractor Personnel

The Contractor must:

- (a) not engage, employ or otherwise use any Contractor Personnel to perform the Contractor's Activities who:
 - (i) has:
 - (A) been dismissed from a Government Authority for reasons of misconduct;
 - (B) breached the TfNSW Statement of Business Ethics; or
 - (C) resigned from a Government Authority in circumstances where the person was being investigated by a Government Authority for misconduct;

- (ii) does not have the necessary visas and/or other work permits to carry out their relevant tasks and activities in connection with the performance of the Contractor's Activities; or
 - (iii) does not meet the background check requirements specified by TfNSW (acting reasonably) from time to time (including those set out in clause 26.3 (Conduct of background checks)); and
- (b) take all necessary steps to identify whether the circumstances described in clause 26.2(a) apply before employing, engaging or otherwise using the services of any person to perform the Contractor's Activities.

26.3 Conduct of background checks

- (a) Subject to paragraph (e), the Contractor must unless agreed otherwise by TfNSW:
 - (i) conduct criminal history checks on Contractor Personnel in every jurisdiction in which the relevant Contractor Personnel resided in the prior seven (7) years, including for any finding of corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* (NSW), and clear the Contractor Personnel to TfNSW's satisfaction:
 - (A) before that Contractor Personnel commences work under this Agreement; and
 - (B) every two (2) Years thereafter;
 - (ii) subject to paragraph (d), conduct such other background, security or other checks on such Contractor Personnel as may be required by TfNSW from time to time, and clear them to TfNSW's satisfaction, provided that where such Contractor Personnel are located at Delivery Locations outside of Australia the Contractor may, prior to conducting the checks, request a Variation for the recovery of the costs of conducting the checks (which Variation Proposal must detail the Contractor's costs reasonably expected to be incurred in conducting the checks); and
 - (iii) provide the results of such checks to TfNSW or alternatively certify that they have been obtained.
- (b) TfNSW may:
 - (i) require the Contractor to report on its compliance with this clause 26.3 and to provide evidence to TfNSW of clearances;
 - (ii) where permitted by Law, carry out the background checks referred to in paragraph (a) itself; and/or
 - (iii) conduct such other investigations and background checks as TfNSW considers appropriate and as are permitted by Law.
- (c) The Contractor must:
 - (i) provide reasonable assistance as requested by TfNSW for purposes of TfNSW exercising its rights under paragraph (b);

- (ii) if requested by TfNSW, provide to TfNSW accurate information about the identity, qualifications, job history and character of any Contractor Personnel nominated by TfNSW; and
 - (iii) obtain any consents required from Contractor Personnel for purposes of any checks to be performed (either by the Contractor or TfNSW) as contemplated by this clause 26.3.
- (d) If the Contractor is unable to obtain any consent from a person, then, unless TfNSW agrees otherwise in writing, the Contractor must not engage that person to perform, or remove that person from performing, the Contractor's obligations under this Agreement.
- (e) The Contractor is not required to comply with this clause 26.3:
 - (i) to the extent that to do so is prohibited by Law (including by any Law in force in the jurisdiction in which the relevant Contractor Personnel is resident). The Contractor must advise TfNSW where that is the case for any Contractor Personnel and provide written reasons for the non-performance. The Contractor must comply with any Direction provided by TfNSW in respect of any restrictions or conditions regarding use of such Contractor Personnel;
 - (ii) for any Contractor Personnel filling the roles specified in section 11.1.2 (Contractor Personnel) of the relevant Statement of Work, provided that this paragraph (ii) will not apply to any Contractor Personnel that have access to TfNSW Data or TfNSW Systems or perform a material aspect of the Contractor's Activities (to be determined by TfNSW, acting reasonably);
 - (iii) for any Contractor Personnel to the extent that such Contractor Personnel are engaged for purposes only of accessing the Rail Corridor or otherwise performing Physical Works, provided that such Contractor Personnel comply with any requirements or processes of TfNSW or Sydney Trains (from time to time) relating to such access to the Rail Corridor or performance of Physical Works;
 - (iv) where the Contractor is required to deploy new Contractor Personnel urgently to respond to an Incident or rectify a Defect, in respect of those new Contractor Personnel only, provided that:
 - (A) the Contractor has notified TfNSW of the need to deploy new Contractor Personnel urgently, and has obtained TfNSW's approval to do so (such approval not to be unreasonably withheld); and
 - (B) immediately following resolution of the Incident or rectification of the Defect, the Contractor complies with this clause 26.3 in respect of such new Contractor Personnel or the Contractor immediately ceases use of such Contractor Personnel; and
 - (v) where obtaining any required background check required by this clause would require a Contractor Personnel to physically travel to an international jurisdiction outside the jurisdiction in which that Contractor Personnel is based provided that:
 - (A) the Contractor advises TfNSW of the need for international travel and provides an estimate of the costs required for that travel as well as any potential impact to the Program; and

- (B) if TfNSW agrees to reimburse those costs and to an adjustment to the Program to reflect any impact the travel will have, the Contractor Personnel will still be required to obtain the relevant background check.

26.4 Qualifications and training

The Contractor must:

- (a) ensure that all Contractor Personnel:
 - (i) are and continue to be competent, experienced, suitably skilled, qualified and trained to undertake the Contractor's Activities for the Contractor;
 - (ii) are qualified and trained to meet any Mandatory Requirements and the requirements of this Agreement;
 - (iii) undertake any relevant training or induction required by TfNSW to perform the Contractor's Activities; and
 - (iv) are made aware of the requirements of this Agreement (with a particular focus on reporting procedures, compliance, community or media enquiries, or other functions on a Delivery Location); and
- (b) maintain records of all qualifications and certifications held by, and training and inductions attended by, Contractor Personnel and provide copies of those records to TfNSW on request.

26.5 Key People

- (a) Schedule 2 (Agreement Details) and each SOW will set out the names and roles of the Contractor's Key People relevant to the performance of the Contractor's Activities under that SOW. The Contractor must ensure that the Key People nominated in a SOW stay in the Key Delivery Positions for the Minimum Commitment Period specified in that SOW.
- (b) The Contractor must ensure that each of the Key People devote their time and effort to the provision of Contractor's Activities under this Agreement to at least the level set out in the Resource Plan.
- (c) The Contractor must not, without TfNSW's prior approval:
 - (i) appoint a person to a Key Delivery Position (including as a replacement for another Key Person); or
 - (ii) remove or replace (temporarily or permanently) Key People from Key Delivery Positions, except:
 - (A) where such Key Person resigns from the employment of the Contractor and all of its Related Bodies Corporate (such that the Key Person is no longer employed by the Contractor or any of its Related Bodies Corporate), in which case the Contractor must promptly notify TfNSW;
 - (B) where such Key Person is unable to work for the Contractor or any of its Related Bodies Corporate by reason of illness or incapacity and

this unavailability is predicted to last longer than four (4) weeks (in which case the Contractor must promptly notify TfNSW); or

- (C) following expiry of the relevant Minimum Commitment Period.
- (d) The Contractor must ensure that any removed Key Person is replaced in accordance with this clause 26.5.
- (e) In seeking TfNSW's approval for the appointment, replacement or reassignment of Key People or the appointment of any additional persons to a Key Delivery Position (**Proposed Key Person**) under this clause 26.5 the Contractor must:
 - (i) ensure the replacement, reassignment or appointment will not adversely affect the quality of the relationship between TfNSW and the Contractor or the performance of the Contractor's Activities in accordance with this Agreement;
 - (ii) appoint the Proposed Key Person for the Minimum Commitment Period specified in the SOW for the relevant Key Delivery Position;
 - (iii) ensure the Proposed Key Person is suitably qualified and experienced for the relevant Key Delivery Position (including meeting any qualifications or experience required in relation to that Key Delivery Position as set out in a SOW);
 - (iv) provide to TfNSW:
 - (A) a resume of the Proposed Key Person;
 - (B) a summary of the Proposed Key Person's experience;
 - (C) such other details in relation to the Proposed Key Person that TfNSW reasonably requires; and
 - (D) the Contractor's proposed replacement plan (including replacement timeframe); and
 - (v) where requested by TfNSW, provide an opportunity for TfNSW to meet with the Proposed Key Person.
- (f) TfNSW must, within ten (10) Business Days, or such longer period as TfNSW reasonably requires after being provided the information set out in paragraph (e)(iv), notify the Contractor whether or not it accepts the Proposed Key Person. If TfNSW does not accept the Proposed Key Person, TfNSW must provide its reasons to the Contractor and the process in paragraphs (e) and (f) will be repeated until TfNSW accepts a Proposed Key Person for the relevant Key Delivery Position (at which point, the list of Key People set out in the relevant SOW will be amended accordingly).
- (g) If a Key Person is replaced, the Contractor must ensure that the Proposed Key Person is appointed to the relevant Key Delivery Position no later than twenty (20) Business Days before the replaced Key Person ceases to act in the relevant Key Delivery Position so that there is a period of parallel appointment to the relevant Key Delivery Position. During such period, TfNSW has no liability to pay, nor is the Contractor entitled to make a payment claim for, any part of the Fee attributable to the engagement of the Proposed Key Person. The period of parallel appointment

will be reduced (or may not apply at all) where a Key Person has to be replaced on shorter (or no) notice as a result of illness or incapacity.

- (h) TfNSW may at any time by notice to the Contractor, acting reasonably and in consultation with the Contractor:
 - (i) nominate certain positions as Key Delivery Positions from the date included in the notice;
 - (ii) require that one or more current Key People are removed from a Key Delivery Position and replaced with an alternative person approved by TfNSW in accordance with paragraph (f) on and from the date included in the notice; or
 - (iii) require that the Contractor procure a resource with a new skillset, in which case the Contractor will use its best endeavours to procure such skillset, such skillset will become a Key Delivery Position for the purposes of this Agreement, and the Labour Rates payable for such Key Delivery Position will be reasonable, market competitive and consistent with the basis on which the Labour Rates for the existing Key Delivery Positions have been calculated,

in which case the list of Key People and Key Delivery Positions set out in the relevant SOW will be amended accordingly.

26.6 TfNSW removal of Contractor Personnel

- (a) If TfNSW is of the reasonable opinion that any Contractor Personnel:
 - (i) fails to meet the criteria for engagement of Contractor Personnel set out in clauses 26.2 (Engagement of Contractor Personnel) to 26.4 (Qualifications and training);
 - (ii) fails to maintain the necessary qualifications or to display a level of competency in the performance of that Contractor Personnel's duties;
 - (iii) is not performing the Contractor's obligations in a satisfactory manner, or in such a way that if done by the Contractor would result in the Contractor breaching its obligations under this Agreement;
 - (iv) may give rise to a Conflict of Interest or have access to Confidential Information of TfNSW which may be used to the detriment of TfNSW or any Stakeholder;
 - (v) acts in a manner materially detrimental to safety or TfNSW's public image and reputation; or
 - (vi) in the opinion of TfNSW is guilty of misconduct or is incompetent or negligent,

then TfNSW may direct the Contractor to:

- (vii) immediately cease the involvement of those Contractor Personnel in the performance of the Contractor's Activities;

- (viii) terminate or refuse for any period, such Contractor Personnel's access to TfNSW's Systems, Rail Transport Entity Sites and Confidential Information;
 - (ix) promptly provide replacements suitable to TfNSW and that otherwise meet the requirements of this Agreement; and
 - (x) take reasonable remedial steps in relation to that person as required by TfNSW (acting reasonably).
- (b) The Contractor must comply with any requirement or Direction made by TfNSW under this clause 26.6.
- (c) The Contractor must ensure that any person that TfNSW directs should cease to be involved in the Contractor's Activities is not again involved in the Contractor's Activities.

26.7 Organisational Chart and Resource Plan

- (a) The Contractor must:
 - (i) develop and maintain an organisational chart in respect of the performance of the Contractor's Activities under each SOW (**Organisational Chart**);
 - (ii) develop and maintain a Contractor Personnel resource plan in respect of the performance of the Contractor's Activities under each SOW (**Resource Plan**); and
 - (iii) comply with the Organisational Chart and Resource Plan in performing the Contractor's Activities.
- (b) The Organisational Chart and Resource Plan must comply with the requirements of the Statement of Work and must, at a minimum:
 - (i) include the name of the Contractor's Representative;
 - (ii) include an organisation chart that identifies all Contractor Personnel that will be involved in delivering the Contractor's Activities under the relevant SOW including name, role, safety accountabilities, work location and employer;
 - (iii) detail the hierarchy of the Contractor Personnel that will be involved in delivering the Contractor's Activities under the relevant SOW;
 - (iv) identify the location of the Contractor Personnel including if they are offshore in Contractor Sites, onshore in Contractor Sites, or onshore in Rail Transport Entity Sites;
 - (v) specify the following information for each Contractor Personnel:
 - (A) name and role in delivering the Contractor's Activities;
 - (B) whether they are also a Key Person;
 - (C) 'home' or 'base' location, and visa status if travelling from an offshore location;

- (D) location for delivering the Contractor's Activities (if different to their 'home' or 'base' location) and proposed travel calendar;
 - (E) duration of their involvement in delivering the Contractor's Activities;
 - (F) for Key People, and for Contractor Personnel performing their functions on a time and materials basis only, utilisation for delivery of the Contractor's Activities, on a weekly or monthly basis as required by TfNSW;
 - (G) whether they have access to Rail Transport Entity Sites or TfNSW Systems;
 - (H) background verification and criminal record checks completion status from their home or base location authority;
 - (I) any other information required by the Agreement; and
 - (J) any other information reasonably required by TfNSW from time to time; and
- (vi) include a succession process which enables the smooth transition of each Key Person if and/or when they are removed or replaced in order to ensure appropriate knowledge management and transfer and otherwise avoid any adverse effect on the performance of the Contractor's Activities and the quality of the relationship between TfNSW and the Contractor.
- (c) The Contractor must:
- (i) update the Organisational Chart and Resource Plan quarterly (or at such other times as may be requested by TfNSW) and provide a copy of the current Organisational Chart and Resource Plan to TfNSW; and
 - (ii) otherwise keep TfNSW informed on a regular basis of:
 - (A) the removal of any Contractor Personnel;
 - (B) the replacement, appointment, reassignment or other change of Contractor Personnel;
 - (C) any other change to the organisation structure relevant to the performance of the Contractor's Activities; and
 - (D) its succession plan and process for the proposed replacement of any Contractor Personnel.
- (d) The Organisational Chart and Resource Plan will be a regular agenda item for discussion between the parties at the Delivery Management Meeting.

26.8 Drugs and alcohol

Irrespective of anything else contained in this Agreement:

- (a) the Contractor:

- (i) acknowledges that a key principle underpinning the TfNSW Policy on drugs and alcohol is zero tolerance;
 - (ii) must develop and implement policies and procedures, in accordance with relevant Laws, Approvals and Standards (including where applicable to Rail Safety Work, the Rail Safety National Law) applicable in the jurisdictions in which the Contractor's Activities are being performed:
 - (A) to manage the risks of the effects of alcohol and drugs on any Contractor Personnel;
 - (B) to ensure that TfNSW's policy of zero tolerance is adhered to at all times in the performance of the Contractor's Activities; and
 - (C) for effective drug and alcohol testing by the Contractor, including the number of tests to be performed annually and the period through the year that testing will take place (and, where applicable, the testing regime shall include prestart testing prior to Track Possessions);
 - (iii) without prejudice to paragraph (ii), may (subject to TfNSW's consent) develop and implement its own policies and procedures in relation to prescription and over-the-counter drugs on a case by case basis;
 - (iv) must ensure that all persons associated with the Contractor's Activities including Contractor Personnel and visitors, are aware of their obligations to comply with all drug and alcohol requirements; and
 - (v) must ensure that all Contractor Personnel sign on each time that they perform the Contractor's Activities and declare themselves to be free of alcohol and drugs; and
- (b) the Contractor:
- (i) agrees that TfNSW may randomly perform (or procure the performance of) drug and alcohol tests on any Contractor Personnel:
 - (A) at any time that the Contractor Personnel are performing the Contractor's Activities;
 - (B) at any time that the Contractor Personnel are present on any of the Delivery Locations (including before performing duties (pre-sign on, primarily alcohol test), during the performance of duties (random and reasonable cause) and following any incident); and
 - (C) in accordance with the Rail Safety National Law, Standards, and TfNSW's reasonable requirements,

and must ensure that Contractor Personnel submit to and comply with TfNSW's testing and instructions in respect of any such tests;
 - (ii) acknowledges and agrees that a failure to comply with this provision, or failure by the relevant Contractor Personnel to pass the relevant tests, may result in TfNSW requiring that the relevant Contractor Personnel must no longer perform Contractor's Activities for TfNSW, and in such event the Contractor will:

- (A) immediately comply with TfNSW's request; and
- (B) be liable for all Losses suffered by TfNSW as a result of any disruption or delay caused as a result;
- (iii) must immediately remove anyone from the Delivery Locations that tests positive to alcohol or drug tests or who refuses an alcohol or drug test, and notify TfNSW immediately; and
- (iv) must take disciplinary action against a person who breaches their obligations to comply with all drug and alcohol requirements.

27 Subcontracting and performance by Related Bodies Corporate

27.1 When subcontracting is permitted

- (a) Subject to paragraphs (b) and (c), the Contractor may subcontract a part (but not the whole) of its obligations under this Agreement.
- (b) Other than in respect of any Pre-Approved Subcontractors and Project Related Bodies Corporate, the Contractor must obtain TfNSW's prior consent in accordance with this clause 27 before subcontracting any of its obligations under this Agreement.
- (c) The Contractor must not subcontract or delegate the management or administration responsibilities for the delivery of the Contractor's obligations in relation to performance of the Contractor's Activities.
- (d) Regardless of any consent given by TfNSW, the Contractor must ensure that any Subcontractor or Project Related Body Corporate:
 - (i) is and remains reputable, capable of performing and has, or has access to, sufficient experience, expertise and ability to perform the relevant Contractor's Activities to the standards required by this Agreement;
 - (ii) is and remains solvent and has sufficient financial capacity to implement any relevant part of the Contractor's Activities;
 - (iii) does not have any interest or duty which conflicts in a material way with the interests of the Program and is not involved in any business or activity which is incompatible with, or in appropriate in relation to, the Program; and
 - (iv) has and maintains the technical capability and the qualifications, skills and experience including holding all Approvals required to perform the obligations of the Contractor to be performed by it to at least the standard required by this Agreement,

(Qualified Subcontractor).
- (e) Paragraph (b) does not apply to individuals that are engaged by the Contractor as contractors on a labour hire basis.

27.2 Contractor remains liable

- (a) The Contractor:

- (i) is not relieved of any of its liabilities or obligations under this Agreement by virtue of its obligations being performed by a Subcontractor or Project Related Body Corporate;
- (ii) will be liable to TfNSW for the acts and omissions of a Subcontractor or Project Related Body Corporate or any personnel of a Subcontractor or Project Related Body Corporate as if they were the acts or omissions of the Contractor or the Contractor Personnel; and
- (iii) acknowledges and agrees that breach of this Agreement caused or contributed to by a Subcontractor or Project Related Body Corporate is a breach of the Contractor,

notwithstanding that TfNSW may have consented to the relevant subcontract or Subcontractor or performance of the Contractor's Activities by a Project Related Body Corporate, and notwithstanding that TfNSW may have approved a form of subcontract pursuant to clause 27.7 (Form of subcontract) or a Key Subcontract in respect of any Key Subcontractor pursuant to clause 27.5 (Key Subcontractors specific provisions).

- (b) The Contractor must, in circumstances where it makes any Claim against TfNSW as a consequence of a Claim that has been made by a Subcontractor or Project Related Body Corporate against the Contractor, take reasonable steps to ensure that any Claim made by a Subcontractor or Project Related Body Corporate is bona fide, prior to making any related Claim against TfNSW.

27.3 Approved Subcontractors and Project Related Bodies Corporate

- (a) The Contractor acknowledges that Approved Subcontractors are only approved in respect of the performance of certain Contractor's Activities, set out in TfNSW's consent to that Subcontractor or, in respect of Pre-Approved Subcontractors, as identified alongside the Pre-Approved Subcontractor in Item 4 (Subcontractors) of Schedule 2 (Agreement Details) or the relevant Statement of Work.
- (b) Subject to clauses 27.5(b)(ii) and 27.10 (Novation of Key Subcontracts), the identification of certain Subcontractors as Pre-Approved Subcontractors, the performance of the Contractor's Activities by Project Related Bodies Corporate or the provision of consent in respect of any other Approved Subcontractor does not create any form of contractual relationship between TfNSW and the relevant Approved Subcontractor(s) or Project Related Body Corporate.
- (c) If:
 - (i) there is any material change to the scope of the Contractor's Activities that an Approved Subcontractor performs under this Agreement or any Statement of Work; or
 - (ii) where a Project Related Body Corporate is wholly owned by the Contractor or one of its Related Bodies Corporate and is performing a material part of the Contractor's Activities, such Project Related Body Corporate ceases to be wholly owned by the Contractor or one of its Related Bodies Corporate,

then the Contractor must immediately seek re-approval in respect of that Approved Subcontractor for performance of the amended scope or approval in respect of the Project Related Body Corporate in accordance with this clause 27. If such re-approval or approval is not granted within five (5) Business Days or such other period as agreed between the parties, then in respect of (i) the Contractor cannot use that Approved Subcontractor for the amended scope or, in respect of (ii), that

entity will cease to be a Project Related Body Corporate with immediate effect, and the Contractor must immediately cease subcontracting or delegating its obligations under the Agreement or any Statement of Work to that entity.

27.4 Seeking TfNSW approval of subcontracting

- (a) Before the Contractor enters into any subcontract that requires TfNSW's consent under clause 27.1(b) (including to replace an existing subcontract or due to the operation of clause 27.3(c)), the Contractor must:
 - (i) notify TfNSW that it proposes to enter into the subcontract; and
 - (ii) provide TfNSW with the following information:
 - (A) written details of the specific tasks to be subcontracted;
 - (B) the name, ABN (or, where the Subcontractor does not hold an ABN, an equivalent corporate identifier in the jurisdiction in which the Subcontractor is incorporated), address and qualifications of the proposed Subcontractor;
 - (C) evidence that the proposed Subcontractor is a Qualified Subcontractor;
 - (D) an assessment of the work health and safety management capability of the proposed Subcontractor;
 - (E) certificates of currency for the insurances held by the proposed Subcontractor; and
 - (F) all other information reasonably requested by TfNSW in respect of the proposed subcontracting.
- (b) On completion of TfNSW's review of information provided under paragraph (a) or clause 27.5 (Key Subcontractors specific provisions), TfNSW must notify the Contractor whether TfNSW consents or does not consent to the engagement of the proposed Subcontractor. If TfNSW does not so notify the Contractor within fifteen (15) Business Days, such failure to notify will be deemed to be a notification that TfNSW does not consent to the engagement of the proposed Subcontractor (following which the Contractor may request that TfNSW provides reasons for its decision not to consent).

27.5 Key Subcontractors specific provisions

- (a) This clause 27.5 applies to Key Subcontracts, in addition to the other provisions in this clause 27.
- (b) When applying for consent to enter into a Key Subcontract pursuant to clause 27.1(b) (including to replace an existing Key Subcontract or an existing Approved Subcontractor), the Contractor must:
 - (i) provide a copy of, and obtain TfNSW's consent to, the terms of the proposed Key Subcontract (which consent must not be unreasonably withheld where the Key Subcontract meets the requirements of this clause 27.5 and has protections in place to allow the Contractor to meet its obligations in clause 27.9 (Other Subcontracting Requirements), as applicable), excluding details of any fees payable under those subcontracts;

- (ii) procure that the Key Subcontractor executes a Subcontractor Deed with TfNSW in the form set out in Schedule 22 (Form of Subcontractor Deed); and
 - (iii) where requested by TfNSW, procure that the Key Subcontractor executes a confidentiality and intellectual property deed poll in the form set out in Schedule 24 (Confidentiality and Intellectual Property Deed Poll), or such other form as requested by TfNSW.
- (c) Without limiting clause 27.7 (Form of subcontract), each Key Subcontract must include (in a form satisfactory to TfNSW) express provisions requiring the Subcontractor to:
 - (i) novate the Key Subcontract to TfNSW if requested by TfNSW under clause 27.10(a) on termination of this Agreement (in whole or in part) or on any variation to this Agreement to de-scope services performed by that Subcontractor (**Key Subcontract Novation**); and
 - (ii) where requested by TfNSW, be a Collaboration Participant and acknowledge and adopt the Collaboration Principles.
- (d) If TfNSW consents to the terms of a proposed Key Subcontract under paragraph (b)(i), then the Contractor must:
 - (i) ensure the terms of the Key Subcontract are not subject to material amendment prior to execution unless the Contractor provides TfNSW with the details of the proposed amendments, and TfNSW consents to such amendments prior to execution of the Key Subcontract in accordance with paragraph (b); and
 - (ii) provide TfNSW with a copy of the executed Key Subcontract (excluding details of any fees payable under the same) within fifteen (15) Business Days of its execution.
- (e) The Contractor must:
 - (i) comply with each Key Subcontract; and
 - (ii) use reasonable endeavours to enforce the terms of each Key Subcontract.
- (f) The Contractor must not (without the prior consent of TfNSW, such consent not to be unreasonably withheld):
 - (i) materially amend, replace or waive any provision of a Key Subcontract;
 - (ii) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in a Key Subcontract;
 - (iii) enter into another contract, arrangement or understanding which affects the operation or interpretation of or relates to the subject matter of a Key Subcontract;
 - (iv) terminate, surrender, rescind or accept repudiation of (or give the relevant Subcontractor an entitlement to terminate, surrender, rescind or accept repudiation of) a Key Subcontract; or

- (v) suffer or permit any compromise or settlement of or waive any material Claim, or give any release under, a Key Subcontract, that relates to the subject matter of this Agreement or has, or has the potential to have, an impact on the performance of the Contractor's Activities.
- (g) If there is any early termination, surrender or rescission of a Key Subcontract for any reason, the Contractor must promptly notify TfNSW (and in any event within five (5) Business Days) of such early termination, surrender or rescission or the Contractor becoming aware of same.

27.6 Timing

In respect of any information required to be provided in relation to a proposed subcontract:

- (a) under clause 27.4(a), that information must be given to TfNSW in sufficient time, and in any event at least ten (10) Business Days; or
- (b) under clause 27.5(b), that information must be given to TfNSW in sufficient time, and in any event at least six (6) weeks,

prior to the anticipated date for execution of the relevant subcontract, to allow TfNSW to give adequate consideration to that information prior to the Contractor entering into the subcontract.

27.7 Form of subcontract

Unless TfNSW approves otherwise, the terms of each subcontract entered into by the Contractor must:

- (a) engage the Subcontractor in connection with the execution of the relevant part of the Program as an independent contractor of the Contractor; and
- (b) include any other provisions which are reasonably necessary to enable the Contractor to fulfil its obligations to TfNSW.

27.8 Withholding consent

Without limitation, the Contractor acknowledges that it will be reasonable for TfNSW to withhold its consent to a proposed subcontracting, if:

- (a) the Contractor has not provided TfNSW all of the information and documents required by this clause 27;
- (b) TfNSW has reasonable cause to consider the proposed Subcontractor is not a Qualified Subcontractor; or
- (c) in the case of a proposed replacement of a Subcontractor for a Key Subcontract, the proposed Key Subcontract does not satisfy the other requirements of this clause 27 relating to Key Subcontracts.

27.9 Other subcontracting requirements

The Contractor must:

- (a) ensure that, where required by Item 7 (Contractor Insurance Policies) of Schedule 2 (Agreement Details), each Subcontractor effects and maintains professional indemnity insurance which:
 - (i) covers the Subcontractor's liability in respect of breaches of professional duty (whether owed in contract or otherwise) by the Subcontractor or its Subcontractors in carrying out the work under the relevant subcontract;
 - (ii) covers the Subcontractor for liability to TfNSW or the Contractor for the relevant minimum amount listed in Item 7 (Contractor Insurance Policies) of Schedule 2 (Agreement Details);
 - (iii) unless the Subcontractor using its best endeavours is unable reasonably to procure such a term in the policy, includes at least one automatic reinstatement of the total limit of liability per annum after claims have been paid; and
 - (iv) remains in place for the duration of the period referred to in Item 7 (Contractor Insurance Policies) of Schedule 2 (Agreement Details),

and must ensure that the relevant Subcontractors comply with clause 64.4 (Insurance requirements generally) in relation to the professional indemnity insurance referred to above;
- (b) procure that each Subcontractor (and their Subcontractors) executes a confidentiality deed substantially in the form of Schedule 23 (Form of Confidentiality Deed Poll), or such other form as reasonably requested by TfNSW, and provides this to TfNSW within five (5) Business Days of the engagement of that Subcontractor;
- (c) if requested by TfNSW, ensure that a Subcontractor or Project Related Body Corporate attends meetings of any of the governance forums specified in Schedule 17 (Governance and Management) (provided that, in the case of any Subcontractor or Project Related Body Corporate who is based overseas, reasonable notice is provided by TfNSW prior to the date of the meeting and/or an option is made available for that Subcontractor or Project Related Body Corporate to attend the relevant meeting by video or telephone conferencing);
- (d) ensure that each Subcontractor does not further subcontract, assign or otherwise transfer the performance of its obligations to any other person without TfNSW's prior consent;
- (e) ensure that a Subcontractor or Project Related Body Corporate is aware of, and does not cause the Contractor to be in breach of, the terms of this Agreement;
- (f) ensure the Subcontractor or Project Related Body Corporate has in place arrangements for ensuring the availability of the appropriate skills and resources to perform its obligations to the standards required by this Agreement;
- (g) ensure that each Subcontractor and Project Related Body Corporate permits the disclosure of information, including confidential information of the Subcontractor or Project Related Body Corporate, to TfNSW and for TfNSW to use and disclose that information as permitted by this Agreement (subject to clause 40 (Confidentiality));
- (h) obtain and ensure TfNSW has the benefit of manufacturer warranties from Subcontractors and Project Related Bodies Corporate with respect to each relevant part of the Program, provided that in respect of manufacturer warranties given by Project Related Bodies Corporate TfNSW acknowledges and agrees that it will

raise any Claim against the Contractor under this Agreement and not against the relevant Project Related Body Corporate directly (and for these purposes, the Contractor acknowledges and agrees that the manufacturer warranty will be deemed to have been given by the Contractor pursuant to this Agreement);

- (i) obtain regular written assurances from Subcontractors and Project Related Bodies Corporate about their ongoing compliance with WHS Legislation, including the due diligence obligation contained therein;
- (j) ensure that each Subcontractor and Project Related Body Corporate does not hold itself out as being, or otherwise purport to be, the agent of TfNSW in connection with the execution of any subcontract or any subcontract works;
- (k) ensure that each Subcontractor and Project Related Body Corporate has no authority to contract or otherwise deal with any tenderer, or any Subcontractor, or any person, as agent for, or on behalf of, TfNSW and must not profess to have any such authority;
- (l) ensure that each Subcontractor, as soon as possible, informs the Contractor and TfNSW in respect of any occurrence which might give rise to a claim, by the Subcontractor, under an insurance policy required by the terms of any subcontract, if that claim would:
 - (i) have a material impact on insurance proceeds available under that policy; or
 - (ii) affect the Subcontractor's ability to comply with its obligations under a subcontract between the Contractor and the Subcontractor, including obligations relating to insurances; and
- (m) immediately notify TfNSW:
 - (i) if a Subcontractor materially breaches any subcontract relating to this Agreement, and such breach relates to the subject matter of this Agreement or has, or has the potential to have, an impact on the delivery of the Contractor's Activities; and
 - (ii) of any dispute with any Subcontractors who are parties to a subcontract relating to this Agreement,

and where the breach or dispute relates to the subject matter of this Agreement, or has the potential to impact on delivery under this Agreement, the Contractor must keep TfNSW aware of the status of the breach or dispute.

27.10 Novation of Key Subcontracts

- (a) On receipt of a notice from TfNSW requiring a Key Subcontract Novation, the Contractor must:
 - (i) do all things necessary to:
 - (A) execute the Key Subcontract Novation in the form of Schedule 33 (Form of Subcontractor Deed of Novation);
 - (B) give effect to such Key Subcontract Novation; and
 - (C) assist TfNSW to assume the responsibilities of a counterparty to the relevant Key Subcontract; and

- (ii) not exercise any right or power under the Key Subcontract that may be contrary to the interests of TfNSW or refuse to exercise any right or power under the Key Subcontract for the interest of TfNSW, pending novation of that Key Subcontract.
- (b) Any Key Subcontract Novation occurring pursuant to this clause will not:
 - (i) relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Agreement), except to the extent expressly otherwise set out in the Key Subcontract Novation;
 - (ii) limit or otherwise affect TfNSW's rights against the Contractor (including those arising out of any warranties given under this Agreement), except to the extent expressly otherwise set out in the Key Subcontract Novation; or
 - (iii) entitle the Contractor to make any Claim against TfNSW,whether under this Agreement or otherwise according to any Law.

27.11 Termination of Subcontractors

- (a) TfNSW may, by giving notice to the Contractor and on reasonable grounds, require the Contractor to cease using any Subcontractor. On receipt of such notice, the Contractor must promptly (or immediately, in the case of a Material Breach or Probity Event or an issue of safety or security) cease using that Subcontractor to perform the Contractor's Activities and terminate such Subcontractor's access to TfNSW Systems and Rail Transport Entity Sites.
- (b) The Contractor will not be entitled to make any Claim against TfNSW and is not entitled to any extension of time in relation to any exercise of TfNSW's rights under this clause 27 and such an exercise of rights will not constitute a Compensation Event.

Part G Financial Terms

28 Fees

28.1 Fees

- (a) Subject to the Contractor performing the Contractor's Activities in accordance with this Agreement, TfNSW must pay the Contractor the Fees in accordance with this Part G (Financial Terms), Schedule 11 (Pricing Terms) and the relevant SOW.
- (b) The Fees must be calculated in accordance with Schedule 11 (Pricing Terms) and the relevant SOW.
- (c) Except as expressly set out in this Agreement, the Fees are the only amounts payable by TfNSW for the:
 - (i) Contractor's Activities; and
 - (ii) performance of the Contractor's obligations under this Agreement,and include all costs and expenses related to the Contractor's performance of its obligations under this Agreement.
- (d) All Fees are to be expressed in, and are payable in, Australian dollars (unless expressly stated otherwise).
- (e) Except as expressly set out in this Agreement, Schedule 11 (Pricing Terms) or the relevant SOW, it is agreed that the Contractor has, and will be deemed to have, allowed in the Fees and the Schedule of Rates, and will be wholly responsible for the payment of:
 - (i) without limiting clause 30 (Taxes and GST), all customs duties, tariffs and similar taxes and charges paid or payable on all items that are:
 - (A) intended to be used for, or that are to be incorporated into, the Assets or Works; or
 - (B) otherwise used for the Contractor's Activities;
 - (ii) any long service leave levy which may be payable in respect of the Contractor's Activities;
 - (iii) all royalties, licence fees and similar payments for Intellectual Property Rights in respect of:
 - (A) the items that are intended to be used for, or that are to be incorporated into, the Assets or the Works (other than any Supplied Items or any other components of the Assets which are supplied by TfNSW or an Interface Contractor); and
 - (B) all Contractor-Licensed IP; and
 - (iv) all fluctuations in the value of the Australian dollar against other currencies.

Except as expressly set out in this Agreement, Schedule 11 (Pricing Terms) or the relevant SOW, the Contractor will have no entitlement to any increase in the Fees or otherwise to make any Claim, and TfNSW and any TfNSW Indemnified Persons will not be liable upon any Claim, in respect of any of those amounts identified in this paragraph (e), whatever they may actually be.

28.2 Most favoured pricing

- [REDACTED]
- [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

29 Invoices and Payment

29.1 Payment claims

- (a) The Contractor may by the Payment Claim Date submit to TfNSW a payment claim showing:
 - (i) details of:
 - (A) the Payment Event(s) completed; or

- (B) the Assets or Works provided in the relevant calendar month in accordance with this Agreement,
 - (as applicable);
 - (ii) details of any amounts that TfNSW is entitled to retain, deduct, withhold or set-off under this Agreement;
 - (iii) details of any applicable discounts;
 - (iv) the Contractor's calculation of:
 - (A) the Fees that are attributable to the completed Payment Event(s) or Assets or Works provided during the relevant calendar month (as applicable), determined by reference to Schedule 11 (Pricing Terms) and the relevant SOW; and
 - (B) any other amounts that are payable to the Contractor under this Agreement; and
 - (v) evidence of the Contractor's entitlement to payment in accordance with paragraph (iv) reasonably sufficient to enable TfNSW to verify that entitlement.
- (b) The Contractor may not submit more than one (1) payment claim in any calendar month.
- (c) The Contractor must:
- (i) ensure each payment claim:
 - (A) generally follows the form of the payment breakdown schedule set out in the relevant Statement of Work (the **Breakdown of Fees**) and be as TfNSW reasonably requires; and
 - (B) subject to paragraph (ii), for Assets or Works only partially completed, reflects a pro-rated portion (determined in accordance with any methodology in the relevant SOW) of the total amount payable for those Assets or Works as set out in the Breakdown of Fees;
 - (ii) not include in any payment claim any amounts for Works or Assets that are Defective or omitted, and any payment claim must be reduced, where Works or Assets are Defective or omitted, by the estimated cost of rectifying the Defect or carrying out the omitted Works or Assets; and
 - (iii) where the Contractor makes a payment claim for unfixed Trackside Equipment (in accordance with section 4.5 of Schedule 11 (Pricing Terms)), only claim 85% of the applicable Unit Rate.
- (d) The value of the construction work carried out by the Contractor, and the amount of the progress payment to which the Contractor is entitled, will be no more than 95% of the amount that TfNSW would otherwise have set out in any payment schedule under clause 29.2 unless the Contractor has provided TfNSW with copies of the following:

- (i) a duly completed and signed statutory declaration and subcontractor's statement in the form contained in Attachment A (Form of Statutory Declaration and Subcontractor's Statement) of Schedule 12 (Security of Payment) (or any other form requested and/or approved by TfNSW), together with any supporting evidence which may be reasonably required by TfNSW;
 - (ii) a duly completed and signed statutory declaration and subcontractor's statement in the form contained in Attachment A (Form of Statutory Declaration and Subcontractor's Statement) of Schedule 12 (Security of Payment) (or any other form requested and/or approved by TfNSW), from each Key Subcontractor in relation to the employees and Subcontractors of that Key Subcontractor, together with any supporting evidence which may be reasonably required by TfNSW;
 - (iii) where paragraph (l) of Schedule 12 (Security of Payment) applies, the statement and evidence (if any) required to be provided by the Contractor pursuant to that clause;
 - (iv) all relevant certificates of currency in respect of all Contractor Insurance Policies;
 - (v) certification that all of the Contractor's Activities, Assets and parts of the Physical Works for which a payment has been claimed are in accordance with the requirements of all Approvals;
 - (vi) where the payment claim relates to any Physical Works, the Contractor's Certificate of Construction Compliance and Designer's Certificates of Construction Compliance (as each of those terms is defined in Schedule 10 (Physical Works)); and
 - (vii) where section 4.5 of Schedule 11 (Pricing Terms) applies, the evidence and items referred to in that section have been provided in accordance with that section.
- (e) Any amount withheld by TfNSW under paragraph (d) must be paid within ten (10) Business Days after the Contractor has complied with the relevant obligation.
 - (f) The Contractor must provide TfNSW with substantiation reports for payment claims at the timing, frequency and in the form TfNSW reasonably requires from time to time.

29.2 Payment schedule

- (a) TfNSW must, within ten (10) Business Days following receipt of a payment claim give the Contractor:
 - (i) a payment schedule which identifies the payment claim to which it relates and sets out:
 - (A) TfNSW's determination of the value of the Contractor's Activities completed in accordance with this Agreement;
 - (B) the amount already paid to the Contractor;

- (C) the amount that TfNSW is entitled to retain, deduct, withhold or set-off under this Agreement, including under clauses 29.1(d) and 29.5 (Set-Off);
 - (D) any applicable discounts;
 - (E) any relevant amounts agreed under any Variations;
 - (F) any correction to previous payment schedules by TfNSW;
 - (G) the amount (if any) which TfNSW proposes to pay to the Contractor; and
 - (H) if the amount in paragraph (a)(i)(G) is less than the amount claimed in the payment claim, the reason why the amount under paragraph (a)(i)(G) is less than the amount claimed by the Contractor in the payment claim; and
- (ii) subject to clause 29.3(c), a Recipient Created Tax Invoice for the amount to be certified by TfNSW to be paid to the Contractor pursuant to this clause 29.2(a).
- (b) The failure of TfNSW to set out in a payment schedule an amount which it is entitled to retain, deduct, withhold or set off under this Agreement will not prejudice its right to subsequently exercise such entitlement. TfNSW may, in any payment schedule, correct any error and modify any assumptions or allowances made in any previous payment schedule.

29.3 Recipient Created Tax Invoices and payment

- (a) Where required by TfNSW, the Contractor agrees to enter into a Recipient Created Tax Invoice arrangement with TfNSW in accordance with this clause 29, and the Contractor and TfNSW agree that:
- (i) this Agreement relates to the provision of Contractor's Activities to which the relevant tax invoice relates;
 - (ii) TfNSW may issue Recipient Created Tax Invoices in respect of Contractor's Activities performed by the Contractor under this Agreement;
 - (iii) TfNSW will issue to the Contractor an adjustment note for any adjustment event;
 - (iv) subject to paragraph (c), the Contractor will not issue tax invoices in respect of the Contractor's Activities;
 - (v) each will notify the other party if it ceases to be registered or if it ceases to satisfy any of the requirements of the GST Act or the *Goods and Services Tax: Recipient Created Tax Invoice Determination 2017 for Agricultural Products, Government Related Entities and Large Business Entities (GST Determination)*; and
 - (vi) TfNSW will not issue a document that would otherwise be a Recipient Created Tax Invoice on or after the date when TfNSW or the Contractor has notified the other party of a GST Determination.

- (b) Subject to clause 29.8 (SOP Act), if the Contractor has not notified TfNSW within seven (7) Business Days of receiving TfNSW's Recipient Created Tax Invoice that it either accepts or disputes the invoice, the invoice will be deemed to be accepted.
- (c) TfNSW may notify the Contractor that it will no longer issue a Recipient Created Tax Invoice for each taxable supply made by the Contractor under this Agreement, in which case, from that point in time:
 - (i) TfNSW will not be required to issue Recipient Created Tax Invoices in respect of such supplies; and
 - (ii) as a condition precedent to TfNSW being obliged to pay any amount in respect of GST to the Contractor in respect of any such taxable supply, the Contractor will be required to issue tax invoices which comply with the GST Act to TfNSW within two (2) Business Days of receipt of a payment schedule issued by TfNSW under clause 29.2 (Payment schedule) for the amount set out in the payment schedule.
- (d) Subject to clause 29.8 (SOP Act), TfNSW must pay the amount stated in the Recipient Created Tax Invoice, or in any invoice provided by the Contractor in accordance with paragraph (c) (as applicable), within fifteen (15) Business Days of its receipt of the Contractor's payment claim.
- (e) Any payment made under this clause 29 is on account only.

29.4 Payment of Employees and Subcontractors

- (a) When submitting any payment claim, the Contractor must give TfNSW a statutory declaration in accordance with clause 29.1(d)(i).
- (b) If any moneys are shown as unpaid in the Contractor's statutory declaration under clause 29.1(d)(i), TfNSW may withhold the moneys so shown until the Contractor provides evidence to the satisfaction of TfNSW that the moneys have been paid to the relevant persons.
- (c) If an employee or a Subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the Contractor's Activities, and produces to TfNSW the court order and a statutory declaration that it remains unpaid, TfNSW may (but is not obliged to) pay the amount of the order and costs included in the order to the employee or Subcontractor, and the amount paid will be a debt due from the Contractor to TfNSW.
- (d) If TfNSW receives notice of any Insolvency Event in relation to the Contractor, TfNSW will not make any payment to an employee or Subcontractor without the concurrence of the administrator, provisional liquidator, liquidator, trustee or official receiver, as the case may be, of the Contractor.
- (e) Nothing in this clause 29.4 limits or otherwise affects TfNSW rights under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act 2007* (NSW) or section 127(5) of the *Industrial Relations Act 1996* (NSW).

29.5 Set-Off

- (a) TfNSW may set off against the Fees payable to the Contractor under this Agreement any:
 - (i) amount that the Contractor owes to TfNSW under any Transaction Document or any other agreement entered into in connection with the Program; and
 - (ii) other claims relating to the Program which TfNSW has against the Contractor, whether under this Agreement, another Transaction Document, another agreement entered into in connection with the Program or otherwise (including at Law),including:
 - (iii) any overpayment by TfNSW against a payment claim that is found to have been incorrectly rendered;
 - (iv) any debt due from the Contractor to TfNSW pursuant to section 26C of the SOP Act; and
 - (v) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on TfNSW pursuant to division 2A of the SOP Act.
- (b) This clause does not prejudice other available means of recovery.

29.6 Late invoicing

Without limiting clauses 29.10 (First Statement of Outstanding Claims and Release) and 29.11 (Second Statement of Outstanding Claims and Release), and subject to applicable Law:

- (a) unless otherwise approved by TfNSW, the Contractor must not render a payment claim for any Contractor's Activities more than one hundred and twenty (120) days after the date on which the Contractor was first entitled to make a payment claim for such amounts; and
- (b) without limiting any other provision of this Agreement, TfNSW will not be liable for any amounts included in a payment claim rendered contrary to this clause 29.6 and will not otherwise have any liability for costs, charges or fees associated with such Contractor's Activities.

29.7 Disputed Amounts

- (a) For the avoidance of doubt, this clause 29.7 does not apply to any payment claims in respect of which the SOP Act applies.
- (b) TfNSW may withhold payment of all, or any part, of a payment claim that TfNSW disputes. TfNSW is not required to make any payment of such withheld amounts until the relevant issues have been resolved in accordance with the Issue Resolution Procedures or the parties agree otherwise.
- (c) Where TfNSW withholds payment of any part of a payment claim in accordance with paragraph (b):

- (i) TfNSW must provide the Contractor an Initial Early Warning Notice and, where required, a Detailed Early Warning Notice within the timeframes set out in, and that meet the requirements of, section 2 of Schedule 18 (Issue Resolution Procedure);
- (ii) the Contractor must provide TfNSW with a payment claim for the undisputed amount;
- (iii) subject to clause 29.3(c) (Recipient Created Tax Invoices), TfNSW must create a Recipient Created Tax Invoice; and
- (iv) TfNSW must pay the undisputed amount within fifteen (15) Business Days of its receipt of the payment claim submitted pursuant to clause 29.1(a).

29.8 SOP Act

Schedule 12 (Security of Payment) applies where the SOP Act applies to the Contractor's Activities.

29.9 Payment of Subcontractors

The Contractor acknowledges and agrees that, without limiting clauses 29.1(d) or 29.4 (Payment of Employees and Subcontractors), the:

- (a) portion of each payment made by TfNSW to the Contractor on account of the Fees 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) Contractor must pay all Subcontractors promptly in accordance with the relevant subcontracts.

29.10 First Statement of Outstanding Claims and Release

- (a) Without limiting clause 29.6 (Late invoicing), in respect of each Statement of Work:
 - (i) no later than twenty-eight (28) days after Acceptance of the "System Provisional Acceptance (System)" Milestone under the Statement of Work (**First Statement Submission Date**); and
 - (ii) subject to compliance with clause 29.1 (Payment claims),

the Contractor may lodge with TfNSW a payment claim marked "Provisional Acceptance Payment Claim" (**Provisional Acceptance Payment Claim**) stating the total Fees paid and payable in connection with that SOW, all payments received on account of the SOW and the balance, if any, due to the Contractor. The Provisional Acceptance Payment Claim must be accompanied by such information as TfNSW may reasonably require.

- (b) With the Provisional Acceptance Payment Claim, the Contractor must lodge with TfNSW a "First Statement of Outstanding Claims" (**First Statement of Outstanding Claims**). The First Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against any TfNSW Indemnified Person in respect of any fact, matter or thing arising out of, or in any way in connection with, the relevant Statement of Work or the Contractor's Activities or the Works

under the relevant Statement of Work which occurred or arose prior to the First Statement Submission Date.

- (c) The Provisional Acceptance Payment Claim and the First Statement of Outstanding Claims must address all such facts, matters or things arising out of or in any way in connection with the Statement of Work or the Contractor's Activities or the Works under the relevant Statement of Work up to the date of submission of the Provisional Acceptance Payment Claim in respect of all Claims included in the Provisional Acceptance Payment Claim and First Statement of Outstanding Claims.
- (d) Without limiting paragraph (i) but subject to clause 29.12 (Exclusions to the Release), any Claim by the Contractor against any TfNSW Indemnified Person in respect of any fact, matter or thing arising out of, or in any way in connection with, a Statement of Work or the Contractor's Activities or the Works under the relevant Statement of Work which occurred or arose prior to the date of the Provisional Acceptance Payment Claim which:

- (i) has been made;
- (ii) could have been made; or
- (iii) should have been made,

that is not included in the Provisional Acceptance Payment Claim or First Statement of Outstanding Claims will be deemed to have been abandoned and waived by the Contractor and is barred.

- (e) The First Statement of Outstanding Claims is not a Claim. All Claims must be made separately and at the times provided in the respective clauses dealing with Claims. After lodging the First Statement of Outstanding Claims the Contractor is not entitled to make any further Claim (not identified in the First Statement of Outstanding Claims or the Provisional Acceptance Payment Claim) whatsoever against any TfNSW Indemnified Person, and no TfNSW Indemnified Person will be liable upon any further Claim by the Contractor except as provided in paragraph (f) or in clauses 29.11 (Second Statement of Outstanding Claims and Release) and 29.12 (Exclusions to the Release).
- (f) Despite paragraph (e), if subsequent to the lodgement by the Contractor of the Provisional Acceptance Payment Claim, a final determination is made under the Issue Resolution Procedure or the Dispute Resolution Procedure increasing the Fees or otherwise entitling the Contractor to the payment of money (including damages), the Contractor can lodge an amended Provisional Acceptance Payment Claim to take account of the amount of the increase or the payment to which it is entitled. The amended claim must be lodged with TfNSW within twenty-eight (28) days after the final determination is made. If it is not lodged within that time, it is barred.
- (g) The claims and statements required under this clause 29.10 are in addition to the other notices that the Contractor must give to TfNSW under this Agreement in order to preserve its entitlements to make any such Claims.
- (h) Without limiting paragraph (g), the Contractor cannot include in any claim or statement under this clause any Claims that that it is not entitled to make or that are barred or waived under this Agreement, including by section 2.3 of Schedule 18 (Issue Resolution Procedure).

- (i) Subject to clause 29.12 (Exclusions to the Release), the Contractor releases the TfNSW Indemnified Persons from, and the TfNSW Indemnified Persons will not be liable in respect of, any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with that Statement of Work or the Contractor's Activities or the Works under that Statement of Work that occurred or arose prior to the First Statement Submission Date, except for any Claim which both:
 - (i) has been included in the Provisional Acceptance Payment Claim or First Statement of Outstanding Claims which is given to TfNSW within the time required by, and in accordance with, this clause; and
 - (ii) is not otherwise barred or waived under this Agreement.

29.11 Second Statement of Outstanding Claims and Release

- (a) Without limiting clause 29.6 (Late invoicing), in respect of each Statement of Work:
 - (i) no later than the date (**Second Statement Submission Date**) that is the later of:
 - (A) twenty-eight (28) days after the expiry of the last Defects Liability Period under that Statement of Work; and
 - (B) Final Acceptance of the Trackside Subsystem; and
 - (ii) subject to compliance with clause 29.1 (Payment claims),

the Contractor may lodge with TfNSW a payment claim marked "Final Payment Claim" (**Final Payment Claim**) stating the total Fees paid and payable in connection with that SOW, all payments received on account of the SOW and the balance, if any, due to the Contractor. The Final Payment Claim must be accompanied by such information as TfNSW may reasonably require.
- (b) With the Final Payment Claim, the Contractor must lodge with TfNSW a "Second Statement of Outstanding Claims" (**Second Statement of Outstanding Claims**). The Second Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against any TfNSW Indemnified Persons in respect of any fact, matter or thing arising out of, or in any way in connection with, the relevant Statement of Work or the Contractor's Activities or the Works under the relevant Statement of Work which occurred or arose prior to the Second Statement Submission Date.
- (c) The Final Payment Claim and Second Statement of Outstanding Claims must address all such facts, matters or things arising out of or in any way in connection with the Statement of Work or the Contractor's Activities or the Works under the relevant Statement of Work up to the date of submission of the Final Payment Claim in respect of all Claims included in the Final Payment Claim and Second Statement of Outstanding Claims.
- (d) Without limiting paragraph (i) but subject to clause 29.12 (Exclusions to the Release), any Claim by the Contractor against any TfNSW Indemnified Person in respect of any fact, matter or thing arising out of, or in any way in connection with, a Statement of Work or the Contractor's Activities or the Works under the relevant Statement of Work which occurred or arose prior to Second Statement Submission Date which:

- (i) has been made;
- (ii) could have been made; or
- (iii) should have been made,

that is not included in the Final Payment Claim or Second Statement of Outstanding Claims will be deemed to have been abandoned and waived by the Contractor and is barred.

- (e) The Second Statement of Outstanding Claims is not a Claim. All Claims must be made separately and at the times provided in the respective clauses dealing with Claims. After lodging the Second Statement of Outstanding Claims the Contractor is not entitled to make any further Claim (not identified in the Second Statement of Outstanding Claims or the Final Payment Claim) whatsoever against any TfNSW Indemnified Person, and no TfNSW Indemnified Person will be liable upon any further Claim by the Contractor except as provided in paragraph (f) or in clause 29.12 (Exclusions to the Release).
- (f) Despite paragraph (d), if subsequent to the lodgement by the Contractor of the Final Payment Claim, a final determination is made under the Issue Resolution Procedure or the Dispute Resolution Procedure increasing the Fees or otherwise entitling the Contractor to the payment of money (including damages), the Contractor can lodge an amended Final Payment Claim to take account of the amount of the increase or the payment to which it is entitled. The amended claim must be lodged with TfNSW within twenty-eight (28) days after the final determination is made. If it is not lodged within that time, it is barred.
- (g) The claims and statements required under this clause are in addition to the other notices that the Contractor must give to TfNSW under this Agreement in order to preserve its entitlements to make any such Claims.
- (h) Without limiting paragraph (g), the Contractor cannot include in any claim or statement under this clause any Claims that it is not entitled to make or are barred or waived under this Agreement, including by section 2.3 of Schedule 18 (Issue Resolution Procedure).
- (i) Subject to clause 29.12 (Exclusions to the Release), the Contractor releases the TfNSW Indemnified Persons from, and no TfNSW Indemnified Persons will be liable in respect of, any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with that Statement of Work or the Contractor's Activities or Works under that Statement of Work that occurred or arose prior to Second Statement Submission Date, except for any Claim which both:
 - (i) has been included in the Final Payment Claim or Second Statement of Outstanding Claims which is given to TfNSW within the time required by, and in accordance with, this clause; and
 - (ii) is not otherwise barred or waived under this Agreement.

29.12 Exclusions to the Release

The waivers, releases and time bars in clauses 29.10(d), 29.10(e), 29.10(i), 29.11(d), 29.11(e) and 29.11(i) do not apply:

- (a) in relation to the Contractor's entitlement to the return of security pursuant to this Agreement; or
- (b) in respect of any Claims made by the Contractor in relation to:
 - (i) the use by TfNSW or its Permitted Sublicensees of the Contractor-Licensed IP other than in accordance with the licence granted pursuant to clause 37.3 (Contractor-Licensed IP);
 - (ii) a breach of clause 40 (Confidentiality) by TfNSW; or
 - (iii) any personal injury (including sickness or death) caused by an act or omission of TfNSW or Sydney Trains.

30 Taxes and GST

30.1 Taxes

- (a) Subject to clause 30.2 (Recovery of GST), the Contractor must pay any Taxes payable upon, or in respect of, this Agreement or the performance of the Contractor's obligations under this Agreement wherever and however such Taxes arise.
- (b) TfNSW may withhold any withholding payments required by Law to be withheld.

30.2 Recovery of GST

If GST is, or becomes, payable on a supply made by a party (**supplying party**) under or in connection with this Agreement, including the Contractor's Activities, the party providing the consideration for the supply (**receiving party**) must pay an additional amount to the supplying party equal to the GST payable by the supplying party (or representative member of a GST group of which the supplying party is a member) in relation to the supply.

30.3 Time for payment of GST amount

Subject to first receiving a tax invoice or adjustment note (as appropriate), the receiving party must pay the GST amount when it is liable to provide the consideration.

30.4 Reimbursement payments

If any party is required under this Agreement to reimburse or pay to the other party an amount (other than any payment on account of the fee and any disbursements for which it is entitled to payment) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.

30.5 Adjustment of GST payable

If the GST payable in relation to a supply made by the supplying party under this Agreement varies from the additional amount paid by the other party under this clause 30 in respect of that supply, then the supplying party 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).

30.6 GST status acknowledgement

Without limiting clause 29.3(a)(v), each party acknowledges and warrants that at the time of entering into this Agreement it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of Recipient Created Tax Invoices.

30.7 Insurance

The Contractor must ensure that each Contractor Insurance Policy covers any liability to GST.

30.8 Interpretation

In this Agreement:

- (a) terms used that are defined in the GST Act have the meaning given in that Act, unless the context makes it clear that a different meaning is intended;
- (b) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
- (c) in addition to the meaning given in the GST Act, the term “GST” includes a notional liability for GST.

31 Benchmarking

- (a) Subject to paragraphs (b) and (i), in order to ensure that TfNSW is obtaining competitive pricing and levels of service, TfNSW may elect to engage the services of an independent Third Party to benchmark the rates contained in the Contractor's Schedule of Rates (or any component of it) against rates charged by equivalent organisations providing services or solutions to equivalent customers (**Benchmarking**).

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- (c) The Benchmarking must take into account all relevant characteristics of the Contractor's Activities being provided to TfNSW, which will include all of the following characteristics:
- (i) the Contractor's Activities as a whole, such as their complexity, volume, the required standards of performance and the operating environment;
 - (ii) the Fees and commercial terms applicable to the Contractor's Activities, including how the Contractor's Activities are priced and applicable risk/reward structures; and
 - (iii) the geographic spread of Works and degree of localised activity, including the applicable labour rates or Taxes in the relevant jurisdictions.

- [REDACTED]
- (e) The benchmarker will assess a pool of organisations of equivalent status and size, the number of which will be determined by the benchmarker's determination of an appropriate sample size. TfNSW will consult with the Contractor regarding the scope of the benchmarker's remit and the Contractor will have the opportunity to make submissions regarding the benchmarker's performance of the Benchmarking.
- (f) The Contractor must provide all reasonable assistance, including the provision of appropriate data, to the benchmarker, provided however, the Contractor will not be required to disclose to TfNSW or the benchmarker any information related to its internal costs, margins or profitability, information related to its other customers or details of effort expended where the Contractor is charging TfNSW on a fixed price basis. The Contractor may request that TfNSW procure that the benchmarker enter into a confidentiality deed substantially in the form of Schedule 23 (Form of Confidentiality Deed Poll) for the benefit of the Contractor prior to disclosing any information to the benchmarker.
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- (h) The Contractor may treat a failure to agree on adjustments or corrective actions under this clause as an Issue for the purposes of the Issue Resolution Procedures.
- (i) TfNSW will bear the costs of the benchmarker. Each party will bear its own costs in participating in the Benchmarking.

- (j) For the purposes of this clause 31:
 - (i) “equivalent” means not materially different; and
 - (ii) “equivalent customer” means any customer purchasing equivalent volumes of equivalent products and services to those being provided by the Contractor as part of or in connection with the Contractor’s Activities, whether that customer is located in Australia or elsewhere, where the relationship between that customer and contractor is based on a similar operating environment.
- (k) For clarity, this clause 31 is not intended to operate to benchmark the fixed price elements of Statement of Work 1 or any subsequently agreed Statement of Work or agreed Variation.

Part H Governance

32 Governance

32.1 Governance model

The parties must comply with the governance model as set out in Schedule 17 (Governance and Management).

32.2 Representatives

- (a) The principal points of contact between the parties in relation to the Transaction Documents will be the TfNSW Representative and the Contractor's Representative.
- (b) The TfNSW Representative and the Contractor's Representative must:
 - (i) manage the working arrangements between the parties under the Transaction Documents;
 - (ii) monitor and review each party's performance of its respective obligations and responsibilities under the Transaction Documents on an ongoing basis; and
 - (iii) serve as the principal interface between the parties with respect to all matters relating to the Transaction Documents.

32.3 TfNSW Representative

- (a) TfNSW must appoint an employee or contractor of TfNSW as the TfNSW Representative and may change its nomination from time to time on reasonable notice to the Contractor. Any substitute TfNSW Representative appointed under this clause 32.3 will be bound by anything done by the former TfNSW Representative to the same extent as the former TfNSW Representative would have been bound.
- (b) The TfNSW Representative will give Directions and carry out all its other functions under the Transaction Documents as the agent of TfNSW (and not as an independent certifier, assessor or valuer).
- (c) The Contractor must comply with any Direction by the TfNSW Representative given or purported to be given under the Transaction Documents.
- (d) The TfNSW Representative may:
 - (i) by notice to the Contractor appoint persons to exercise any of the TfNSW Representative's functions under the Transaction Documents;
 - (ii) not appoint more than one person to exercise a specific function under the Transaction Documents;
 - (iii) revoke any appointment under paragraph (d)(i) by notice to the Contractor; and
 - (iv) continue to exercise a function under the Transaction Documents despite appointing another person to exercise that function (provided that any

Directions of the TfNSW Representative will take precedence over those of any appointees to the extent of any inconsistency).

- (e) All references in the Transaction Documents to the TfNSW Representative include a reference to a representative appointed under paragraph (d). The Contractor acknowledges that a purported exercise by the TfNSW Representative's appointee of a function outside of those functions delegated to the appointee and notified to the Contractor is not binding on TfNSW.

32.4 Contractor's Representative

- (a) The Contractor must appoint as the Contractor's Representative a senior employee of the Contractor listed in a Statement of Work or approved by TfNSW, and may only replace that appointed person in accordance with clause 26.5 (Key People) or in accordance with paragraph (h).
- (b) The Contractor's Representative will carry out all its functions under the Transaction Documents as the agent of the Contractor (and not as an independent certifier, assessor or valuer), and must have the full power and authority to act for and on behalf of and to bind the Contractor under the Transaction Documents.
- (c) The Contractor must ensure that the Contractor's Representative has full authority to execute the Directions of TfNSW without delay.
- (d) The Contractor must ensure that the Contractor's Representative is present at the primary location in Australia where the Contractor's Activities are being carried out (or such other Delivery Location as is agreed) at all times reasonably necessary to ensure that the Contractor is complying with its obligations under the Transaction Documents.
- (e) On reasonable notice from TfNSW, the Contractor's Representative must attend any ad hoc or regular meetings required by TfNSW and must provide reports and make any presentations that TfNSW reasonably requests, to either:
 - (i) demonstrate the Contractor's compliance with any Project Plan or any other system required to comply with the Transaction Documents; or
 - (ii) discuss other matters of importance to the conduct or progress of the Contractor's Activities.
- (f) A Direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.
- (g) Matters within the knowledge of the Contractor's Representative are deemed to be within the knowledge of the Contractor, and the Contractor is bound by and deemed to have knowledge of:
 - (i) notices or documents signed by the Contractor's Representative;
 - (ii) matters within the knowledge of the Contractor's Representative; and
 - (iii) acts, omissions and defaults of the Contractor's Representative, whether or not the Contractor's Representative was acting within the scope of its authority at the time of the act, omission or default.

- (h) If TfNSW makes a reasonable objection as to the identity of or the performance of the Contractor's Representative, the Contractor must terminate the appointment and appoint another representative, subject again to the approval of TfNSW.

32.5 Delegated Authority

- (a) The Contractor acknowledges that any Direction, agreement, acceptance, consent or approval by TfNSW with or to the Contractor (as applicable) in respect of any matter or thing under the Transaction Documents is not binding on TfNSW unless such Direction, agreement, acceptance, consent or approval is given or made by the TfNSW Representative, or a person authorised by the TfNSW Representative in accordance with clause 32.3 (TfNSW Representative) to give or make such Direction, agreement, acceptance, consent or approval.
- (b) TfNSW acknowledges that any agreement, acceptance, consent or approval by the Contractor with or to TfNSW (as applicable) in respect of any matter or thing under the Transaction Documents is not binding on the Contractor unless such agreement, consent or approval is given or made by the Contractor's Representative, or a person authorised by the Contractor's Representative in writing to give or make such agreement, acceptance, consent or approval.

32.6 Performance reviews

The Contractor acknowledges that TfNSW may from time to time undertake assessments and reviews of performance of the Contractor's Activities, compliance with the Collaboration Principles and Interface Requirements and otherwise with the terms of the Transaction Documents. TfNSW may develop metrics and performance measures for this purpose and the Contractor must reasonably co-operate with TfNSW in undertaking such assessments, including by providing such information and reports as may be requested by TfNSW in connection with the same.

32.7 Interpretation

For the purposes of this clause 32, Transaction Documents does not include the TLS Agreement.

33 Resolution of Matters

33.1 Issue Resolution

- (a) The parties intend to adopt a collaborative and cooperative approach to resolving Matters, and to that end have agreed that only Matters which:
 - (i) are material in the context of the Program, being those:
 - (A) for an amount greater than \$250,000 (or such other amount agreed from time to time); or
 - (B) which either party (acting reasonably) contends have, had, or have the potential to have, an impact on the Contractor's ability to meet a Milestone Date or the overall Program or the performance of the Contractor's Activities (including, for the avoidance of doubt, EOT Events and Compensation Events); or

- (c) which either party (acting reasonably) contends have, had, or have the potential to have, an adverse safety impact; or
 - (ii) the parties are unable to resolve within the timeframes stipulated in the relevant contractual provision governing the Matter (or, if no timeframe is stipulated or if there is no such contractual provision, within twenty (20) Business Days (or such other period as agreed from time to time) of the Matter first being raised by a party); or
 - (iii) the occurrence of any EOT Event, a Compensation Event or any other Matter which this Agreement stipulates will be subject to the Issue Resolution Procedures set out in Schedule 18 (Issue Resolution Procedure),

(such Matters being “**Issues**”) will, subject to paragraph (b), be resolved through the Issue Resolution Procedures.
- (b) Notwithstanding paragraph (a), it is the intention of the parties to resolve as many Issues as possible without recourse to the Issue Resolution Procedures.
- (c) Subject to paragraph (b), any:
 - (i) Issues must be dealt with in accordance with the Issue Resolution Procedures set out in Schedule 18 (Issue Resolution Procedure); and
 - (ii) Disputes must be dealt with in accordance with the Dispute Resolution Procedures set out in Schedule 19 (Dispute Resolution Procedure).
- (d) Neither party may:
 - (i) issue a Dispute Notice under section 1.1 (Dispute notice) of Schedule 19 (Dispute Resolution Procedure) or follow the Dispute Resolution Procedures without first complying with paragraph (c)(i); or
 - (ii) seek to resolve by way of court proceedings or otherwise, a Matter, an Issue or a Dispute, other than in accordance with paragraphs (a) to (c), Schedule 18 (Issue Resolution Procedure) and Schedule 19 (Dispute Resolution Procedure) (as applicable).
- (e) Information provided on a without prejudice basis by a party during or in connection with the Matter resolution processes detailed in paragraphs (a) to (c) must not be used against that party in any Dispute Resolution Procedures except on the question of costs of the Dispute Resolution Procedures.
- (f) Unless expressly provided otherwise in this Agreement (including in Schedule 18 (Issue Resolution Procedure) and Schedule 19 (Dispute Resolution Procedure)), despite the existence of a Matter (including an Issue or Dispute) or the provision of any notice by TfNSW or the Contractor under Schedule 18 (Issue Resolution Procedure) or Schedule 19 (Dispute Resolution Procedure), the Contractor must:
 - (i) except where the Agreement has been terminated, continue to carry out the Contractor’s Activities; and

otherwise comply with, and will not be relieved from, its obligations under this Agreement.

- (g) Nothing in this Agreement (including in Schedule 18 (Issue Resolution Procedure) and Schedule 19 (Dispute Resolution Procedure)):
 - (i) will prejudice the right of a party to seek urgent injunctive relief from a court;
 - (ii) will limit the operation or effect of any other provision of this Agreement that requires either party to give notice to the other party in order to preserve an entitlement to make a claim or any conditions precedent, limitation or exclusion clause;
 - (iii) is intended to limit or prevent the operation and proceedings of the governance forums detailed in Schedule 17 (Governance and Management) in accordance with the terms of reference for those forums; or
 - (iv) is intended to prevent either party from raising a Variation in accordance with the Variation Procedures.

33.2 Complaints and Notification

- (a) The Contractor must immediately notify TfNSW if any:
 - (i) complaint is made, or any proceedings are instituted or threatened;
 - (ii) letter of demand is issued; or
 - (iii) order or Direction is made,

by anyone (including any Rail Transport Entity, Government Authority or any landowner, lessee or licensee on or near the Delivery Locations) against the Contractor or any of its Subcontractors or their respective employees in respect of any aspect of carrying out the Contractor's Activities, including:

 - (iv) Contamination arising out of, or in connection with, the Contractor's Activities;
 - (v) the Contractor's non-compliance with any Approval (or any condition or requirement thereunder), any Third Party Agreement, the Project Management Plan or any Law regarding the Environment;
 - (vi) the implementation of the Project Management Plan or the Contractor's community liaison plan;
 - (vii) the Contractor's use or occupation of the Delivery Locations; or
 - (viii) loss or damage of the kind referred to in clause 18.4 (Loss or damage to Third Party property).
- (b) The Contractor must respond to complaints and enquiries received regarding the Contractor's Activities and that of its Subcontractors in accordance with the PR.

34 Records and Audit

34.1 Records

The Contractor must:

- (a) keep (and must ensure that each Subcontractor keeps) full and proper, up-to-date books of accounts and records in accordance with Industry Best Practice:
 - (i) relating to matters reasonably required by TfNSW and other matters relating to the performance of its obligations under this Agreement; and
 - (ii) as may be reasonably required in order to verify the:
 - (A) Contractor's compliance with its obligations under this Agreement; and
 - (B) accuracy of the Fees,
- (b) maintain all Records, Reports, Project Plans and other plans developed under this Agreement during the Term and for seven (7) years after the termination or expiry of this Agreement or any SOW (whichever is the later).

34.2 Audit and Inspection

- (a) Without limiting any other clause of this Agreement, TfNSW (or its Representatives) may audit and Inspect the Contractor and any Subcontractors at all reasonable times in respect of any matter relating to this Agreement, including to:
 - (i) verify the accuracy of any payment claims issued under this Agreement by reference to supporting records;
 - (ii) examine the performance of the Contractor's Activities (including all Records, Reports, Project Plans and other plans developed under this Agreement);
 - (iii) examine the Contractor's Spares Inventory;
 - (iv) conduct a review or audit of the Contractor's Sites, facilities, safeguards, policies, procedures and security measures in place to protect any TfNSW Data and TfNSW's Confidential Information, including practices for physical security, logical security, back-ups, business continuity plans, systems and processes, and procedures and systems in relation to preventing the introduction of Disabling Code;
 - (v) conduct penetration testing;
 - (vi) verify the required quality certification and compliance with applicable quality or WHS management system(s), work practices and procedures applicable to the performance of this Agreement; or
 - (vii) investigate an actual or suspected fraud, a Security Incident (physical or logical), a Probity Event, or an actual or suspected Event of Default.
- (b) TfNSW must provide the Contractor (or its Subcontractors) with at least three (3) Business Days' notice of its intention to conduct an audit or Inspection, except in respect of an audit or Inspection for an event described in paragraph (a)(vii) (in which case, TfNSW may provide less than twenty-four (24) hours' notice).

- (c) If TfNSW provides notice under paragraph (b), the Contractor must provide, and must ensure its Subcontractors provide, TfNSW or its Representative (or both of them) and the audit/Inspection team put together by TfNSW, on request, with (subject to TfNSW and/or its Representative (as applicable) complying with the Contractor's reasonable access and security requirements and any Third Party entering into a confidentiality agreement substantially in the form of Schedule 23 (Form of Confidentiality Deed Poll)):
 - (i) access to any premises occupied by it, or any Subcontractor, and make suitable facilities available to accommodate the audit or Inspection and the audit / Inspection team;
 - (ii) access to (including the right to copy) any Records, Reports, Project Plans, other plans developed under this Agreement, books, accounts, files, tapes, recordings, records and other documents relating to the performance of the Contractor's Activities and/or its obligations under this Agreement (however, notwithstanding this or any other clause of this Agreement, the Contractor will not be required to disclose its profit margins or costs associated with performing the Contractor's Activities, any internal detailed work or repair instructions, manufacturing drawings, software source codes (other than in accordance with the escrow provisions in this Agreement), or details of manufacturing practices, processes or operations or information that the Contractor is prevented from supplying in accordance with any Law);
 - (iii) copies of the documents mentioned in paragraph (c)(ii);
 - (iv) access to any audits conducted by the Contractor (under clause 34.5 (Contractor audit) or otherwise), whether access is required on the Contractor's Sites or otherwise;
 - (v) save to the extent prohibited by Law, employment and training records;
 - (vi) access to its facilities and systems relating to the performance of the Contractor's Activities and/or its obligations under this Agreement;
 - (vii) the opportunity to interview relevant Contractor Personnel relating to the performance of the Contractor's Activities and/or its obligations under this Agreement; and
 - (viii) all reasonable assistance relating to the conduct of the audit or Inspection.
- (d) If TfNSW provides notice under paragraph (b) in respect of a matter set out in paragraph (a)(iv), the Contractor must, in addition to its obligations under paragraph (c), as soon as reasonably practicable:
 - (i) compare the level of current safeguards and security measures, as set out in TfNSW's Policies as provided to the Contractor and/or as are in place at the relevant time, with the ISO 27001 standard (as updated from time to time); and
 - (ii) provide the results of the audit to TfNSW in writing as soon as reasonably practicable.

34.3 Financial Assessment

Without limiting or otherwise restricting clauses 31 (Benchmarking) and 34.2 (Audit and Inspection), the Contractor acknowledges and agrees that:

- (a) TfNSW may, either itself, or through the engagement of private sector service providers, undertake ongoing financial assessments (**Financial Assessment**) of the Contractor and any Subcontractors;
- (b) the Financial Assessment may be undertaken at three (3) monthly (or longer) intervals from the Commencement Date; and
- (c) it must, if requested by TfNSW, within ten (10) Business Days of receiving such request, provide any documents, information and evidence as is reasonably required by TfNSW under, out of, or in connection with the Financial Assessment (however, the Contractor will not be required to disclose its profit margins or costs associated with performing the Contractor's Activities).

34.4 Timing, Costs and Remedying Non-compliance

- (a) Subject to paragraph (b), each party will bear its own costs associated with any audit or Inspection conducted by TfNSW under clause 34.2 (Audit and Inspection) or Financial Assessment.
- (b) If any audit, Inspection or Financial Assessment shows that the Contractor is not complying with this Agreement (including any Project Plan) in any material respect, without limiting any of TfNSW's rights or remedies:
 - (i) the Contractor must reimburse TfNSW for its reasonable costs associated with performing such audit, Inspection or Financial Assessment, provided that the Contractor will not be required to reimburse TfNSW pursuant to this paragraph where the audit, Inspection or Financial Assessment shows only non-compliances which the Contractor has:
 - (A) prior to the audit, Inspection or Financial Assessment taking place fully disclosed to TfNSW (including disclosing details of the Contractor's proposed rectification actions); and
 - (B) taken or is continuing to take steps to rectify the non-compliance in accordance with its prior disclosure and any agreed outcomes or outcomes required by this Agreement;
 - (ii) the Contractor must:
 - (A) take such action as is necessary (including any recommendations arising from any audit, Inspection or Financial Assessment) to remedy the non-compliance promptly upon receipt of notice by TfNSW;
 - (B) demonstrate to TfNSW's reasonable satisfaction that such non-compliance has been remedied (including through preparing an Action Plan, if required by TfNSW); and
 - (C) promptly put in place appropriate preventative mechanisms to prevent reoccurrence of such non-compliance; and
 - (iii) TfNSW may conduct follow-up audits, Inspections or Financial Assessments at the Contractor's cost until the Contractor has demonstrated to TfNSW's reasonable satisfaction that such non-compliance has been remedied.
- (c) If an audit, Inspection or Financial Assessment shows that a Conflict of Interest, Probity Event, fraud or any security breach has occurred, then without limiting any

other right or remedy it may have under this Agreement or at Law, TfNSW may immediately by notice require the Contractor to remove any Contractor Personnel responsible for, or involved in, such Conflict of Interest, Probity Event, fraud or security breach from performing the Contractor's Activities for TfNSW, and the Contractor must comply with that notice immediately.

34.5 Contractor audit

- (a) The Contractor must provide TfNSW with a program of Contractor-led audits and management or project reviews.
- (b) Without limiting this clause 34, the Contractor must, where requested by TfNSW, share with TfNSW the results of any self-verification, management or project review or audit conducted by the Contractor that relates in whole or in part to the Program.

35 Probity Events and Conflicts of Interest

35.1 Notice

- (a) Without limiting any other clause in this Agreement, the Contractor must give notice to TfNSW as soon as it becomes aware that a Probity Event or Conflict of Interest has occurred or is likely to occur. Such notice must describe the nature of the Probity Event or Conflict of Interest and the circumstances giving rise to it or likely to give rise to it.
- (b) TfNSW may give notice to the Contractor if TfNSW becomes aware that a Probity Event or Conflict of Interest has occurred or is likely to occur.
- (c) Without prejudice to clause 58.1(a)(xii), on receipt of a notice under paragraph (a) or the issue of a notice under paragraph (b), TfNSW may approve the Contractor continuing to perform the Contractor's Activities, which approval may be subject to conditions specified by TfNSW (including requirements relating to separation arrangements) to ensure appropriate management of the Conflict of Interest.

35.2 Investigations

The Contractor must:

- (a) promptly comply with any reasonable request from TfNSW for access to Contractor Personnel or access to the personnel of any Associate of the Contractor for the purpose of undertaking any investigations that TfNSW may wish to carry out in relation to a Probity Event or Conflict of Interest; and
- (b) use reasonable endeavours to ensure that the Contractor Personnel or the personnel of any Associate of the Contractor co-operate with TfNSW and comply with any reasonable requests for information that TfNSW may make in the course of its investigations.

35.3 Remedial action

- (a) Upon the issue of a Probity Event Notice, the parties must meet at a time nominated or agreed by TfNSW to discuss the occurrence of the actual or likely Probity Event or Conflict of Interest. During any such meeting, the parties must use reasonable endeavours to agree on the actions to be taken by the Contractor to

ensure that the Probity Event or Conflict of Interest does not occur or its impact is minimised.

- (b) If the parties are unable to agree on appropriate actions within five (5) Business Days of such meeting or the Contractor fails to implement any actions agreed under paragraph (a), TfNSW may give notice to the Contractor setting out the action it must take to address the adverse effect of the Probity Event or Conflict of Interest. Such action may include:
 - (i) terminating any Subcontract under clause 27.11 (Termination of Subcontractors);
 - (ii) procuring the relevant Contractor Personnel (or the personnel of any Associate of the Contractor) to cease having involvement, shares, entitlement, contract, arrangement, significant influence, or power or control over the Contractor or Contractor's Associate; or
 - (iii) removing any such personnel from any further involvement with this Agreement.

35.4 Statement of Interests and Associations

TfNSW may, at any time, require the Contractor to sign and procure that each of its Representatives and/or Subcontractors signs and delivers to TfNSW, the Statement of Interests and Associations in the form attached in Schedule 30 (Statement of Interests and Associations).

36 Collusive Arrangements

- (a) The Contractor:
 - (i) warrants that prior to the Execution Date, it maintained all appropriate probity arrangements, including compliance under the *Competition and Consumer Act 2010* (Cth), in any dealings relating to the Program;
 - (ii) warrants that, prior to the Execution Date, the Contractor had no knowledge of the whole or any part of the RFP price of any other tenderer for the Trackside Packages and had not directly or indirectly communicated the Contractor's RFP price, or any part of such RFP price, to any other tenderer for the Trackside Packages;
 - (iii) warrants that, except as disclosed in the RFP and as agreed with TfNSW in writing, the Contractor has not:
 - (A) entered into any contract or arrangement or arrived at any understanding with any other tenderer for the Trackside Packages or with any trade or industry association to the effect that:
 - the Contractor will pay money to or confer any benefit upon any other tenderer for the Trackside Packages; or
 - the Contractor will pay money to or confer any benefit upon any trade or industry association (above the published standard membership fee),

as a result of entering into this Agreement or providing a RFP for the Contractor's Activities;

- (B) made any allowance in the Fees on account of a contract, arrangement or understanding of a kind referred to in paragraph (a)(iii)(A); and
 - (C) and will not, pay any money or confer any benefit on any other tenderer for the Trackside Packages or any trade or industry association of the kind referred to in paragraph (a)(iii)(A); and
 - (iv) acknowledges that it is aware that TfNSW entered this Agreement in reliance upon the warranties in paragraphs (a)(i) to (a)(iii).
- (b) If any matter warranted in paragraphs (a)(i), (a)(ii) or (a)(iii) is found to be untrue or incorrect, in addition to any other rights that TfNSW may have, the Contractor:
- (i) will be deemed to have committed a Material Breach; and
 - (ii) without limiting TfNSW's rights under clause 58 (Termination), must pay to TfNSW as liquidated damages, the sum equivalent to that allowed or paid, or to be paid, pursuant to any contract, arrangement or understanding referred to in paragraphs (a)(iii)(A) or (a)(iii)(C).

Part I Information Handling and Security

37 Intellectual Property

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38 TfNSW Data

38.1 Ownership

- (a) The TfNSW Data is and remains the property and Confidential Information of TfNSW and all rights, title and interests, including Intellectual Property Rights, in the TfNSW Data will remain with or vest in TfNSW as Assigned IP.
- (b) The Contractor acknowledges that:
 - (i) it assigns to TfNSW all rights, title and interest in the TfNSW Data, including by virtue of the assignment of Assigned IP in clause 37.2 (Assigned IP); and
 - (ii) the Contractor will not obtain any right, title or interest to the TfNSW Data save as set out in clause 37.4 (TfNSW licence to Contractor for TfNSW IP).
- (c) The Contractor must ensure TfNSW has access at all times (and without condition or additional charge) to all TfNSW Data (in an industry standard format) whilst in the possession or under the control of the Contractor or any of its Subcontractors.

38.2 Use of TfNSW Data

- (a) The Contractor must retain only the TfNSW Data that TfNSW has agreed the Contractor may retain and must only retain that TfNSW Data for the period of time and in the volumes notified by TfNSW from time to time, after which date the Contractor must destroy the TfNSW Data or return it to TfNSW, at TfNSW's election.
- (b) If TfNSW has agreed in writing that TfNSW Data may be used for testing purposes, the Contractor must not use any TfNSW Data for testing purposes unless that TfNSW Data has first been masked or de-identified in a manner approved by TfNSW.

- (c) The Contractor must remove all TfNSW Data from any of its media taken out of service and must destroy or securely erase such media in accordance with the relevant TfNSW Policy or as requested by TfNSW.
- (d) The Contractor is responsible for validating any TfNSW Data as sufficient to enable the Contractor to perform the Contractor's Activities in accordance with the Contract Specifications. The Contractor is not required to validate the accuracy of any TfNSW Data. However, the Contractor must notify TfNSW of issues with or errors in the TfNSW Data that are detected by the Contractor and provide reasonable details of the issues or errors to TfNSW as soon as reasonably practicable (and in any event, within twenty-four (24) hours of becoming aware of the issues or errors).

38.3 Security and confidentiality of the TfNSW Data

- (a) The Contractor acknowledges that TfNSW Data is Confidential Information of TfNSW (and not of the Contractor or its Associates) and is subject to the confidentiality obligations in clause 40 (Confidentiality).
- (b) Without limiting the other provisions of this clause 38, during the periods in which TfNSW Data is within the possession or under the control of the Contractor or any Contractor Personnel, the Contractor must maintain, enforce and continuously improve a security environment and safety and security procedures and safeguards in connection with the Contractor's Activities, the Trackside Subsystem and the Contractor's and its Subcontractors' associated systems (including procedures and safeguards against the destruction, loss, disclosure, alteration or unauthorised access or use of TfNSW Data) that:
 - (i) are consistent with the security and control requirements set out in the Contract Specifications or any SOW;
 - (ii) are no less rigorous than those described in TfNSW Policies maintained by TfNSW as of the Execution Date (or implemented by TfNSW in the future as notified by TfNSW);
 - (iii) are no less rigorous than those maintained by the Contractor for its own information of a similar nature from time to time;
 - (iv) are in accordance with Industry Best Practice;
 - (v) are consistent with the following International Standards for Information Security (available from the Australian Standards website, www.standards.org.au):
 - (A) AS/NZS ISO/IEC 27001:2013 Information Security Management Systems - Requirements;
 - (B) AS/NZS ISO/IEC 27002:2013 Code of Practice for Information Security Management; and
 - (C) ISO/IEC 27005:2011 Information Security Risk Management;
 - (vi) are adequate to meet the requirements of the TfNSW Policies relating to privacy, secrecy, security, records retention and data; and

- (vii) comply with all Laws applicable to TfNSW's and the Contractor's use and custody of the TfNSW Data.
- (c) Without limiting paragraph (a) and clause 38.7 (Reconstruction of Data), the Contractor must:
 - (i) at all times use appropriate, sophisticated and up-to-date pro-active security threat prevention Software, including virus detection systems and intrusion detection systems for preventing and detecting Disabling Code;
 - (ii) ensure that all of the Contractor's systems are constantly updated throughout the Term to address security vulnerabilities and changes in the threat environment;
 - (iii) not remove or transfer TfNSW Data to any non-TfNSW premises or from TfNSW Systems without obtaining the prior approval of TfNSW or as expressly authorised by and in accordance with this Agreement;
 - (iv) provide TfNSW with security-relevant information including security intelligence, near-miss incident or relevant updates to the Contractor's data security policies which may impact the security of TfNSW Data and Systems; and
 - (v) promptly inform TfNSW of any security threats or Disabling Code and the steps necessary to avoid their introduction.
- (d) The Contractor must keep TfNSW informed at all times of the Contractor's current safety and security procedures and safeguards in respect of TfNSW Data and keep TfNSW informed of any amendments to such procedures and safeguards as they are made from time to time.
- (e) In the event of any conflict between any data or security requirements applicable to TfNSW Data, Personal Information or the System under this Agreement, the most stringent or higher level of security standard will apply.

38.4 Security Incident

If the Contractor becomes aware of an actual, alleged or suspected Security Incident, including any relating to TfNSW Data, the Contractor must:

- (a) immediately notify TfNSW of such Security Incident;
- (b) within forty-eight (48) hours from the notification:
 - (i) conduct an investigation (with TfNSW's participation if so desired by TfNSW) of such Security Incident;
 - (ii) perform a risk assessment and root cause analysis;
 - (iii) develop an Action Plan for TfNSW approval; and
 - (iv) provide a written report to TfNSW of such risk assessment, root cause analysis and Action Plan;
- (c) remediate the effects of such Security Incident within twenty-four (24) hours from the conclusion of the investigation in paragraph (b)(i); and

- (d) provide TfNSW with such assurances as TfNSW reasonably requests that such Security Incident will not recur.

38.5 No transfer of TfNSW Data outside of NSW

- (a) The Contractor must not, without TfNSW's prior consent (which may be provided subject to conditions):
 - (i) transfer, or permit the transfer, outside of NSW any TfNSW Data which is a State Record or Personal Information held in connection with this Agreement; or
 - (ii) allow or permit access to such TfNSW Data by any person who is outside of NSW at the time of such access.
- (b) If TfNSW provides the Contractor with consent under paragraph (a), the Contractor must comply with any conditions imposed by TfNSW in relation to the TfNSW Data the subject of the consent.

38.6 Data recovery and back-up

Without limiting any other terms of this Agreement, the Contractor must, to the extent the TfNSW Data is within the possession or under the control of the Contractor or any Contractor Personnel:

- (a) maintain back-ups in accordance with Industry Best Practice and as required by this Agreement and the Contract Specifications; and
- (b) if there is a loss of, or damage to, TfNSW Data, reload the relevant data saved during the last back-up.

38.7 Reconstruction of Data

As part of the Contractor's Activities, the Contractor is responsible for developing and maintaining procedures for the reconstruction of lost TfNSW Data that is within the possession or under the control of the Contractor or any Contractor Personnel which reflect Industry Best Practice and are no less rigorous than those:

- (a) described in TfNSW Policies maintained by TfNSW as of the Execution Date (or implemented by TfNSW in the future as notified by TfNSW); and
- (b) the Contractor for its own information of a similar nature from time to time.

38.8 Disabling Code

- (a) The Contractor must not, and must ensure the Contractor Personnel do not:
 - (i) supply or connect, or permit to be supplied or connected, to the System, the TfNSW Environment, Works or Assets any product or system containing a Disabling Code; or
 - (ii) insert or activate, or permit to be inserted or activated, any Disabling Code into the System, the TfNSW Environment, Works or Assets at any time.

- (b) If the Contractor becomes aware that any Disabling Code is found to have been installed, released or otherwise introduced into any part of the TfNSW Environment or Works or Assets:
 - (i) the Contractor must promptly provide all information reasonably requested by TfNSW in relation to the Disabling Code, its manner of introduction and the effect the Disabling Code has had or is likely to have;
 - (ii) if the Disabling Code causes a loss of operational efficiency or loss of data, reasonably assist TfNSW to mitigate the effect of the Disabling Code and to assist TfNSW to recover the efficiency and/or data; and
 - (iii) where the Disabling Code was introduced by the Contractor or any Contractor Personnel or otherwise in circumstances where the Contractor did not comply with its obligations in respect of security or Disabling Code under this Agreement, in addition to any other rights that TfNSW may have, the Contractor must pay the Losses incurred by TfNSW relating to:
 - (A) identifying and removing the Disabling Code; and
 - (B) restoring any data lost, damaged or corrupted as a result of the Disabling Code to the last backed-up version of that data and otherwise remedying the impact of the Disabling Code.

39 Escrow

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40 Confidentiality

40.1 Obligations of confidence

- (a) Each party must:
 - (i) use the other party's Confidential Information solely for the purposes of exercising rights or performing obligations under this Agreement;
 - (ii) notify the other party of any potential, suspected or actual unauthorised access, reproduction or use of the other party's Confidential Information which comes to its attention; and
 - (iii) keep the other party's Confidential Information confidential and not disclose it to any Third Party except as:
 - (A) provided for in clause 40.2 (Permitted use and disclosures); or
 - (B) otherwise permitted under this Agreement.
- (b) These obligations of confidence extend to any Confidential Information provided to or obtained by a party prior to entry into this Agreement and includes Confidential Information provided or obtained under the ECI Agreement.

40.2 Permitted use and disclosures

(a) Each party may disclose Confidential Information of the other party as follows:

- (i) to its officers, agents, professional advisors (including lawyers), employees, contractors, sub-contractors and insurers; or
- (ii) to any auditor, expert, mediator or arbitrator appointed under this Agreement,

in each case on a “need-to-know” and confidential basis. This paragraph (a) does not apply to Permitted Sublicensees which are governed by paragraph (d).

(b) Confidential Information of a party may also be disclosed with the prior written consent of that party.

(c) Subject to paragraph (d) and (f), each party who discloses Confidential Information of the other pursuant to paragraph (a) must ensure that such information is kept confidential by the recipients on the basis set out in this clause 40.

(d) Without limiting paragraph (a), TfNSW may also disclose any Confidential Information of the Contractor or any Contractor Personnel to any person who is a Permitted Sublicensee.

(e) The Contractor acknowledges and agrees that, in relation to Confidential Information disclosed to any Permitted Sublicensee that is a party to any other agreement or deed (including the Confidentiality and Intellectual Property Deed Poll) in favour of the Contractor under which the Permitted Sublicensee has a right to receive and use the Contractor’s (or any Contractor Personnel’s) Confidential Information (**Other Confidentiality Agreement**):

- (i) any Claim by the Contractor or any Contractor Personnel that any such Permitted Sublicensee has used such Confidential Information in breach of any obligations of confidence must be brought by the Contractor or relevant Contractor Personnel against the relevant Permitted Sublicensee under the Other Confidentiality Agreement; and
- (ii) TfNSW is not liable for the acts or omissions of the Permitted Sublicensee in connection with that Confidential Information and the Contractor is not entitled to, and waives any rights it has or may have to, bring any Claim against TfNSW.

(f) TfNSW will notify the Contractor each time a Permitted Sublicensee enters into a deed poll on substantially the same terms as the Confidentiality and Intellectual Property Deed Poll executed by the Contractor.

(g) Where requested by TfNSW (and where the relevant Permitted Sublicensee is not a party to an Other Confidentiality Agreement), the Contractor must enter into a non-disclosure deed with the Permitted Sublicensee in the form set out in Schedule 23 (Form of Confidentiality Deed Poll), or such other non-disclosure deed as agreed between the parties but which is on substantially the same terms as the deed set out in Schedule 23 (Form of Confidentiality Deed Poll). Where such non-disclosure deed is entered into:

- (i) any Claim by the Contractor that any such Permitted Sublicensee has used the Contractor’s Confidential Information in breach of the non-disclosure

deed must be brought by the Contractor against the relevant Permitted Sublicensee under the non-disclosure deed; and

- (ii) TfNSW is not liable for the act or omission of the Permitted Sublicensee in connection with that Confidential Information and the Contractor is not entitled to, and waives any rights it has or may have to bring any Claim against TfNSW.
- (h) Notwithstanding anything to the contrary in this Agreement, either party may disclose Confidential Information of the other party where such Confidential Information is required to be disclosed:
 - (i) by applicable Law, by a court or Government Authority, provided that, prior to disclosing any such Confidential Information, the party making the disclosure has promptly notified the other party to allow that party to take all reasonable steps to maintain such Confidential Information in confidence; or
 - (ii) in accordance with the rules of any stock exchange upon which the securities of the party making the disclosure are listed.

40.3 Confidentiality Deed Poll

Unless otherwise agreed, the Contractor must ensure that each officer, employee, Subcontractor or agent of the Contractor involved in the performance of the Contractor's Activities duly execute and deliver to TfNSW a Confidentiality Deed Poll in the form set out in Schedule 23 (Form of Confidentiality Deed Poll).

40.4 Security

Each party must take reasonable steps to protect the Confidential Information of the other party from unauthorised use or disclosure, and in any event steps no less protective than those taken to protect that party's own Confidential Information.

40.5 Records and retention of TfNSW Confidential Information

- (a) On the date any TfNSW Confidential Information is no longer needed for the purposes of the Contractor performing the Contractor's Activities, the Contractor and each of its Representatives must within fourteen (14) Business Days after such date:
 - (i) cease using the relevant TfNSW Confidential Information; and
 - (ii) subject to any legal requirement in relation to the retention of records (including any requirement under the rules of any stock exchange), deliver to TfNSW, or, at TfNSW's option, destroy (in accordance with approved destruction methods) or De-Identify all tangible records of TfNSW Confidential Information in the power, possession or control of the Contractor or any person to whom it has given access to these records, including any tape or backup records.
- (b) If requested by TfNSW, the Contractor must provide evidence satisfactory to TfNSW that all TfNSW Confidential Information has been delivered to TfNSW or destroyed or De-Identified in accordance with this clause 40.5.

40.6 Publicity

- (a) The Contractor must not make any public statement about the Transaction Documents or the Program, or anything related to the subject matter of the Transaction Documents or the Program, without the prior consent of TfNSW.
- (b) Paragraph (a) will not apply where the Contractor is required to make a public statement in order to comply with the rules of any stock exchange upon which the securities of any Related Body Corporate of the Contractor are listed, provided that, prior to making such statement, the Contractor consults with TfNSW regarding the form and content of the statement.

41 Privacy

41.1 Privacy compliance

If the Contractor collects, uses, discloses, transfers or otherwise handles any Personal Information in connection with this Agreement, it must:

- (a) comply with all applicable Privacy Laws as if it were a person subject to the Privacy Laws;
- (b) comply with any TfNSW Policies related to privacy; and
- (c) not do anything or engage in any practice which if done or engaged in by TfNSW, would be a breach of any Privacy Laws.

41.2 General privacy obligations

Without limiting clause 41.1 (Privacy compliance), the Contractor must:

- (a) (and must ensure the Contractor Personnel) collect, use, disclose, transfer or handle any Personal Information only to the extent necessary to perform its obligations in accordance with this Agreement;
- (b) not disclose any Personal Information to any other person (including to a Subcontractor) without the prior consent of TfNSW or, subject to paragraph (e), as required by Law;
- (c) ensure that Contractor Personnel who have access to any Personal Information:
 - (i) are made aware of the obligations in this clause 41; and
 - (ii) if requested by TfNSW, ensure that such Contractor Personnel sign written undertakings (in a form acceptable to TfNSW) to comply with the obligations in this clause 41;
- (d) without limiting any of the Contractor's other obligations under this Agreement, take all technical, organisational and other security measures as are reasonably within the Contractor's power to protect any Personal Information from:
 - (i) misuse, interference and loss; and
 - (ii) unauthorised access, Modification or disclosure;

- (e) notify TfNSW:
 - (i) as soon as reasonably practicable after the Contractor receives any request or complaint concerning any Personal Information;
 - (ii) immediately after the Contractor becomes aware that a disclosure of any Personal Information may be required by Law; and
 - (iii) immediately if the Contractor becomes aware of any breach of this clause 41, or of any Data Breach which has occurred or which the Contractor has reasonable ground to suspect may have occurred;
- (f) promptly comply with any requests and/or Directions from TfNSW from time to time:
 - (i) concerning the collection, use, disclosure, transfer, handling, access or correction of any Personal Information; and
 - (ii) for information, assistance and co-operation to allow TfNSW to investigate breaches of this clause 41, or a Data Breach and to comply with its obligations under the Privacy Laws; and
- (g) without limiting the above, in relation to the Data Breach, if the Contractor forms the view that it is or may be required to notify affected individuals of a Data Breach under the Privacy Laws, ensure that:
 - (i) before making any such notification it promptly discusses such matter with TfNSW in good faith and complies with any reasonable Directions issued by TfNSW in relation to such notification, including as to whether the Contractor or TfNSW will be the person responsible for fulfilling the relevant notification requirements; and
 - (ii) where TfNSW determines that the Contractor will be the party responsible for fulfilling the relevant notification requirements, comply with all such notification requirements in accordance with the Privacy Laws.

42 Government Disclosure

42.1 GIPAA

- (a) The Contractor acknowledges that TfNSW may be required to publish certain information concerning the Transaction Documents:
 - (i) in accordance with sections 27 – 35 of the *Government Information (Public Access) Act 2009* (NSW); 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 TfNSW any other information which TfNSW reasonably requires to comply with its obligations under this paragraph (a).
- (b) If the Contractor reasonably believes that any part of the Transaction Documents contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, then the Contractor should immediately

advise TfNSW in writing, identifying the provisions and providing reasons. TfNSW will consider the Contractor's submission with a view to assessing whether or not to seek to exempt those provisions from publication, however is under no obligation to do so.

42.2 Disclosure to other agencies

- (a) The Contractor authorises TfNSW to make information concerning the Contractor, Contractor Personnel and/or the Transaction Documents available to any Government Authorities (whether in NSW or any other jurisdiction), including:
 - (i) any information provided by or on behalf of the Contractor or any Contractor Personnel to TfNSW;
 - (ii) any information relating to the Contractor's or any Contractor Personnel's performance under this Agreement; and
 - (iii) the terms of the Transaction Documents or any Subcontract.
- (b) The Contractor acknowledges that:
 - (i) any information about the Contractor or any Contractor Personnel from any source, including substantiated reports of unsatisfactory performance, may be considered by TfNSW and any Government Authority in considering whether to offer the Contractor or any Contractor Personnel future opportunities for NSW government work;
 - (ii) the communication of such information to any Government Authority is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
 - (iii) TfNSW has in place processes for assessing the performance of its suppliers, that these processes will apply to the Contractor's and Contractor Personnel's performance under the Transaction Documents and that it will participate in TfNSW's "Contractor Performance Reporting" process.

42.3 No limitation

- (a) Nothing in this clause 42 or any other provision of this Agreement operates to limit or restrict any of TfNSW's rights to publish or disclose (on the internet or otherwise) information relating to:
 - (i) the Contractor's performance with respect to the Transaction Documents; or
 - (ii) the nature and performance of the Trackside Subsystem.

Part J Compliance

43 Mandatory Requirements and Approvals

43.1 Mandatory Requirements

(a) The Contractor must:

- (i) perform (and procure that all Contractor Personnel and Subcontractors perform) the Contractor's Activities in accordance with; and
- (ii) ensure that:
 - (A) the Trackside Subsystem on Provisional Acceptance and Final Acceptance; and
 - (B) all Spares on delivery,

comply and perform in accordance with all of the following, being the **Mandatory Requirements**:

- (iii) Laws;
 - (iv) Approvals (including any conditions or requirements under them) that:
 - (A) the Contractor is required to obtain;
 - (B) are listed in a Statement of Work or otherwise in the Contract Specifications; or
 - (C) have been obtained by TfNSW or a Third Party, and in respect of which the Contractor has been provided notice;
 - (v) Standards, including any standards developed in accordance with clause 45.2(b); and
 - (vi) provisions of the Contractor's AEO Authorisation and the ASA requirements in accordance with clause 45 (ASA Compliance).
- (b) The Contractor must:
- (i) diligently monitor no less than once every six (6) months all Changes in Law, Changes in Approvals and Changes in Standards;
 - (ii) without prejudice to the notification requirements contained in section 6 (Changes in Laws, Approvals and Standards) of Schedule 7 (New SOWs and Variation Procedures), notify TfNSW within ten (10) Business Days of becoming aware of any Change in Law, Change in Approval or Change in Standard;
 - (iii) comply with all Changes in Laws;
 - (iv) comply with all Changes in Approvals; and

- (v) comply with Changes in Standards, where required by section 6.2 (Changes in Standards) of Schedule 7 (New SOWs and Variation Procedures).
- (c) Other than as set out in clauses 15.3 (Extension of Time) and 15.6 (Compensation Events) and section 6 (Changes in Laws, Approvals and Standards) of Schedule 7 (New SOWs and Variation Procedures), the Contractor will not be entitled to make, and TfNSW will not be liable upon, any Claim arising out of or in connection with:
 - (i) any Change in Law, Change in Approval or Change in Standard;
 - (ii) any Law, Approval or Standard obtained or issued or which otherwise takes effect after the date of this Agreement; or
 - (iii) any:
 - (A) assumptions the Contractor makes; or
 - (B) failure by the Contractor to adequately satisfy itself,as to what work methodologies might be permissible under all Mandatory Requirements.

43.2 Contractor to obtain and maintain Approvals

- (a) The Contractor must:
 - (i) obtain (or procure) and maintain all Approvals required for the Contractor to perform its obligations under this Agreement, other than those Approvals which this Agreement (including a SOW) expressly states that TfNSW or a Third Party has obtained or requires TfNSW or a Third Party to obtain or maintain;
 - (ii) give all notices and pay all fees and other amounts which it is required to pay to Government Authorities in respect of the performance of its obligations under this Agreement unless this Agreement specifically states otherwise;
 - (iii) without prejudice to clause 43.1(a)(iv):
 - (A) comply with, satisfy, carry out and fulfil the conditions and requirements of all Approvals obtained by the Contractor;
 - (B) comply with the conditions and requirements of all Approvals obtained by TfNSW or a Third Party and in respect of which the Contractor has been provided notice; and
 - (C) satisfy, carry out and fulfil the conditions and requirements of Approvals obtained by TfNSW or a Third Party where such conditions and requirements are specified to be satisfied by the Contractor in the relevant Statement of Work,including those conditions and requirements that TfNSW or the relevant Third Party would otherwise be required, under the terms of the Approvals, to comply with, satisfy, carry out and fulfil;
- (iv) not cause TfNSW or a Third Party to fail to comply with, satisfy, carry out or fulfil the requirements of any Approval as defined in clauses 43.1(a)(iv)(A) to

- (C) that TfNSW or the Third Party is required to comply with, satisfy, carry out or fulfil; and
- (v) affect all insurances, provide any security and execute any undertakings or agreements or any other document required by any relevant Government Authority in respect of any Approval which the Contractor must obtain, maintain or comply with in accordance with paragraphs (a)(i) and (a)(iii).
- (b) Except to the extent provided otherwise in this Agreement (including a SOW), the Contractor must:
- (i) prepare and submit:
- (A) to each relevant Government Authority all applications and associated documents for the purposes of obtaining all Approvals;
- (B) to TfNSW, copies of (on a monthly basis) evidence of compliance with the EPL (if an EPL is required); and
- (C) all studies and reports required pursuant to any Approval which the Contractor is required obtain, maintain or comply with in accordance with paragraphs (a)(i) and (a)(iii); and
- (ii) without limiting paragraph (i), provide TfNSW copies of all documents (including applications, notices, orders or directions) and details of all other communications relating to the Contractor's Activities that are:
- (A) requested by TfNSW in relation to an Approval or dealing with a Government Authority;
- (B) received by the Contractor (or a Subcontractor) from a Government Authority (including Approvals and other notices) as soon as possible after they are received by the Contractor (or Subcontractor);
- (C) given by the Contractor (or a Subcontractor) to a Government Authority;
- (D) without limiting paragraph (C), submitted to a Government Authority in respect of the release of a Hold Point, which documents must be submitted within a reasonable period of time before the release of the Hold Point; and
- (E) without limiting paragraph (C), submitted to a Government Authority in respect of a Witness Point, which documents must be submitted within a reasonable period of time before the review, witness, inspection, or the undertaking of any tests, methods or processes related to or in connection with the Witness Point.
- (c) If the Contractor (or a Subcontractor) is required under this Agreement to prepare for submission, or submit, any documents to a Government Authority to obtain an Approval, or pursuant to an Approval, the Contractor must:
- (i) provide TfNSW with a copy of those documents for Review before they are submitted to the Government Authority;
- (ii) consider any comments made by TfNSW on Review of the documents; and

- (iii) in relation to any documents which the Contractor is required to prepare for submission by TfNSW, deliver a final version of the documents to TfNSW in order to enable TfNSW to submit the relevant document to the Government Authority on time.
- (d) The Contractor indemnifies and must keep indemnified the TfNSW Indemnified Persons against any Loss suffered by any of them arising out of or in connection with a failure by the Contractor to comply with this clause 43.2.

43.3 Contractor to assist TfNSW

The Contractor must provide TfNSW and the Rail Transport Entities with all reasonable assistance to enable each of them to:

- (a) comply with all applicable Mandatory Requirements; and
- (b) obtain, satisfy or fulfil the conditions and requirements in respect of any:
 - (i) Approvals which are obtained by any of them; or
 - (ii) conditions and requirements of Approvals which have been obtained by TfNSW or a Rail Transport Entity and in respect of which the Contractor has been provided notice, including those conditions and requirements that a Rail Transport Entity is required, under the terms of the Approvals, to comply with, satisfy, carry out and fulfil,

relating to the Contractor's Activities and the Program.

44 Accreditation

44.1 TfNSW's Accreditation Variation

The Contractor acknowledges that:

- (a) the Rail Transport Entities may need to obtain Accreditation Variations in order to deliver and operate the Program;
- (b) the Contractor will be required to provide material inputs to enable the Rail Transport Entities to obtain the Accreditation Variations within the timeframes required;
- (c) a failure to obtain, or delay in obtaining, the Accreditation Variations will have a significant adverse impact on the ability of the Rail Transport Entities to fulfil the Operations Functions;
- (d) as at the Execution Date, ONRSR's requirements in relation to Accreditation Variations are not yet fully known, and are likely to evolve as the Program matures;
- (e) the process for obtaining Accreditation Variations will be an iterative one, and will require the Contractor to cooperate flexibly and responsively with the Rail Transport Entities;
- (f) ONRSR will require the safety management systems of the Rail Transport Entities to:

- (i) cover all relevant aspects of the Program; and
- (ii) include measures to address safety risks arising from the Program and their interfaces with related activities of the Rail Transport Entities, including appropriate measures regarding competency, communication, risk management and continuous improvement; and
- (g) it is in the interests of the Rail Transport Entities, the Contractor and ONRSR for the Accreditation Variation Applications to be coordinated effectively.

44.2 Coordination of Accreditation Variation Applications

Having regard to the acknowledgements made by the Contractor in clause 44.1 (TfNSW's Accreditation Variation), the Contractor must:

- (a) deal with TfNSW (or, if required by TfNSW, with the System Integrator as its nominee) as the single point of contact for the Contractor in connection with the Contractor's input into the Accreditation Variation Applications;
- (b) subject to paragraph (a), cooperate in good faith with, and do all things reasonably necessary to enable and assist, the Rail Transport Entities to obtain all relevant Accreditation Variations, including by:
 - (i) preparing and submitting to TfNSW in a form, and as, reasonably required by TfNSW:
 - (A) all inputs requested by TfNSW to the Accreditation Variation Documents;
 - (B) all supporting documentation and certificates referred to in clause 44.3 (Contractor to prepare Accreditation Variation Documents); and
 - (C) any other information and documentation that any Rail Transport Entity may reasonably require in connection with the Accreditation Variation,

within the time specified in the Contractor's Program or Review Procedures or, if no time is specified, then in a timely manner and in a form reasonably required by TfNSW; and
 - (ii) responding to queries or requests by TfNSW in a timely manner and within the time reasonably required by TfNSW; and
- (c) not do, or omit to do, anything that may hinder or delay a Rail Transport Entity from obtaining an Accreditation Variation.

44.3 Contractor to prepare Accreditation Variation Documents

- (a) The Contractor must develop and submit to TfNSW for Review, in accordance with the Review Procedures, draft and final inputs to the Accreditation Variation Documents that are in accordance with:
 - (i) the Contractor's safety accreditation strategy;
 - (ii) the Rail Safety National Law;

- (iii) the safety management systems of the relevant Rail Transport Entities;
 - (iv) any requirements of ONRSR for the Accreditation Variation Document; and
 - (v) the other requirements of this Agreement.
- (b) Each input to an Accreditation Variation Document submitted by the Contractor to TfNSW for Review in accordance with the Review Procedures must be accompanied by:
 - (i) supporting documentation in such form as TfNSW may reasonably require to demonstrate that the inputs provided comply with the requirements of paragraph (a); and
 - (ii) a certificate from an appropriately qualified person issued on behalf of the Contractor stating that the inputs provided comply with the requirements of paragraph (a).
- (c) If ONRSR rejects or requires changes to, or further information in respect of, an Accreditation Variation Application, then the Contractor must, if requested by TfNSW, promptly make the necessary changes to its input to the Accreditation Variation Documents or provide the further information (or both, as required by ONRSR).

44.4 Continuing obligations

The Contractor must:

- (a) operate under TfNSW's or a Rail Transport Entities' Accreditation for the Contractor's Activities in accordance with a Rail Transport Entity's Accreditation requirements;
- (b) liaise and co-operate with the Rail Transport Entities, and do everything reasonably necessary to enable and assist each Rail Transport Entity to:
 - (i) maintain any Accreditation; and
 - (ii) comply with their other obligations under the Rail Safety National Law in relation to rail safety,to the extent that any Rail Transport Entities' Accreditation or rail safety obligations are affected by the Program and/or the Contractor's Activities;
- (c) not do, or omit to do, anything which may cause any:
 - (i) Rail Transport Entity to breach any term of its Accreditation; or
 - (ii) Rail Transport Entity's Accreditation to be suspended or cancelled; and
- (d) give ONRSR such access to premises and information as ONRSR lawfully requests to fulfil its functions with respect to the Program and the Contractor's Activities, within the time requested.

45 ASA Compliance

45.1 AEO Authorisation

- (a) The Contractor must without limiting or otherwise restricting paragraph (c):
 - (i) obtain prior to commencing the Contractor's Activities; and
 - (ii) maintain throughout the Term,

the AEO Authorisation necessary for completion of those engineering services forming part of the Contractor's Activities for which the Contractor (or an Associate of the Contractor) is responsible, including all the engineering services defined in the Contract Specifications.
- (b) The Contractor acknowledges that the ASA will assess, and is the body empowered to grant, AEO status to the Contractor and its Subcontractors to carry out such engineering services, including on the basis of the procedures of, and undertakings given by, the Contractor (and its Associates) as set out in the Project Plans.
- (c) The AEO matrix set out in Appendix 03 of the PR sets out the engineering services the subject of the Contractor's AEO Authorisation which the Contractor is required to deliver as part of the Contractor's Activities.

45.2 ASA Compliance

- (a) The Contractor must:
 - (i) comply, and ensure the Contractor Personnel comply, with the conditions of its AEO Authorisation, and the ASA Requirements applicable to the Contractor's Activities;
 - (ii) ensure that any Subcontractor engaged to perform Physical Works in respect of the installation of the Trackside Equipment has its own AEO Authorisation;
 - (iii) have in place, maintain and consistently apply, at all times when performing the Contractor's Activities, engineering management methodologies and undertake all safety assurance activities for the successful delivery and assurance of the Contractor's Activities and Trackside Subsystem that comply with the AEO Authorisation and ASA Requirements and the requirements of this Agreement;
 - (iv) develop and maintain a competency management system for the Contractor's Activities as part of its AEO Authorisation;
 - (v) carry out its own assurance on the Contractor's Activities and the Trackside Subsystem;
 - (vi) participate in any assurance process conducted by the System Integrator or as required by TfNSW or the System Integrator, as part of the System Integrator's assurance of the System;

- (vii) cooperate, and ensure the Contractor Personnel cooperate, fully with the ASA in the performance of the ASA's functions;
 - (viii) 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;
 - (ix) comply, and ensure the Contractor Personnel comply, with the Directions, instructions and requirements issued by the ASA;
 - (x) notify the ASA of any matter that could reasonably be expected to affect the exercise of the ASA's functions;
 - (xi) 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
 - (xii) provide TfNSW with such reasonable assistance as may be reasonably required by TfNSW to enable TfNSW to cooperate fully with the ASA and to implement and comply with ASA Requirements.
- (b) The Contractor must work with TfNSW and the ASA to develop appropriate standards for the Program.
 - (c) The Contractor acknowledges and agrees that it is not entitled to make (and neither TfNSW nor the ASA will be liable for) any Claim arising out of or in connection with the obligation to comply with the requirements of ASA and the AEO Authorisation.

45.3 CCB Gates

- (a) TfNSW is responsible for submitting to the ASA the documents required for the Trackside Subsystem to achieve any CCB Gate and for obtaining the relevant Configuration Change Acceptance Notice.
- (b) The Contractor must:
 - (i) deliver to TfNSW all documentation and other inputs required for the Trackside Subsystem to achieve any CCB Gate within the timeframes required by the Contractor's Program and the Review Procedures;
 - (ii) make any necessary changes to, and prepare, the Design Documentation or other documentation requested by TfNSW in order to achieve a CCN; and
 - (iii) provide to TfNSW all assistance reasonably requested in relation to the preparation of documentation for a CCB Gate.

46 Safety

46.1 Rail Safety Work

Without limiting any other obligation in this Agreement, the Contractor must:

- (a) ensure that any Contractor Personnel who will undertake any Rail Safety Work in connection with the Contractor's Activities hold and maintain Rail Safety Work certification and comply with the:
 - (i) Rail Safety National Law;
 - (ii) TfNSW Policies on drug and alcohol testing and fatigue management; and
 - (iii) TfNSW Policies related to Rail Safety Work, including Rail Safeworking Standard 4TP-ST-014.3.0;
- (b) prior to any Rail Safety Worker carrying out any Rail Safety Work in connection with the Contractor's Activities, provide TfNSW with the Competence Records in the form Directed by TfNSW (which may be electronic);
- (c) ensure that any Rail Safety Worker who carries out Rail Safety Work has the competence to carry out the work;
- (d) 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; and
- (e) in performing the Contractor's Activities:
 - (i) not adversely affect the operation of the Network or associated infrastructure, Rollingstock and facilities, unless a shutdown or other operation has been scheduled in advance with TfNSW;
 - (ii) not adversely affect the safety of the Network or associated infrastructure, Rollingstock and facilities; and
 - (iii) ensure there is no damage to the Network, associated infrastructure, Rollingstock and facilities.

46.2 Workplace health and safety obligations

- (a) Without limiting any of the Contractor's other obligations under this Agreement, the Contractor must:
 - (i) carry out the Contractor's Activities:
 - (A) safely and in a manner that does not put the health and safety of persons at risk; and
 - (B) in a manner that protects property;
 - (ii) comply with, be responsible for, and assume liability for all of its obligations under any applicable Laws and Approvals obtained by the Contractor or Approvals obtained by TfNSW or a Third Party with which the Contractor is required to comply under clause 43.2 (Contractor to obtain and maintain Approvals) relating to work health, safety and rehabilitation management including the WHS Legislation;
 - (iii) insofar as the Contractor, in carrying out the Contractor's Activities, is a person conducting a business or undertaking that:

- (A) designs plant, substances or structures to whom section 22 of the WHS Act applies;
- (B) manufactures plant, substances or structures to whom section 23 of the WHS Act applies;
- (C) imports plant, substances or structures to whom section 24 of the WHS Act applies;
- (D) supplies plant, substances or structures to whom section 25 of the WHS Act applies; or
- (E) installs, constructs or commissions plant or structures to whom section 26 of the WHS Act applies,

then to the extent that the obligations under that section apply to the Contractor's Activities, the Contractor must comply with the applicable obligations under the WHS Legislation;

- (iv) develop, document and implement a contract specific Safety Management System and Safety Management Plan in accordance with the WHS Legislation, the WHS Guidelines and the PR;
- (v) carry out the Contractor's Activities in accordance with the Safety Management Plan;
- (vi) create a safe working environment for ensuring the safety of all authorised personnel on the Delivery Locations and ensure that no unauthorised individual gains access to the Delivery Locations;
- (vii) supervise any Subcontractor's activities and ensure that they are complying with all relevant Laws, their respective obligations under the WHS Legislation, all relevant Approvals and the PR in relation to WHS management on the Delivery Locations;
- (viii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein and provide TfNSW with those written assurances together with written assurances from the Contractor about the Contractor's ongoing compliance with the WHS Legislation;
- (ix) take reasonable steps to ensure the health, welfare and safety of the Contractor Personnel, including in the performance of the Contractor's Activities;
- (x) consult with TfNSW as required to enable TfNSW to discharge its obligations under clause 294 of the WHS Regulation;
- (xi) notify TfNSW immediately (and in any event within twelve (12) hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in connection with the Contractor's Activities;
- (xii) promptly inform TfNSW and the relevant authorities of the occurrences of any serious injury (or any other matter as required by Part 3 of the WHS Act) suffered by any person in connection with the Contractor's Activities or any

event which would create a risk for the TfNSW Indemnified Persons and/or the Contractor Personnel;

- (xiii) comply with, and procure that all Contractor Personnel comply with, any reasonable Directions issued by TfNSW in relation to work, health, safety or the environment;
 - (xiv) comply with its obligation under the WHS Legislation to consult, cooperate, and coordinate activities with all other persons (including Rail Transport Entities and Interface Contractors) who have a work health and safety duty in relation to the same matter;
 - (xv) exercise a duty of utmost good faith to TfNSW in carrying out the Contractor's Activities to enable TfNSW to discharge TfNSW's duties under the WHS Legislation; and
 - (xvi) to the extent permitted by Law, indemnify and must keep indemnified the TfNSW Indemnified Persons against all Claims which may be imposed under, or which may arise out of enforcement of any section of, the WHS Legislation as a result of any breach by the Contractor or the Contractor Personnel of the WHS Legislation, including any refusal or failure by the Contractor or the Contractor Personnel to comply with any Directions and requests of the TfNSW Indemnified Persons.
- (b) If TfNSW reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities, TfNSW may Direct the Contractor to change its manner of working or to cease working.
- (c) The Contractor must advise TfNSW at all times of the name of the senior management representative responsible for implementing the safety requirements of this Agreement and monitoring the effectiveness of the Contractor's safety management system in complying with all safety requirements.
- (d) The Contractor's Design Documentation must:
- (i) take into account best work health and safety practice applicable to the construction, utilisation, operation, safety and/or maintenance of the Program; and
 - (ii) be subject to a health, safety and environment review by a suitably qualified person at appropriate stages of the design development process (if any) to verify the design's compliance with the WHS Legislation.
- (e) The Contractor must prepare the Safety Report in accordance with the requirements of, and otherwise discharge its obligations under, the WHS Legislation. The Contractor must give a copy of the Safety Report to TfNSW within the timeframe set out in the PR or as otherwise notified by TfNSW.

46.3 Safe Work Method Statement

The Contractor must:

- (a) undertake an assessment of the risks associated with the provision of the Works under each SOW and prepare and submit to TfNSW within one (1) month of the SOW Commencement Date a Safe Work Method Statement (**SWMS**) specific for each site relevant to the Works under that SOW that meets the requirements of the

TfNSW Policies and that complies with the requirements of Part 6.3 of the WHS Regulation;

- (b) maintain and keep up to date each SWMS; and
- (c) ensure that the Contractor's Activities under that SOW are carried out in accordance with the SWMSs, and if a risk to the health or safety of a person arises because of non-compliance with any SWMS, ensure that work is stopped immediately and not resumed until the relevant SWMS is complied with (unless an immediate cessation of work is likely to increase the risk to health and safety, in which event the Contractor must stop the work as soon as it is safe to do so).

46.4 Principal Contractor

- (a) In this clause 46.4:
 - (i) the terms 'construction project', 'construction work', 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation;
 - (ii) **Control** of an area of a Delivery Location means undertaking all the activities required to manage and control all access to and across an area of the Delivery Location and maintaining the temporary and permanent infrastructure provided by the Contractor. Such activities will include managing, controlling and maintaining the security of an area of the Delivery Location conducting basic familiarisation and safety inductions for all those accessing an area of the Delivery Location (but not inductions specific to Interface Contractor Work), operating and maintaining the temporary and permanent infrastructure provided by the Contractor and liaising with Government Authorities; and
 - (iii) **Interface Contractor Work** means certain works that an Interface Contractor has been appointed by a Rail Transport Entity to undertake at a Delivery Location under an Interface Contractor Agreement.
- (b) For the purpose of the WHS Legislation and this Agreement, the Works and any Interface Contractor Work is taken to be part of the same 'construction project'.
- (c) Unless otherwise specified in a SOW, during any period for which the Contractor or any Contractor Personnel access a Delivery Location (or part thereof), the Contractor is in Control of that Delivery Location or part thereof (and any associated access points), regardless of the extent to which the Contractor's Activities or any Interface Contractor Work include construction work, and:
 - (i) TfNSW engages the Contractor as the principal contractor in respect of the Contractor's Activities and all Interface Contractor Work carried out on that part of the Delivery Location;
 - (ii) TfNSW authorises the Contractor to have management and Control of each workplace at which the Contractor's Activities and the Interface Contractor Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation; and
 - (iii) the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation.

- (d) To the extent not prohibited by Law, the Contractor indemnifies and must keep indemnified the TfNSW Indemnified Persons against any Loss suffered or incurred by any TfNSW Indemnified Person arising out of or in connection with the Contractor's failure to discharge the duties imposed on a principal contractor by the WHS Legislation that the Contractor is required to discharge in accordance with this clause 46.4.
- (e) Where the:
 - (i) Contractor is specified in a SOW as not being; or
 - (ii) TfNSW has Directed that the Contractor is not to be, in Control of a part of a Delivery Location, the Contractor:
 - (iii) acknowledges that the person who is specified in the relevant SOW as being, or whom TfNSW has otherwise notified the Contractor as being, in Control of that part of the Delivery Location is the principal contractor in respect of all construction work carried out by or on behalf of TfNSW on that part of the Delivery Location during the period during which that person is in Control of that part of the Delivery Location; and
 - (iv) must comply with any exercise by the person referred to in paragraph (iii) of such authority as is necessary to enable that person to discharge the responsibilities imposed on a principal contractor by the WHS Legislation.
- (f) For the purposes of this clause 46.4, notwithstanding what is set out in a SOW or Direction, where the Contractor is deemed to be in Control of a Delivery Location (or part thereof):
 - (i) the Contractor is also deemed to be in Control of any access points to that Delivery Location; and
 - (ii) the Contractor is deemed to be in Control for all periods that the Contractor is performing Contractor's Activities, notwithstanding that the Contractor's Activities or Interface Contractor Work is not construction work.
- (g) The Contractor must comply with any Direction by TfNSW for the purposes of compliance with a condition or restriction of TfNSW's Accreditation, except to the extent that compliance with the Direction of TfNSW is inconsistent with the Contractor's obligations under paragraphs (c)(i) to (c)(iii).

46.5 Safety Interface Agreement

Where required under a SOW or by Law, the Contractor must:

- (a) subject to paragraph (b), enter into Safety Interface Agreements with Interface Contractors; and
- (b) prior to execution of any Safety Interface Agreement, submit a draft of the Safety Interface Agreement to TfNSW for Review.

46.6 Third Party Agreement

- (a) The Contractor:

- (i) acknowledges that TfNSW has entered or will enter into the Third Party Agreements;
- (ii) must:
 - (A) unless otherwise expressly specified in the Allocation Table, comply with, satisfy, carry out and fulfil the conditions and requirements of all Third Party Agreements, including those conditions and requirements that TfNSW is required, under the terms of the Third Party Agreements, to comply with, satisfy, carry out and fulfil; and
 - (B) comply with and fulfil any conditions, obligations or requirements allocated to the Contractor in the Allocation Table that are additional to or more stringent or onerous than the conditions and requirements described in paragraph (A);
- (iii) must assist TfNSW in any way that TfNSW reasonably requires to enable TfNSW to perform the obligations identified for TfNSW to perform in the Allocation Table;
- (iv) must comply with any reasonable Directions of TfNSW in relation to compliance with the relevant conditions and requirements of each Third Party Agreement;
- (v) must, where a Third Party Agreement provides for TfNSW to provide a document, notice or information to the Third Party, provide such document, notice or information to TfNSW (and not to the Third Party) within a reasonable time sufficient for TfNSW to review and comment on the document, notice or information and provide it to the Third Party within the time period required by a Third Party Agreement;
- (vi) must, in carrying out the Contractor's Activities:
 - (A) ensure that no act or omission of the Contractor or its Associates constitutes, causes or contributes to any breach by TfNSW of its obligations to the Third Party under the Third Party Agreement; and
 - (B) otherwise act consistently with the terms of the Third Party Agreement;
- (vii) agrees that whenever, pursuant to the terms of a Third Party Agreement, TfNSW makes an acknowledgment or gives a release or warranty, indemnity, or covenant to the Third Party under any clause of the Third Party Agreement then, subject to what is provided in the Allocation Table and the other terms of this Agreement, the Contractor is deemed to make the same acknowledgement or give the same release or warranty, indemnity or covenant to TfNSW on the same terms and conditions as the acknowledgement, release or warranty, indemnity or covenant made or given by TfNSW under a Third Party Agreement in the same way as if the relevant terms of the acknowledgement, release or warranty, indemnity or covenant were set out in full in this Agreement; and
- (viii) acknowledges that to the extent that a Third Party Agreement contains a provision pursuant to which the Third Party is stated to make no representation as to a state of affairs, the Contractor agrees that TfNSW similarly makes no representation to the Contractor in respect of that state of

affairs in the same way as if the relevant terms of the Third Party Agreement were set out fully in this Agreement.

- (b) The parties acknowledge that as at the date of commencement of a SOW:
 - (i) the terms and conditions of the Third Party Agreements identified in that SOW as "Draft" have not been finalised between TfNSW and the relevant Third Party (each a **Draft Third Party Agreement**); and
 - (ii) certain Third Party Agreements may need to be replaced with new agreements on different terms (each a **Replacement Third Party Agreement**).
- (c) The parties agree that the Contractor has reviewed the Third Party Agreements executed at the date of each SOW and the Draft Third Party Agreements and has included in the Fees under that SOW all of its costs (including the cost of all Contractor's Activities and allowance for any delay or disruption) in complying with its obligations under this clause 46.6 and TfNSW's obligations under those Third Party Agreements and the Draft Third Party Agreements, other than those responsibilities identified in the SOW for TfNSW to perform.
- (d) Following:
 - (i) finalisation of any Draft Third Party Agreement; or
 - (ii) the execution of any Replacement Third Party Agreement,after the date of the relevant SOW, TfNSW must promptly give the Contractor a copy of the:
 - (iii) executed version of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable), together with (in the case of a Replacement Third Party Agreement) details of the Third Party Agreement that is replaced; and
 - (iv) amendments (if any) to the Allocation Table arising out of the execution of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable) (**Revised Allocation**).
- (e) Within twenty-eight (28) days of receipt of an executed copy of a Draft Third Party Agreement or a Replacement Third Party Agreement (as applicable), and the associated Revised Allocation, the Contractor must inform TfNSW in writing if any terms and conditions of the:
 - (i) executed version of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); or
 - (ii) associated Revised Allocation,are more onerous than those contained in the:
 - (iii) relevant Draft Third Party Agreement; and
 - (iv) Allocation Table,(**Difference in Conditions**), and where the Difference in Conditions will result in:

- (v) additional administration, details of such additional administration costs to be incurred by the Contractor; or
- (vi) changes to the Contractor's Activities, or additional Contractor's Activities:
 - (A) not forming part of the existing Contractor's Activities; and
 - (B) which are otherwise in addition to any physical works contemplated by the Third Party Agreements executed at the date of this Agreement and the Draft Third Party Agreements,

the Contractor must provide TfNSW with:

- (vii) details of such additional Contractor's Activities and the cost of carrying out such additional Contractor's Activities; and
 - (viii) where the Difference in Conditions alters the Contractor's risk profile under this Agreement and creates a contingent liability which the Contractor did not previously bear and which may convert to an actual liability on the happening of another event (**Trigger Event**), details of the altered risk profile, contingent liability and Trigger Event and a notice of intention to Claim.
- (f) If TfNSW does not receive a notice from the Contractor under paragraph (e) within the twenty-eight (28) day period:
- (i) the Allocation Table is amended in accordance with the Revised Allocation as and from the date of receipt by the Contractor of the:
 - (A) executed copy of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); and
 - (B) Revised Allocation,under paragraph (d); and
 - (ii) the Contractor must carry out its obligations under this Agreement on the basis of the:
 - (A) executed version of the Draft Third Party Agreement or Replacement Third Party Agreement (rather than the Third Party Agreement that is replaced) (as applicable); and
 - (B) Revised Allocation,without any adjustment to the Fees or any entitlement to make any other Claim, including any extension of time or any Claim in respect of a Compensation Event.
- (g) If TfNSW receives a notice from the Contractor under paragraph (e) within the twenty-eight (28) day period, then the:
- (i) Allocation Table is amended in accordance with the Revised Allocation as and from the date of receipt by the Contractor of the:

- (A) executed copy of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); and
 - (B) Revised Allocation,

under paragraph (d);
- (ii) Contractor must carry out its obligations under this Agreement on the basis of:
 - (A) the executed version of the Draft Third Party Agreement or Replacement Third Party Agreement (rather than the Third Party Agreement that is replaced) (as applicable); and
 - (B) the Revised Allocation,

and paragraph (h) applies.
- (h) If TfNSW receives a notice from the Contractor under paragraph (e) within the twenty-eight (28) day period, TfNSW must:
 - (i) where the Contractor has provided the details referred to in paragraph (e)(v), give the Contractor a notice setting out TfNSW's determination of the reasonable, additional administration costs incurred or to be incurred by the Contractor in complying with the executed version of the Draft Third Party Agreement, the Replacement Third Party Agreement or Revised Allocation and the Fees will be increased by that amount;
 - (ii) where the Contractor has provided the details referred to in paragraph (e)(vi), if the terms of any executed version of a Draft Third Party Agreement, the relevant Replacement Third Party Agreement or Revised Allocation require the Contractor to change or carry out any additional Contractor's Activities which:
 - (A) do not form part of the Contractor's Activities; and
 - (B) are additional to any Works contemplated by the Third Party Agreements executed at the date of this Agreement and the Draft Third Party Agreements,

Direct the Contractor to carry out such change or additional Contractor's Activities as a Variation; and
 - (iii) where the Contractor has provided the details referred to in paragraph (e)(viii), TfNSW's obligation to make a determination in relation to the altered risk profile or contingent liability referred to in that paragraph is deferred until the Trigger Event occur, following which the following paragraphs (i) to (k) apply.
- (i) If:
 - (i) the Contractor issues a notice under paragraph (e) and provides the details referred to in paragraph (e)(viii); and
 - (ii) during the implementation of:

- (A) the executed Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); and
 - (B) the Revised Allocation a Trigger Event occurs,

the Contractor may issue a notice to TfNSW providing details of the reasonable costs incurred in satisfying the actual liability which has arisen.
- (j) If TfNSW receives a notice under paragraph (i), TfNSW must give the Contractor a notice setting out TfNSW's determination of the reasonable, additional costs incurred by the Contractor in satisfying the actual liability which has arisen and the Fees will be increased by that amount.
- (k) Notwithstanding the provisions of paragraphs (i) to (j), the amount of any additional costs incurred by the Contractor as a result of the circumstances referred to in paragraph (e)(viii) will not be added to the Fees unless the Contractor has taken all proper and reasonable measures to:
 - (i) avoid the Trigger Event; and
 - (ii) avoid or minimise the extra costs resulting from such circumstances.
- (l) The Contractor indemnifies and must keep indemnified each TfNSW Indemnified Person from and against any:
 - (i) Claim by a Third Party against the TfNSW Indemnified Person; or
 - (ii) liability of the TfNSW Indemnified Person, to a Third Party,

arising out of or in connection with a Third Party Agreement (including a Draft Third Party Agreement or a Replacement Third Party Agreement executed after the date of this Agreement) to the extent that the Claim or liability arises out of or in connection with a failure by the Contractor to comply with this clause 46.6 or a wrongful, negligent or reckless act or omission of the Contractor or any of its Associates.
- (m) Subject to any rights that the Contractor may have under clause 15.3 (Extension of Time) or clause 15.6 (Compensation Events), the Contractor agrees that it:
 - (i) bears the full risk of:
 - (A) complying with the obligations under this clause 46.6; and
 - (B) any acts or omissions of Third Parties in relation to Third Party Agreements unless otherwise specified in the Allocation Table; and
 - (ii) will not be entitled to make, and TfNSW will not be liable upon, any Claim arising out of or in connection with the risks referred to in paragraph (i).

47 Industrial and community relations

47.1 Industrial relations

- (a) The Contractor must perform its obligations under this Agreement so as to minimise industrial relations disputes and ensure that a good industrial climate is maintained.
- (b) The Contractor must ensure that at all times it complies with any and all employment and industrial relations obligations to the Contractor Personnel, including ensuring that:
 - (i) all relevant awards and formal industrial agreements are adhered to;
 - (ii) good safety practices in accordance with relevant legislation, awards and procedures contained in the relevant industry agreements are maintained; and
 - (iii) industrial relations are professionally managed.
- (c) Without prejudice to the generality of the foregoing provisions of this clause, the Contractor must, in carrying out the Contractor's Activities:
 - (i) assume sole responsibility for and manage all aspects of industrial relations of the Contractor Personnel for the Contractor's Activities;
 - (ii) ensure all Subcontractors manage all aspects of the industrial relations with their employees appropriately;
 - (iii) ensure that the rates of pay and conditions of employment specified in all relevant industrial, enterprise and project based agreements and awards, and any relevant Law, for all Contractor Personnel engaged in any capacity in connection with the Contractor's Activities, are always observed in full;
 - (iv) keep TfNSW fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the Contractor's Activities and the Program;
 - (v) without limiting clause 48.4 (NSW Code and NSW Guidelines), comply with all the requirements of the NSW Code and the NSW Guidelines;
 - (vi) conduct its industrial relations affairs in accordance with the Workplace Relations Management Plan developed and submitted by the Contractor in accordance with the PR;
 - (vii) not commence any work on the Delivery Locations until the Workplace Relations Management Plan required under the PR has been Confirmed;
 - (viii) submit to TfNSW, before beginning work on the Delivery Locations, a statement detailing the:
 - (A) location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;

- (B) names of each award or enterprise agreement that is likely to cover the Contractor and Subcontractors involved in the Contractor's Activities; and
 - (C) names of those responsible for coordinating industrial relations for the Contractor's Activities;
 - (ix) not do, or omit to do, anything that is, or is likely to be, prejudicial to the performance of the Contractor's Activities;
 - (x) before beginning work on the Delivery Locations, submit a statement on the Contractor's letterhead and signed by an authorised person, attesting to the Contractor's compliance, in the preceding twelve months, with all employment and legal obligations, including:
 - (A) payment of remuneration to employees;
 - (B) annual leave provisions;
 - (C) obligations to register workers under the *Building and Construction Industry Long Service Payments Act 1986* (NSW);
 - (D) workers' compensation insurance, including self-insurance arrangements (the Contractor's statement must also attest to the Contractor's compliance with its obligation to procure workers' compensation insurance under clause 64 (Insurance));
 - (E) superannuation fund membership and contributions; and
 - (F) over-award payments such as redundancy fund contributions; and
 - (xi) continue to provide during the Contractor's Activities appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for the Contractor's Activities.
- (d) If the Contractor engages an independent industry or employer association or other specialist organisation to audit and verify compliance with employment and legal obligations, a statement or declaration from that organisation may be submitted instead of the statement by the Contractor under paragraph (c)(x).
- (e) The industrial relations requirements contained in this Agreement and the NSW Code, and the NSW Guidelines:
- (i) are in addition to, but are not in substitution for, any requirements of Law; and
 - (ii) do not limit the powers of TfNSW or the liabilities and responsibilities of the Contractor.
- (f) The Contractor warrants and acknowledges that it has allowed in the Fees for all the costs and expenses involved with complying with all the requirements of this Agreement relating to industrial relations and all relevant awards, enterprise and industrial agreements and project specific agreements and awards.

- (g) The Contractor indemnifies and must keep indemnified the TfNSW Indemnified Persons against any Loss or Claim suffered or incurred as a result of or in connection with any industrial relations dispute or Industrial Action which arises as a result of a failure by the Contractor to comply with this clause 47.1 or a wrongful, negligent or reckless act or omission of the Contractor or any of its Associates.

47.2 Community relations

The Contractor:

- (a) acknowledges that the areas where the Contractor's Activities are being carried out are of great importance to many people, including local residents and businesses; and
- (b) must participate in all community relations and involvement programs and activities as:
 - (i) required by the PR;
 - (ii) required by any Approvals; and
 - (iii) otherwise reasonably required by TfNSW from time to time.

48 NSW Government obligations

48.1 SME Participation Plan – Reporting and Compliance

- (a) This clause 48.1 applies in connection with the Contractor's Small & Medium Enterprises Participation Plan submitted under the NSW Government's Small and Medium Enterprise and Regional Procurement Policy (**SMERPP**).
- (b) The Contractor acknowledges that TfNSW:
 - (i) has relied on the SMERPP in awarding the Transaction Documents and each SOW to the Contractor; and
 - (ii) may take into consideration non-compliance by the Contractor with the SMERPP when evaluating other tenders submitted by the Contractor to TfNSW in the future and may report such non-compliance to other NSW Government Authorities including to Procurement NSW.
- (c) The Contractor must comply with the requirements and commitments provided for in the SMERPP and take all steps reasonably required to enable TfNSW to monitor compliance by the Contractor with the SMERPP.
- (d) The parties acknowledge and agree that:
 - (i) TfNSW may establish mechanisms to monitor compliance by the Contractor with its commitments under the SMERPP; and
 - (ii) non-compliance by the Contractor with the SMERPP commitments will constitute a material breach for the purposes of paragraph (a) of the definition of Material Breach.

48.2 Social Procurement Workforce

- [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

[illegible]

- (a) The Contractor acknowledges that TfNSW, any Rail Transport Entity or any Government Authority may make policy decisions in relation to the development and implementation of transport planning in New South Wales as it sees fit. Nothing in this Agreement restricts this.
- (b) The Contractor must participate as reasonably required by any Rail Transport Entities or Government Authorities in the development and implementation of transport planning. This participation may involve:
 - (i) attending meetings, consultation forums and other similar events;

- (ii) reviewing and contributing to the development of proposals and strategies put forward by the Rail Transport Entities, Government Authorities or other transport operators and stakeholders;
 - (iii) providing comments on the impact of proposals and strategies on the Program; and
 - (iv) cooperating in good faith in the implementation of TfNSW's public transport policy objectives, as notified to the Contractor.
- (c) The Contractor will have no entitlement to make any Claim against any TfNSW Indemnified Person or any other Rail Transport Entity or Government Authority with respect to any consequence of such person exercising, or not exercising, any right or power in relation to the development and implementation of transport planning in New South Wales, except as expressly provided in this Agreement.

48.4 NSW Code and NSW Guidelines

- (a) In addition to terms defined in this Agreement, terms used in this clause have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.
- (b) Subject to paragraph (c), the Contractor must at all times comply with, and meet any obligations imposed by the NSW Code and the NSW Guidelines.
- (c) The Contractor's obligations with respect to the NSW Guidelines will apply only to the extent that the Contractor is performing activities within the scope of the NSW Guidelines.
- (d) The Contractor must notify the CCU and TfNSW of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within twenty-four (24) hours of becoming aware of the possible non-compliance.
- (e) Where the Contractor engages a Subcontractor, the Contractor must ensure that the contract imposes on the Subcontractor equivalent obligations to those in this clause, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (f) The Contractor must not appoint or engage another party in relation to the Works where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.
- (g) The Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors and related entities.
- (h) The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises controlled by the Contractor, including the Delivery Locations;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the Works;

(v) have access to personnel; and

(vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Contractor and its Associates.

- (i) The Contractor and its Associates must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.
- (j) The Contractor warrants that at the time of entering into this Agreement, neither it, nor any of its Associates, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (k) If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (l) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - (A) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
 - (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.
- (m) The Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make a claim for extension of time from TfNSW or the State of NSW or to treat compliance with the NSW Code or NSW Guidelines as a Compensation Event.
- (n) Compliance with the NSW Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the Contractor's Activities and any other obligation under this Agreement, or from liability for any Defect or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (o) Where a change in this Agreement or the Contractor's Activities is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Contractor must immediately notify TfNSW (or nominee) of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;

- (ii) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
- (iii) what steps the Contractor proposes to take to mitigate any adverse impact of the change,

and TfNSW will Direct the Contractor as to the course it must adopt within ten (10) Business Days of receiving notice.

49 International obligations

49.1 Anti-bribery and anti-corruption

Without limiting any other provision of this Agreement, the Contractor must:

- (a) comply with all applicable anti-bribery and anti-corruption legislation, including the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) and similar Laws of other countries that are applicable;
- (b) maintain and enforce its own policies and procedures, including adequate procedures to ensure compliance with all applicable anti-bribery and anti-corruption legislation; and
- (c) use all reasonable endeavours to ensure that Contractor Personnel, officers, employees and agents comply with this clause.

49.2 Anti-slavery and human trafficking

Without limiting any other provision of this Agreement, the Contractor must:

- (a) not engage in (and take reasonable steps to ensure that in the Contractor's operations and supply chains there are not) activities, practices or conduct:
 - (i) that would constitute an offence under Modern Slavery Laws; or
 - (ii) which occurs outside of an Australian jurisdiction which would constitute an offence under Modern Slavery Laws if it had taken place within the relevant Australian jurisdiction;
- (b) notify TfNSW as soon as reasonably practicable after it becomes aware of any actual or suspected activity, practice or conduct of the kind described in paragraph (a);
- (c) provide TfNSW with all information and records reasonably requested by TfNSW, in order for TfNSW to comply with its reporting obligations under the *Modern Slavery Act 2018* (Cth), *Modern Slavery Act 2018* (NSW) and equivalent legislation in the other Australian states and territories, within thirty (30) days of TfNSW's request; and
- (d) warrant that it will comply with the mandatory reporting requirements under the *Modern Slavery Act 2018* (Cth), *Modern Slavery Act 2018* (NSW) and equivalent legislation in the other states and territories, to the extent applicable, and provide a copy of its modern slavery statement produced in accordance with such legislation to TfNSW within thirty (30) days of being required to produce such statement under the relevant legislation.

49.3 Compliance with USA Export Regulations

- (a) The parties acknowledge that the U.S. Export Administration Regulations set forth in Title 15 of the U.S. Code of Federal Regulations "Commerce and Foreign Trade" control the export and re-export of certain controlled commercial items that may form part of the information disclosed to the Contractor pursuant to this Agreement (in particular, information received by TfNSW from ARTC in respect of ATMS) (the **Sensitive Information**).
- (b) The Contractor acknowledges that TfNSW (and, if applicable, ARTC) is bound to comply with the U.S. Export Administration Regulations in respect of such Sensitive Information. As such, and without prejudice to the Contractor's obligation to comply with the Mandatory Requirements set out in clause 43.1 (Mandatory Requirements), the Contractor:
 - (i) must comply, and ensure all Contractor Personnel and Subcontractors comply, with the U.S. Export Administration Regulations in respect of the use and handling of such Sensitive Information;
 - (ii) agrees that any such information will be clearly labelled by ARTC with restrictions that will apply to relevant information disclosure and dissemination to and within the Contractor (which may exclude the information from being provided to people who are citizens of, or have certain connections with, foreign countries), and the Contractor must comply, and ensure all Contractor Personnel and Subcontractors comply, with those restrictions; and
 - (iii) must not, and must ensure that its Contractor Personnel and Subcontractors do not, do anything that would result in TfNSW failing to comply with its obligations under the U.S. Export Administration Regulations or to any Third Party (including ARTC) in respect of such Sensitive Information.

50 Environmental

The Contractor acknowledges and agrees that:

- (a) if any of the Contractor's Activities, or the activities of any of the Contractor Personnel, in connection with the Contractor's Activities (the **Relevant Matters**) constitute a "facility" within the meaning of the NGER Legislation, then, for the purposes of the NGER Legislation, the Contractor has operational control of that facility and will comply with any obligations arising in respect of TfNSW's activities under the NGER Legislation;
- (b) if, despite the operation of paragraph (a), TfNSW incurs, or (but for this clause) would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with any of the Relevant Matters, and the NGER Legislation provides that such liability can be transferred by TfNSW or the NSW Government or any of its agencies to the Contractor, the Contractor must, on the written request of TfNSW, do all things reasonably necessary to ensure the liability is transferred to the Contractor;
- (c) if TfNSW requests it, the Contractor must provide Greenhouse Data to TfNSW:
 - (i) to the extent that, in a manner and form that, and at times that, will enable TfNSW to comply with the NGER Legislation irrespective of whether TfNSW

or the Contractor or any other person has an obligation to comply with the NGER Legislation in connection with any Relevant Matters; and

(ii) otherwise as requested by TfNSW from time to time,

relating to the transportation of any Assets or Australian Delivery Locations where the Contractor's Activities are performed;

- (d) the Contractor must also provide to TfNSW all Greenhouse Data and other information which the Contractor provides to any other person under the NGER Legislation in connection with any Relevant Matters, at the same time as the Contractor provides that Greenhouse Data or other information to that other person;
- (e) the Contractor must:
 - (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the Contractor to discharge its obligations under this clause, and keep that Greenhouse Data for at least seven (7) years after the end of the year in which the Relevant Matters occur; and
 - (ii) permit any persons appointed or authorised by TfNSW to examine, monitor, measure, copy, audit and/or verify the Greenhouse Data and co-operate with and provide all reasonable assistance to any such persons (including by doing such things as giving access to premises, plant and equipment, producing and giving access to documents and answering any relevant questions);
- (f) TfNSW may provide or otherwise disclose the Greenhouse Data and any other information which TfNSW obtains under this clause to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as TfNSW sees fit; and
- (g) nothing in this clause 50 is to be taken as meaning that TfNSW has agreed to perform any statutory obligation that the Contractor may have regarding the provision of Greenhouse Data to any Government Authority.

51 Incident management

- (a) The Contractor must develop and implement clear guidelines for anticipating, and for responding to, any Incident arising (or which may arise) from the performance of the Contractor's Activities, and establish procedures to ensure that TfNSW is promptly notified of any Incident in accordance with the PR as it applies to Incident and Security Management.
- (b) Without limiting paragraph (a), if the Contractor becomes aware of an Incident, the Contractor must, at its cost:
 - (i) immediately inform TfNSW of the Incident;
 - (ii) keep TfNSW informed about the Incident; and
 - (iii) provide TfNSW with sufficient information to enable TfNSW to assess the nature of the Incident and the likely effect of the Incident.

- (c) If any Incident causes or is likely to cause the:
- (i) Network, NSW Rail Assets or any Rail Transport Entity Sites;
 - (ii) safety of any Rail Transport Entity's passengers, station patrons or representatives of TfNSW or any Rail Transport Entity; or
 - (iii) operations of the Network,
- to be at risk (as determined by TfNSW in its absolute discretion), the Contractor must:
- (iv) immediately co-operate with TfNSW's requests in respect of the Incident (including by ceasing to carry out that part of the Contractor's Activities in respect of which the Incident applies and, if applicable, ceasing any access rights it has in respect of the Network or vacating the Rail Corridor); and
 - (v) at its cost assist TfNSW and/or the relevant Rail Transport Entity to take such action as TfNSW Directs is necessary to avert any danger and ameliorate the risk.
- (d) Subject to sections 2.3(h), (i) and (j) of Schedule 10 (Physical Works), in relation to any environmental or safety Incident involving Contamination or other waste that arises during the performance of the Contractor's Activities, the Contractor must:
- (i) promptly take all appropriate action to manage and dispose of all Contamination or other waste arising from the Incident;
 - (ii) comply with all relevant Laws including any requirements to give notice to a relevant Government Authority; and
 - (iii) manage the incident in a manner which minimises damage to the reputation of TfNSW including complying with any reasonable request of TfNSW.
- (e) Without prejudice to TfNSW's other rights under this Agreement, if TfNSW forms the reasonable view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the Contractor is not taking adequate measures to manage the Incident or control or eliminate the adverse impact or the risk of such an Incident arising in the future, TfNSW may take such actions as it deems necessary to overcome and alleviate the cause and consequences of any Incident. If TfNSW takes any such action it will be entitled to recover its reasonable costs and expenses from the Contractor as a debt due from the Contractor to TfNSW.
- (f) Without prejudice to TfNSW's other rights under this Agreement, TfNSW may issue a Direction under clause 55 (Suspension) requiring the Contractor to suspend the carrying out of the whole or any part of the Contractor's Activities in the event of any Incident, involving:
- (i) a significant spill of Contamination;
 - (ii) any accident or release of Contamination which it believes may pose a danger to health, life or property;
 - (iii) any actual damage to the Environment or a significant risk of harm to the Environment; or

- (iv) any safety incident occurs which leads to, or has the potential to lead to, a fatality or injury to any person (including any incident which must be reported to SafeWork NSW) or damage to property.
- (g) The Contractor will not be entitled to make, and TfNSW will not be liable upon, any Claim for any Loss arising out of or in connection with:
 - (i) any suspension due to a Direction to suspend issued, or for a failure to issue a notice to suspend, in the circumstances set out in paragraph (f); or
 - (ii) complying with a Direction issued under paragraph (f).
- (h) TfNSW may recover (as a debt due from the Contractor to TfNSW) its reasonable costs and expenses for any action TfNSW deems necessary to avoid the issue of any notice to suspend in the circumstances set out in paragraph (f) due to the Contractor's, its agents' or its Subcontractors' act or omissions in performing the Contractor's Activities.

52 Dealings with regulators

52.1 Cooperation with Investigative Authorities

Without limiting any other provision of this Agreement, the Contractor must:

- (a) promptly give all Investigative Authorities such access to premises and information as any Investigative Authority lawfully requests, within the time requested;
- (b) cooperate with and respond to any lawful requests made by an Investigative Authority, within the time requested; and
- (c) not hinder or delay any Investigative Authority in carrying out its duties.

52.2 Enforcement

The Contractor must comply with any requirement, notice, order or direction received from or given to it by any Investigative Authority in connection with the Contractor's Activities, including any infringement notice, fine or penalty it receives.

Part K Non-performance

53 Action Plans and Enhanced Cooperation

53.1 Preparation of Action Plans

- (a) If requested to do so by TfNSW or if required by this Agreement, the Contractor must prepare an Action Plan and submit the Action Plan to TfNSW in accordance with this clause 53.
- (b) The draft Action Plan must specify (in a level of detail reasonably satisfactory to TfNSW):
 - (i) the process for identifying, and where applicable must identify, the cause of the failure, deficiency in the Contractor's Activities, problem or concern (**Failure**) that the Action Plan is intended to remedy or prevent;
 - (ii) if remedy of the Failure is possible, the actions that will be implemented by the Contractor to effect that remedy;
 - (iii) the actions that will be implemented by the Contractor to prevent the same or a substantially similar Failure from occurring in the future;
 - (iv) a timeline for the implementation of the Action Plan; and
 - (v) any other content that may reasonably be requested by TfNSW from time to time.
- (c) The Action Plan will be discussed at the Commercial Management Meeting or the Delivery Management Meeting, as required by TfNSW.

53.2 Implementation of Action Plans

- (a) Once an Action Plan is approved by TfNSW, the Contractor must implement that Action Plan:
 - (i) at no cost to TfNSW, unless otherwise agreed between the parties and set out in the Action Plan; and
 - (ii) in accordance with the timeframe and other terms specified in that Action Plan.
- (b) The provision by the Contractor, the approval by TfNSW, and/or the implementation of, an Action Plan does not waive, limit, prejudice or otherwise affect any other rights or remedies TfNSW may have under this Agreement or at Law, including TfNSW's right to:
 - (i) terminate this Agreement (wholly or in part) under clause 58 (Termination); and/or
 - (ii) claim or recover Losses.
- (c) In addition to any other rights that TfNSW may have, TfNSW may exercise its rights under clause 53.3 (Enhanced Cooperation Right) and/or immediately terminate one or more affected SOWs by giving the Contractor notice if:

- (i) a draft Action Plan is submitted three (3) or more times in relation to the same Failure and none of the versions of the Action Plan have been approved by TfNSW;
- (ii) the Contractor fails to implement an Action Plan; or
- (iii) the Contractor implements an Action Plan and the:
 - (A) Action Plan fails to remedy the Failure that gave rise to the development and implementation of the Action Plan; or
 - (B) same, or a substantially similar, Failure as that which gave rise to the development and implementation of the applicable Action Plan occurs; and thenthe Contractor implements a second Action Plan and the:
 - (C) Action Plan fails to remedy the Failure that gave rise to the development and implementation of the Action Plan; or
 - (D) same, or a substantially similar, Failure as that which gave rise to the development and implementation of the applicable Action Plan occurs.

53.3 Enhanced Cooperation Right

If any of the circumstances referred to in clause 53.2(c)(i) to 53.2(c)(iii) occur or TfNSW reasonably considers that the Action Plan procedure set out in clauses 53.1 (Preparation of Action Plans) and 53.2 (Implementation of Action Plans) either is not appropriate on its own or has not resolved or is not likely to resolve the relevant Failure, then TfNSW may require the Contractor to:

- (a) enable TfNSW or its nominated TfNSW Personnel to work alongside and supervise the Contractor Personnel to understand and collaborate on how to resolve the relevant Failure;
- (b) promptly provide TfNSW or its nominated TfNSW Personnel with such information (in addition to any information required to be provided under the other provisions of this Agreement), and access to the Delivery Locations used in the provision of the Contractor's Activities as TfNSW may reasonably request to enable it fully to understand the nature and causes of the Failure, other information relevant to the Contractor's Activities, and the steps (if any) being taken or considered by the Contractor to remedy such Failure; and
- (c) procure that such members of the Contractor's senior management engaged or familiar with the delivery of the Contractor's Activities:
 - (i) attend in person, at TfNSW's chosen location, meetings with representatives of TfNSW as soon as reasonably practicable and on no more than two (2) Business Days' notice; and
 - (ii) are directly responsible for management and oversight of resolution of the relevant circumstances, problem, risk or issue, remotely providing comprehensive daily updates (or updates at such other frequency as TfNSW may require) on such resolution to TfNSW.

54 Performance Remediation

- (a) TfNSW may exercise the rights described in paragraph (b) immediately where:
 - (i) in TfNSW's opinion, the performance of the Contractor's Activities poses or is likely to pose a safety concern or a risk to persons or property;
 - (ii) in TfNSW's opinion, the Contractor has suffered an Insolvency Event or is evidencing an intention to do any act that would constitute an Insolvency Event;
 - (iii) any Asset fails to pass any testing, Review, Verification or validation activities to TfNSW's satisfaction (acting reasonably) more than two (2) times, and the Contractor fails to remedy that failure within a period of ten (10) Business Days (or such longer period as may be agreed by the parties);
 - (iv) the Contractor fails, or in TfNSW's opinion (acting reasonably) is likely to fail, to comply with or perform any obligation under this Agreement, and:
 - (A) the default or non-performance is incapable of being remedied; or
 - (B) the Contractor fails to remedy the default or non-performance, or the act or omission likely to result in the default or non-performance (as applicable), within ten (10) Business Days (subject to appropriate access being provided) of TfNSW notifying the Contractor to do so (or such longer period as notified by TfNSW); or
 - (v) any event occurs which would entitle TfNSW to terminate this Agreement.
- (b) If one of the events described in paragraph (a) occurs, TfNSW may by notice to the Contractor, at its option:
 - (i) assist, or engage a Third Party to assist, the Contractor to perform any part of the affected Contractor's Activities (the **Affected Activities**);
 - (ii) nominate TfNSW representatives to be included in the Contractor's team tasked with the resolution of the breach and restoration of the Affected Activities, in which case the Contractor must:
 - (A) ensure that such TfNSW representatives are invited and permitted to be involved in all aspects of the resolution and restoration; and
 - (B) comply with any Directions given to the Contractor Personnel by such TfNSW representatives;
 - (iii) appoint a person as remediation manager to manage the Contractor's performance of the Affected Activities;
 - (iv) take control of the Affected Activities, and in so doing take any action that TfNSW or its nominee believes is necessary to restore or rectify the Affected Activities, including having TfNSW or its nominee:
 - (A) give Directions to Contractor Personnel;

- (B) do all other things TfNSW considers necessary to take over control of the Affected Activities; and/or
 - (C) provide goods or perform services which are the same as or similar to the Affected Activities itself or procure such goods or services from a Third Party (or require the Contractor to do so);
 - (v) without limiting the above, assist, or engage a Third Party to assist, the Contractor in managing the performance of a subcontract, or perform itself, or engage a Third Party to perform, the obligations under a subcontract;
 - (vi) require the novation of a subcontract on the terms of clause 27.10 (Novation of Key Subcontracts) as if that clause applied to all Subcontractors and not just Key Subcontractors; and/or
 - (vii) take such other action as is reasonably necessary to restore the affected function or remedy the relevant issue.
- (c) TfNSW will continue to pay the Fees for the duration of the performance remediation. The Contractor will reimburse TfNSW the costs incurred by TfNSW as a result of any exercise by TfNSW of its rights under this clause 54. Amounts payable by the Contractor to TfNSW under this paragraph (c) will be deducted from the Contractor's payment claim following the process set out in clause 29 (Invoices and Payment) for the next payment that is due following incurrence of those costs by TfNSW provided that if TfNSW terminates this Agreement prior to such payment becoming due, any amounts payable under this paragraph (c) will become a debt due and payable by the Contractor within twenty (20) Business Days of demand by TfNSW.
- (d) TfNSW must cease the exercise of its performance remediation activities if the Contractor demonstrates to TfNSW's satisfaction that the Contractor is able to recommence performance of the Affected Activities as required by this Agreement. TfNSW may at any time cease to exercise its performance remediation activities by notice to the Contractor. The Contractor must resume performance of its obligations under this Agreement that are the subject of the performance remediation in accordance with the period specified in the notice.
- (e) The Contractor must fully cooperate with TfNSW (and its nominees) and provide all reasonable assistance, access, materials and work-in-progress at no charge in connection with TfNSW's exercise of its rights under this clause 54, which may include provision of the Contractor's Equipment or copies of the Software (including associated source code).
- (f) Nothing in this clause limits the Contractor's liability to TfNSW in relation to any default or non-performance by the Contractor under this Agreement, including any right of damages or termination under this Agreement.
- (g) The Contractor will not be liable for any damage caused to TfNSW to the extent caused by TfNSW exercising its performance remediation rights or to the extent arising due to the acts or omissions of a Rail Transport Entity or any Other Contractor as part of the exercise by TfNSW of its performance remediation activities under this clause 54.
- (h) Without limiting any other term of this clause 54 or clause 53.3 (Enhanced Cooperation Right), where TfNSW provides any assistance, materials or resources to support or help the Contractor in performance of any Contractor's Activities or

the conduct of any remediation activities in connection with this clause 54 or clause 53.3 (Enhanced Cooperation Right), the provision of such assistance, materials or resources in no way limits the Contractor's obligations or warranties under this Agreement or reduces the Contractor's liability under this Agreement. This clause is without limitation to any rights available to the Contractor pursuant to clauses 15.3 (Extension of Time) or 15.6 (Compensation Events).

55 Suspension

- (a) TfNSW may at any time, by notice to the Contractor, suspend any or all aspects of this Agreement (including one or more SOWs) for such period as TfNSW considers necessary (**Suspension Notice**).
- (b) Subject to paragraph (c), if TfNSW serves a Suspension Notice, then:
 - (i) both parties will be relieved from their obligations under this Agreement in respect of the suspended aspects of this Agreement only for the period specified in the Suspension Notice;
 - (ii) if the suspension affects the Contractor's ability to meet a Milestone Date, then the Contractor will be entitled to submit a claim for an extension of time under clause 15.3 (Extension of Time); and
 - (iii) the Contractor must recommence performance of its obligations in respect of those suspended aspects on the date specified in the Suspension Notice or as otherwise Directed by TfNSW.

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

[REDACTED]

■

[REDACTED]

■

[REDACTED]

- (d) Each of the following is a condition precedent to the Contractor being entitled to recover Fees or costs under paragraph (c):
- (i) in respect of Fees or costs under paragraphs (c)(i)(A) and (c)(i)(B) only, the Contractor being able to substantiate its claim for those Fees based on time that such Contractor Personnel were not able to work and did not work on this Program or any other project or account due to the suspension and demonstrate how it has minimised such costs, to TfNSW's reasonable satisfaction;
 - (ii) the relevant Fees or costs have not been incurred as a result of, and the suspension has not otherwise been caused by, the Contractor's failure to comply with the Collaboration Principles or the Interface Requirements;
 - (iii) unless the parties agree otherwise, the Contractor has followed and continues to follow the process set out in clause 33 (Resolution of Matters) and has provided an Initial Early Warning Notice and, where required, a Detailed Early Warning Notice within the timeframes set out in, and that meets the requirements of, section 2 (Issue Resolution Procedure) of Schedule 18 (Issue Resolution Procedure);
 - (iv) the cause and extent of the suspension is beyond the reasonable control of the Contractor; and
 - (v) the Contractor has used and continues to use all reasonable endeavours to mitigate the effects of the suspension and works and co-operates with the Rail Transport Entities and Other Contractors to mitigate the extent and impact of the suspension and any associated costs or expenses.
- (e) If any of the conditions precedent in paragraph (d) are not satisfied:
- (i) no Fees or costs will be recoverable under paragraph (c) in respect of the suspension;

- (ii) TfNSW will not be liable upon any Claim by the Contractor; and
 - (iii) the Contractor cannot make any Claim against TfNSW, arising out of or in connection with the suspension.
- (f) Without limiting or otherwise restricting this clause 55, if the suspension under paragraph (a) arises as a result of the Contractor's failure to carry out its obligations in accordance with this Agreement (including under clause 45.1 (AEO Authorisation) or where the Contractor fails to comply with its obligations in relation to its AEO Authorisation or ASA compliance in accordance with this Agreement):
 - (i) paragraphs (b)(i), (b)(ii) and (c) will not apply with respect to the Contractor;
 - (ii) TfNSW may set out in its Suspension Notice the steps that the Contractor must take before TfNSW will issue a Direction pursuant to paragraph (b)(iii), and the Contractor must comply with such steps; and
 - (iii) the Contractor will not be entitled to make, and TfNSW will not be liable for, any Claim or extension of time arising out of, or in connection with, the suspension.
- (g) This clause sets out the Contractor's sole and exclusive rights and remedies in relation to a suspension and any costs or expenses arising as a consequence of it. Notwithstanding any other provision of this Agreement (including any provision of this Agreement entitling the Contractor to an increase in the Fees for additional costs, or to the payment of additional costs), the amounts payable pursuant to paragraph (c) will be a limitation upon TfNSW's liability to the Contractor for any delay, disruption or additional costs or expenses that arises out of, or in connection with, the suspension, and the Contractor will not be entitled to make, nor will TfNSW be liable upon, any Claim in these circumstances other than for the amount which is payable by TfNSW in accordance with paragraph (c).

56 Financial Standing and Unconditional Undertaking

56.1 Evidence of financial standing or financial arrangements

- (a) Without limiting clause 34 (Records and Audit), the Contractor must, as and when requested by TfNSW from time to time, promptly, and in any event within the period stated in TfNSW's request, provide TfNSW with a copy of such evidence reasonably required by TfNSW which demonstrates the:
 - (i) Contractor's financial capacity to meet all of its obligations under this Agreement; and
 - (ii) Guarantor's financial capacity to perform its obligations under the Parent Company Guarantee.
- (b) The Contractor must promptly notify TfNSW of:
 - (i) any material change to any information provided by the Contractor under paragraph (a); 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 Transaction Documents (other than the TLS Agreement).

- (c) 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 TfNSW or its nominees in relation to any review of:
 - (i) any information provided by the Contractor or the Guarantor under this clause; or
 - (ii) the Contractor's or the Guarantor's financial capacity to meet their obligations under the Transaction Documents (other than the TLS Agreement).

56.2 Form of Unconditional Undertaking

- (a) The Contractor must provide each unconditional undertaking required under a Statement of Work, at the times and for the amounts specified in that Statement of Work. The unconditional undertakings to be provided under this paragraph and the remainder of this clause 56 are for the purpose of ensuring the due and proper performance by the Contractor of its obligations under this Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (c) TfNSW:
 - (i) may have recourse to any unconditional undertaking provided under this Agreement at any time;
 - (ii) is not obliged to pay the Contractor interest on:
 - (A) any unconditional undertaking; or
 - (B) the proceeds of any unconditional undertaking if it is converted into cash; and
 - (iii) does not hold the proceeds referred to in paragraph (c)(ii)(B) on trust for the Contractor.
- (d) The Contractor must not take any steps to injunct or otherwise restrain:
 - (i) any issuer of any unconditional undertaking provided under this Agreement or receiving payment under any such unconditional undertaking; or
 - (ii) TfNSW using the money received under any unconditional undertaking provided under this Agreement.

56.3 Release of Unconditional Undertaking

- (a) Subject to its rights to have recourse to the unconditional undertakings, and subject to paragraph (c), TfNSW must release each unconditional undertaking referred to in clause 56.2(a) within twenty-eight (28) days of the relevant release date for that unconditional undertaking referred to in the relevant SOW.
- (b) If TfNSW terminates a SOW pursuant to clause 58.4 (Termination by TfNSW for Convenience) or the Contractor terminates this Agreement pursuant to clause 58.5 (Termination by the Contractor for cause), then to the extent that TfNSW has not had recourse to it, upon the expiry of all relevant Defects Liability Periods under the relevant SOW TfNSW must release all security then held by it, and provided to it by the Contractor, pursuant to the relevant SOW provided that the Contractor has complied with its obligations under clause 58.8 (Return of Information).
- (c) Despite any other provision of this Agreement to the contrary, where this Agreement may otherwise require TfNSW to release an unconditional undertaking, or this Agreement is terminated by TfNSW, TfNSW may continue to hold the unconditional undertaking after the date for its release or the termination of this Agreement to the extent of any Claim which TfNSW may have against the Contractor arising out of, or in connection with, this Agreement or the Contractor's Activities whether for damages (including liquidated damages) or otherwise.

56.4 Replacement Unconditional Undertaking

[illegible]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

57 Force Majeure

57.1 Force Majeure Events

- (a) If a party is unable to perform an obligation under this Agreement because of a Force Majeure Event (the **Affected Party**), then:
 - (i) as soon as reasonably practicable (and in any event no later than ten (10) Business Days) after the Force Majeure Event arises, the Affected Party must notify the other party and describe in reasonable detail the nature of the Force Majeure Event and the extent to which the Affected Party is unable to perform its obligation;
 - (ii) where an Affected Party complies with paragraph (a)(i):
 - (A) subject to clause 57.2(a), the Affected Party will not be liable for any failure to perform those obligations for the duration of the delay arising directly out of the Force Majeure Event; and
 - (B) if the Force Majeure affects the Contractor's ability to meet a Milestone Date, then the Contractor will be entitled to submit a claim for an extension of time under clause 15.3 (Extension of Time); and
 - (iii) the parties must use their best endeavours to minimise the impact of any Force Majeure Event (including using best endeavours to continue to perform the relevant obligations) and resume performance of any suspended obligations in accordance with this Agreement as soon as possible.
- (b) The Affected Party must take all reasonable steps to mitigate any Losses caused to the other party and itself.

57.2 No relief

- (a) Neither party is relieved from (or excused from any liability in connection with):
 - (i) their obligations under this Agreement where the Force Majeure Event is within their reasonable control or where it:
 - (A) could have been prevented by the Affected Party taking reasonable precautions;
 - (B) could be remedied or overcome by the Affected Party through the use of reasonable alternate sources, workarounds or other means readily available to the Contractor or any of its Related Bodies Corporate; or
 - (C) results from any act or omission on the part of the Affected Party or its Associates (including a breach of a Transaction Document by the Affected Party); and
 - (ii) any obligation to pay money because of a Force Majeure Event.
- (b) Any failure to perform by a Subcontractor will not constitute a Force Majeure Event in respect of the Contractor unless the Subcontractor was itself subject to a Force Majeure Event.
- (c) The Contractor will not be entitled to any additional payment from TfNSW or to recover any additional costs it may incur as a result of the occurrence or the rectification of any Force Majeure Event to which the Contractor, its Subcontractors or agents are subject.

57.3 Termination

If a delay or non-performance by the Contractor arising out of a Force Majeure Event continues for more than forty-five (45) Business Days, TfNSW may terminate the Agreement and/or the affected SOW with immediate effect by giving notice to the Contractor.

57.4 Government Action

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- Gilbert + Tobin

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

58 Termination

- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]



**58.4 Termination by TfNSW for convenience**

- (a) TfNSW may terminate this Agreement in whole or in part, at any time by giving the Contractor at least twenty (20) Business Days' notice. Where TfNSW terminates this Agreement under this paragraph (a), clauses 58.7(c) and 58.7(d) will apply.
- (b) Subject to clauses 58.7(c) and 58.7(e), where TfNSW terminates this Agreement in whole under paragraph (a), TfNSW will return all unconditional undertakings then held by TfNSW under clause 56 (Financial Standing and Unconditional Undertaking) provided that the Contractor has complied with all its obligations under this clauses 58.7 and 58.8 and clause 59 (Disengagement).

58.5 Termination by the Contractor for cause

- (a) Without prejudice to TfNSW's obligations under clause 29 (Invoices and Payment) the Contractor may terminate this Agreement, as a whole, by notice to TfNSW, if:
 - (i) any Fees due and payable by TfNSW under this Agreement are more than two (2) months overdue;
 - (ii) after those Fees have become more than two (2) months overdue, the Contractor has raised the overdue payment the subject of paragraph (i) at the relevant governance forum and has issued an Initial Early Warning Notice in respect of the amount overdue stating that the Contractor intends to terminate the Agreement if TfNSW does not pay the amount within thirty (30) days after receipt of the notice;
 - (iii) there is no dispute between TfNSW and the Contractor in relation to such Fees; and
 - (iv) TfNSW fails to pay such Fees to the Contractor by the later of:
 - (A) a further thirty (30) days following the Contractor's issuance of the Initial Early Warning Notice requiring payment of such Fees; and
 - (B) thirty (30) days following the conclusion of the Issue Resolution Procedure in respect of such Fees.
- (b) Where the Contractor terminates this Agreement under paragraph (a), clauses 58.7(c) and 58.7(d) will apply.
- (c) The parties acknowledge that the termination rights set out in this clause 58.5 are an exhaustive statement of the Contractor's rights to terminate this Agreement.

58.6 Partial Termination

- (a) A reference to termination of this Agreement "*in part*" in this clause 58 (Termination) means termination of one or more SOWs or termination of particular parts of this Agreement or of one or more SOWs.
- (b) If TfNSW exercises a right to terminate in part under this clause 58:
 - (i) TfNSW has the sole discretion as to which part or parts of this Agreement are to be terminated; and
 - (ii) TfNSW must specify:
 - (A) appropriate variations to the remaining portion of this Agreement; and
 - (B) how the rights and obligations in clause 59 (Disengagement) must be implemented by the Contractor in respect of the terminated parts.

58.7 Consequences of expiry or termination

- (a) Except as set out otherwise in this Agreement, the expiry or termination of this Agreement does not affect:
 - (i) either party's rights in respect of any breach of this Agreement occurring before such expiry or termination;
 - (ii) the obligations of the parties to make a payment under this Agreement which was due before such expiry or termination, as further described in Schedule 11 (Pricing Terms);
 - (iii) the obligations of the parties to perform any other act under this Agreement which was due before such expiry or termination; and/or
 - (iv) each perpetual licence granted by the Contractor under this Agreement (which to avoid doubt will continue in full force and effect).
- (b) Without prejudice to TfNSW's exercise of its other rights under this Agreement, on expiry or termination of this Agreement the Contractor must, as requested by TfNSW, offer to TfNSW the Contractor's Equipment, Assets, Software and Third Party contracts on the terms set out in Schedule 11 (Pricing Terms) and Schedule 20 (Disengagement).
- (c) Where TfNSW terminates this Agreement under clauses 58.3(b) or 58.4(a), or where the Contractor terminates this Agreement under clause 58.5(a), the Contractor must do everything that is reasonably practicable to mitigate its losses arising as a consequence of a termination under those clauses, including:
 - (i) not entering into arrangements for the pre-payment of service fees, licence fees or maintenance for more than twelve (12) months in advance without TfNSW's prior written consent;
 - (ii) redeploying the Contractor Personnel where possible;
 - (iii) repurposing the Contractor's Equipment;

- (iv) facilitating the sale of any of the Contractor's Equipment which TfNSW elects not to purchase pursuant to clause 58.7(b); and
 - (v) terminating Subcontractors in accordance with their terms, if applicable, so as to minimise any liability to pay compensation for early termination.
- (d) Subject to paragraphs (c) and (e), where TfNSW terminates this Agreement under clauses 58.3(b) or 58.4(a), or where the Contractor terminates this Agreement under clause 58.5(a), the Contractor will be entitled to payment of the following amounts as determined by TfNSW acting reasonably:
- (i) for work carried out prior to the date of termination or for work carried out after the date of termination in accordance with clause 58.7(a)(iii):
 - (A) subject to clause 29.1 (Payment claims), the amount which would have been payable if this Agreement had not been terminated and the Contractor had submitted a payment claim under clause 29.1 (Payment claims) for such work; and/or
 - (B) in relation to any such work that is attributable to a Payment Milestone that:
 - has commenced under the Contractor's Program; and
 - is yet to be payable under clause 29.1 (Payment claims),a proportional amount of the Payment Milestone based on demonstrable progress against the Acceptance Criteria of that Payment Milestone; and
 - (ii) the amounts expressly set out as "Termination Costs" in Schedule 11 (Pricing Terms) (**Termination Costs**), provided that TfNSW is only required to pay such Termination Costs to the extent that:
 - (A) those Termination Costs are unavoidable and are directly, reasonably and necessarily incurred by the Contractor as a result of the termination;
 - (B) those Termination Costs have not already been recovered by the Contractor (including as part of the Fees);
 - (C) the Contractor substantiates that those costs have been or will be incurred to TfNSW's satisfaction (acting reasonably);
 - (D) those costs relate solely to Contractor's Activities provided pursuant to a SOW on foot at the date the notice to terminate was given;
 - (E) those costs relate exclusively to Contractor's Activities provided solely for TfNSW and would not have been incurred or required to have been incurred by the Contractor for any other reason; and
 - (F) the Contractor has not been able to mitigate those costs, including despite complying with its obligations under paragraph (c).
- (e) Paragraph (d) sets out the only amounts TfNSW is required to pay in the event TfNSW terminates this Agreement under clauses 58.3(b) or 58.4(a), or the

Contractor terminates this Agreement under clause 58.5(a). For the avoidance of doubt, in no event will Termination Costs payable by TfNSW include any amounts for:

- (i) redundancy or retrenchments costs; or
 - (ii) loss of profit of the Contractor or any Contractor Personnel.
- (f) Once TfNSW has paid the amounts in paragraph (d), no further compensation is payable for that termination.

58.8 Return of Information

- (a) On termination or expiry of this Agreement for any reason the Contractor must, as requested by TfNSW:
- (i) return all TfNSW Data and TfNSW Confidential Information in the format specified by TfNSW; or
 - (ii) destroy, delete or De-Identify any TfNSW Data and TfNSW Confidential Information,
- and certify to TfNSW that it has done so.
- (b) Without limiting paragraph (a), if this Agreement is frustrated or terminated, the Contractor must:
- (i) immediately deliver the original and all but one copy of all TfNSW Data, TfNSW Confidential Information and Document Deliverables (whether complete or not), including fully detailed electronic versions in unlocked native format (with all logic links intact and nothing hidden or protected), then in existence to TfNSW; and
 - (ii) provide such details, memoranda, explanations, documentation and other assistance as TfNSW reasonably requires in relation to the TfNSW Data, TfNSW Confidential Information and Document Deliverables.
- (c) Paragraph (a) does not apply to the extent that a party is required by Law to retain the other party's Confidential Information.

58.9 Survival

Clauses 33 (Resolution of Matters), 34 (Records and Audit), 37 (Intellectual Property), 38 (TfNSW Data), 39 (Escrow), 40 (Confidentiality), 41 (Privacy), 42 (Government Disclosure), 58 (Termination), 59 (Disengagement), 61 (Representations and warranties), 62 (Indemnities), 63 (Liability), 64 (Insurance), 65 (Notices), 67 (General), Schedule 18 (Issue Resolution Procedure), Schedule 19 (Dispute Resolution Procedure) and Schedule 20 (Disengagement), and any other provisions which are expressed to survive or by their nature impose continuing obligations on the relevant parties, separate and independent from the other obligations of the parties, will survive the termination or expiry of this Agreement.

59 Disengagement

59.1 Disengagement Services

The Contractor acknowledges and agrees that the Contractor must provide all assistance necessary and as may be required by TfNSW:

- (a) to achieve an orderly and staged transition of the Contractor's Activities (in whole or in part) (including any relevant information, knowledge, systems and assets) from the Contractor to TfNSW or a Replacement Contractor to enable TfNSW to continue to obtain the benefit of such Contractor's Activities (including all relevant information, knowledge, systems and assets) for the business purposes of TfNSW with minimal risk, disruption, hindrance or discontinuity; and
- (b) in connection with TfNSW's performance of the Contractor's Activities itself or its sourcing and appointment of any Replacement Contractor,

including those services detailed in Schedule 20 (Disengagement).

59.2 Provision of Disengagement Services

- (a) If:
 - (i) one or more of the Contractor's Activities expires or is terminated (in whole or in part) for any reason; and/or
 - (ii) this Agreement expires or is terminated (in whole or in part, including any SOW) for any reason,

the Contractor must, on and from the relevant Disengagement Commencement Date and for the Disengagement Period, provide the Disengagement Services in accordance with this clause 59 and Schedule 20 (Disengagement) and in accordance with the Disengagement Plan.
- (b) If this Agreement expires or is terminated only in part (including the expiry or termination of one or more of the Contractor's Activities), the obligations of the Contractor under this clause 59 will, in respect of that expiry or termination, apply only to the extent necessary or desirable by TfNSW to ensure the orderly transition to TfNSW or its nominated Replacement Contractor of those Contractor's Activities which are the subject of or are impacted by the partial expiry or termination.
- (c) Without prejudice to its obligations under paragraph (a), during the Disengagement Period the Contractor must:
 - (i) to the extent required by TfNSW, continue to provide the Contractor's Activities in accordance with this Agreement and for the relevant Fees (until notified by TfNSW); and
 - (ii) take such steps to minimise any disruption to TfNSW and each TfNSW Indemnified Person in connection with the transition or disengagement of the Contractor's Activities.
- (d) TfNSW may, by notice to the Contractor, elect to require the Contractor to transition some or all of the terminated or expired Contractor's Activities so that as such Contractor's Activities are disengaged or handed over to TfNSW or its

nominee Replacement Contractor (whether in a staged manner or otherwise) they may cease to be provided by the Contractor.

- (e) TfNSW may disclose Confidential Information of the Contractor to any prospective suppliers that TfNSW is considering appointing as a supplier for particular products or services, provided that:
 - (i) TfNSW must notify the Contractor no less than five (5) Business Days prior to the date on which TfNSW intends to make the disclosure; and
 - (ii) where the Contractor considers (acting reasonably) that the Confidential Information to be disclosed contains any sensitive pricing information or other Contractor-Licensed IP and requests within three (3) Business Days of receipt of TfNSW's notice under paragraph (e)(i) that TfNSW either exclude or redact such content prior to disclosing the relevant information, TfNSW will exclude or redact such of the content as would preserve the utility of the remainder of the Confidential Information for the purposes for which it is being disclosed.

59.3 Fees for Disengagement Services

The Contractor may only charge TfNSW for the provision of Disengagement Services to the extent allowed by and in accordance with Schedule 11 (Pricing Terms) and Schedule 20 (Disengagement). The Contractor may not charge fees for Disengagement Services if the Disengagement Services involve the remediation of past performance issues (including any work required in order to ensure documentation or other records are up to date).

Part L Risk Allocation

60 Information and reliance

60.1 Reliance Material, Information Documents and Materials

- (a) TfNSW represents and warrants to the Contractor that, to the best of its knowledge and belief, as at the Execution Date the Reliance Material is accurate in all material respects and suitable for the purpose for which it was provided.
- (b) The Contractor acknowledges and agrees that neither TfNSW, any Other Contractor, any Stakeholder or any person acting on behalf of them:
 - (i) has verified, or has any obligation to verify, the accuracy, adequacy, efficacy, suitability, reliability, completeness or current application of any Information Documents and Materials; or
 - (ii) warrants, guarantees, assumes any duty of care or other responsibility for or makes any representation about the:
 - (A) accuracy, adequacy, efficacy, suitability, reliability, completeness or current application of any Information Documents and Materials; or
 - (B) existing conditions at the Rail Transport Entity Sites (unless expressly provided otherwise in a Statement of Work).
- (c) The Contractor acknowledges and agrees that the Reliance Material and Information Documents and Materials:
 - (i) and all Intellectual Property Rights in the Reliance Material and Information Documents and Materials, remain the property of TfNSW or any of its Associates (as the case may be); and
 - (ii) do not constitute an invitation, offer or recommendation by or on behalf of TfNSW or any of its Associates.

60.2 Contractor investigations

- (a) The Contractor represents and warrants to TfNSW that prior to the Execution Date (in respect of this Agreement and Statement of Work 1) and each SOW Commencement Date (in respect of each SOW other than Statement of Work 1), the Contractor:
 - (i) has (unless expressly provided otherwise in the relevant Statement of Work) had access to all documentation, materials and other information, and performed such evaluations, investigations and sought such clarifications, as the Contractor considers necessary to enable it to:
 - (A) make an informed decision to enter into each Transaction Document;
 - (B) satisfy itself that it is able to perform its obligations under each Transaction Document; and
 - (C) ascertain the risks associated with the Program and the Contractor's Activities and associated obligations;

- (ii) has been provided with, and undertaken its own independent review and evaluation of, the suitability and accuracy of the TfNSW Provided Materials (other than the Reliance Material);
- (iii) has checked and carefully considered and understands the TfNSW Provided Materials;
- (iv) other than to the extent it has relied on the Reliance Material, enters into each Transaction Document based on its own investigations, interpretations, deductions, information and determinations and not in reliance on the TfNSW Provided Materials;
- (v) has satisfied itself either that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the documents comprising the TfNSW Provided Materials or else that any such omissions, ambiguities, discrepancies or inconsistencies do not affect its decision to enter into the Transaction Documents;
- (vi) other than to the extent it has relied on the Reliance Material, has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the TfNSW Provided Materials;
- (vii) other than to the extent it has relied on the Reliance Material, has satisfied itself that the TfNSW Provided Materials are proper, adequate and fit for their intended purpose, including for the purpose of enabling the Contractor to carry out the Contractor's Activities and TLS Activities in accordance with, and to ensure that the Assets comply with, the Transaction Documents;
- (viii) other than to the extent it has relied on the Reliance Material, has relied upon its own assessment, skill expertise and enquiries in respect of identifying the risks, contingencies and other circumstances relevant to its entry into and performance of the Transaction Documents;
- (ix) other than to the extent it has relied on the Reliance Material, has satisfied itself as to the correctness and sufficiency of its Proposal and that it has made adequate allowance for the costs of complying with all of its obligations under the Transaction Documents and of all matters and things necessary for the due and proper performance and completion of the Contractor's Activities and TLS Activities;
- (x) other than to the extent it has relied on the Reliance Material, has informed itself of all matters relevant to the employment of labour and all industrial matters relevant to the Contractor's Activities and TLS Activities;
- (xi) except to the extent stated in a SOW, has performed all investigations and examinations allowed by TfNSW, in respect of the adequacy or sufficiency of the Rail Transport Entity Sites, and it is satisfied that the Rail Transport Entity Sites (in conjunction with the Contractor Sites) are adequate and sufficient for the Contractor's Activities (including the storage of Trackside Equipment and Contractor's Equipment) and for it to satisfy its obligations under the Transaction Documents; and
- (xii) has had a sufficient opportunity to obtain, and obtained, all the necessary legal and other technical advice in relation to the terms of the Transaction Documents and the Program as well as the risk, contingencies and other

circumstances having an effect on its Proposal, the performance of its obligations and its potential liabilities under the Transaction Documents.

- (b) Without prejudice to paragraph (a) or any other provision of this Agreement (including clause 15.3 (Extension of Time)), if the Contractor becomes aware of any material error in the TfNSW Provided Materials or if the Contractor becomes aware that any document, instruction or other information provided by TfNSW or which makes up this Agreement is ambiguous or inaccurate or is otherwise insufficient to enable the Contractor to perform the Contractor's Activities or TLS Activities, it must promptly notify TfNSW upon becoming so aware.

60.3 Reliance on Materials

- (a) The Contractor acknowledges and agrees that:
 - (i) it will be fully and exclusively responsible and liable for all risks howsoever they may arise as a result of the use by the Contractor of the Information Documents and Materials;
 - (ii) the use of, or reliance upon, the Information Documents and Materials does not affect any of its obligations under the Transaction Documents or entitle the Contractor to make any Claim against TfNSW arising out of or in connection with the Information Documents and Materials;
 - (iii) no statement, representation, term, warranty, condition, promise or undertaking made, give or agreed to by or behalf of TfNSW or its Associates (including in any prior negotiation, arrangement, understanding or agreement) is of any effect except to the extent expressly set out or incorporated in the Transaction Documents; and
 - (iv) it will not be relieved of any liability or responsibility under any Transaction Document because of the provision by TfNSW or its Associates of the Information Documents and Materials or any failure to provide any data or information prior to the Execution Date.
- (b) The Contractor releases and indemnifies (and must keep indemnified) the TfNSW Indemnified Persons from and against any:
 - (i) Claim against the TfNSW Indemnified Persons by, or liability of the TfNSW Indemnified Persons to, any person; or
 - (ii) Loss incurred by a TfNSW Indemnified Person,
arising out of or in connection with:
 - (iii) the provision of, or the purported reliance upon, or use of, the Information Documents and Materials to or by the Contractor or any other person to whom the Information Documents and Materials are disclosed by the Contractor;
 - (iv) any failure by the TfNSW Indemnified Persons to provide any data or information to the Contractor prior to the Execution Date;
 - (v) any breach by the Contractor of clause 60.2 (Contractor investigations); or

- (vi) the Information Documents and Material being “misleading or deceptive” or “false and misleading” (within the meaning of those terms in sections 18 and 29 (respectively) of the *Australian Consumer Law* in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation.
- (c) Paragraphs (a) and (b) do not apply in relation to any Reliance Material.

61 Representations and warranties

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64 Insurance

64.1 TfNSW effected insurance

- (a) TfNSW will, from the Commencement Date, effect the TfNSW Insurance Policies.
- (b) The TfNSW Insurance Policies are 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 TfNSW Insurance Policies; and
 - (ii) acknowledges that the TfNSW Insurance Policies 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 TfNSW Insurance Policies; or
 - (B) cover any such exclusions, conditions or excesses in that insurance, which the Contractor wants to insure against or cover.
- (c) The Contractor acknowledges and agrees that nothing in this Agreement:
 - (i) entitles the Contractor to require TfNSW to bring a Claim under the TfNSW Insurance Policies; or
 - (ii) constitutes a waiver of the Contractor's liability, or of TfNSW's right to bring a Claim against the Contractor, in respect of any Losses for which the Contractor would otherwise have been liable,by virtue of the TfNSW Insurance Policies being in place.

64.2 Contractor's obligation to effect insurance

- (a) The Contractor must take out and maintain the Contractor Insurance Policies on the terms and for the periods required by Item 7 (Contractor Insurance Policies) of Schedule 2 (Agreement Details) and otherwise in this Agreement (including any relevant SOW).
- (b) The Contractor Insurance Policies taken out by the Contractor must provide coverage that meets the requirements of Item 7 (Contractor Insurance Policies) of Schedule 2 (Agreement Details) and otherwise in this Agreement (including in any relevant SOW) with deductibles no greater than those specified in Item 7 (Contractor Insurance Policies) of Schedule 2 (Agreement Details) and otherwise in this Agreement (including in any relevant SOW).
- (c) If TfNSW at any time reasonably requires the Contractor to:

- (i) insure against a risk not specifically provided for or contemplated under the Contractor Insurance Policies; or
- (ii) increase the extent of, or change the terms of, the Contractor Insurance Policies,

it may notify the Contractor and request that the Contractor give effect to TfNSW's requirements.

- (d) The Contractor must promptly inform TfNSW of the amount of any additional premium payable to give effect to a requirement of TfNSW under paragraph (c) before it implements the requirement (using reasonable endeavours to minimise any increase in or maximise the reduction in the cost of any additional, increased or varied insurances) and TfNSW will advise the Contractor whether it still requires the Contractor to give effect to that requirement.
- (e) Any additional premiums paid on any additional, increased or varied insurances required by TfNSW under paragraph (d), as well as any brokerage and Taxes payable in respect of those premiums, will be reimbursed by TfNSW to the Contractor at cost.

64.3 Premiums and Excesses

- (a) The Contractor must punctually pay:
 - (i) all premiums, excesses and other amounts payable in respect of the Contractor Insurance Policies; and
 - (ii) where it bears the risk of the relevant loss or damage, or is required to indemnify TfNSW or the TfNSW Indemnified Persons under this Agreement, all excesses in relation to insured matters under the TfNSW Insurance Policies in accordance with the policy terms. The Contractor may effect its own insurance to cover the amount of any such excesses.
- (b) If an insurer requires payment of any amounts under a Contractor Insurance Policy by TfNSW, or (where paragraph (a)(ii) applies) payment of any excesses under a TfNSW Insurance Policy by TfNSW, TfNSW may recover the payment of such amount from the Contractor as a debt due and payable immediately.

64.4 Insurance requirements generally

The Contractor must ensure that each Contractor Insurance Policy (other than the workers compensation insurance and compulsory third party motor vehicle insurance):

- (a) is, unless otherwise approved by TfNSW, taken out and maintained with an insurer that:
 - (i) has the Required Rating;
 - (ii) is authorised under the *Insurance Act 1973* (Cth) to carry on an insurance business in Australia, or such equivalent legislation as may apply in the jurisdiction in which the insurer is incorporated; and
 - (iii) is supervised by the Australian Prudential Regulation Authority, or such equivalent regulatory body as may exist in the jurisdiction in which the insurer is incorporated;

- (b) does not contain any non-market-standard exclusions, endorsements or alterations unless it is first approved in writing by TfNSW;
- (c) for the Marine Transit Insurance, Asbestos Insurance and Construction Plant Insurance policies only, names TfNSW, Sydney Trains, NSW Trains and TAHE as additional insureds under the policy for the purposes of this Program only;
- (d) for the Own Damage Motor Vehicle Insurance and Third Party Property Damage Motor Vehicle Insurance policies, includes a principal's indemnity in favour of TfNSW, Sydney Trains, NSW Trains and TAHE pursuant to which the insurer agrees to waive any rights to which it may become entitled by subrogation against those parties from liability arising from an event covered by the policy but not to the extent that the claim arose as a result of a negligent act or omission of those parties;
- (e) for the Asbestos Insurance policy, extends to cover the Contractor's Subcontractors and others described in the relevant policy, by specifying them within the definition of "insured" for their respective rights and interests;
- (f) in relation to the Asbestos Insurance, Marine Transit Insurance and Construction Plant Insurance policies, includes a waiver clause in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured;
- (g) in relation to the Professional Indemnity Insurance, Construction Plant Insurance and Asbestos Insurance policies, includes a cross liability clause in which the insurer agrees:
 - (i) except in relation to the Professional Indemnity Insurance, to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured;
 - (ii) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them; and
 - (iii) that any non-disclosure, breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim under any insurance, provided that notwithstanding the foregoing, this condition shall not apply to any of the persons comprising the insured that are a parent, subsidiary or affiliate of the named insured;
- (h) the Contractor must provide notice to TfNSW within thirty (30) Business Days upon becoming aware of the:
 - (i) lead insurer giving the Contractor a notice of cancellation;
 - (ii) lead insurer cancelling the policy on the request of the Contractor;
 - (iii) lead insurer giving the Contractor any other notice in respect of the policy; or
 - (iv) Contractor Insurance Policy lapsing;
- (i) in respect of the Professional Indemnity Insurance and the Asbestos Insurance policies, does not exclude coverage for innocent non-disclosure, but excludes known circumstances;

- (j) for the Asbestos Insurance policy only, written on an each 'Pollution Incident' basis, provides that a single deductible is payable for each occurrence regardless of whether a claim or claims are brought against one or more insureds;
- (k) for the Professional Indemnity Insurance policy only, if written on a claims-made basis, provides that a single deductible is payable for each claim regardless of whether a claim or claims are brought against one or more insureds;
- (l) in respect of the Professional Indemnity Insurance, Asbestos Insurance and Construction Plant Insurance policies, does not contain any 'other insurance' provisions that attempt or purport to limit or restrict coverage where another insurance policy may also potentially respond; and
- (m) is governed by and construed (as it relates to Claims or Loss arising under or related to this Agreement only) according to the Laws of any jurisdiction in Australia and, in the case of all policies other than legal liability policies and the Marine Transit Insurance policies, includes a provision under which each party to that policy agrees to:
 - (i) submit to the non-exclusive jurisdiction of the courts of any jurisdiction in Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to that policy; and
 - (ii) waive 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 the venue falls within paragraph(m)(i).

64.5 Compliance with policies

The Contractor must:

- (a) comply at all times with the terms and conditions of each Contractor Insurance Policy;
- (b) not do or permit, or omit to do, anything which would prevent TfNSW from complying with the terms of each TfNSW Insurance Policy;
- (c) not do or permit, or omit to do, anything which prejudices the Insurance Policies or the eligibility or ability to claim under any Insurance Policy;
- (d) if necessary, rectify anything which might prejudice any Insurance Policy;
- (e) reinstate a Contractor Insurance Policy if it lapses;
- (f) not cancel, vary (in a manner that would adversely affect TfNSW or the exercise of TfNSW's rights under this Agreement) or allow a Contractor Insurance Policy to lapse without prior approval of TfNSW;
- (g) immediately notify, and ensures that its Key Subcontractors or other Subcontractors that are required to hold Professional Indemnity Insurance as specified in Item 7 (Contractor Insurance Policies) of Schedule 2 (Agreement Details) similarly notify, TfNSW of any:

- (i) event which may result in an Insurance Policy lapsing or being cancelled or of any fact or circumstance or change in circumstances which may prejudice an Insurance Policy; and
- (ii) occurrence that may give rise to a claim under an Insurance Policy, or if it receives any claim or notice in connection with an Insurance Policy, if that claim would:
 - (A) have a material impact on insurance proceeds available under that Insurance Policy; or
 - (B) affect the Contractor's ability to comply with its obligations under this Agreement, including this clause,

and keep TfNSW informed of subsequent developments concerning the claim;

- (h) do everything reasonably required by TfNSW (or any other person in whose name the relevant TfNSW Insurance Policy is effected) to enable TfNSW or such other person to claim, collect or recover money due under the TfNSW Insurance Policy;
- (i) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might prejudice or affect any such Insurance Policy or the payment of all or any benefits under the Insurance Policy;
- (j) subject to paragraph (k), diligently pursue any material claim which it has under any Contractor Insurance Policy; and
- (k) not compromise, settle, prosecute or enforce a claim under any Insurance Policy without the prior written consent of TfNSW (such consent not to be unreasonably withheld).

64.6 Insurance proceeds account

- (a) This clause 64.6 applies to all amounts received under the Contractor Insurance Policies in respect of Loss incurred by TfNSW to the extent that the Contractor has not already compensated TfNSW (**Insurance Proceeds**).
- (b) Unless otherwise agreed between the parties, the Contractor must, once notice of the first claim under any of the Contractor Insurance Policies has been issued and for the duration of the period for which Insurance Proceeds exist:
 - (i) establish an account to be known as the "Insurance Proceeds Account" (**Insurance Proceeds Account**);
 - (ii) maintain that account in the name of the Contractor with a financial institution nominated by the Contractor and approved by TfNSW in writing;
 - (iii) provide details of that account to TfNSW;
 - (iv) if requested by TfNSW, grant TfNSW a first ranking Security Interest over the Insurance Proceeds Account; and
 - (v) procure the agreement of the financial institution referred to in paragraph (ii) not to exercise any right of set-off or combination of accounts in relation to the Insurance Proceeds Account.

- (c) All Insurance Proceeds must be deposited into the Insurance Proceeds Account.
- (d) Subject to paragraph (f), moneys in the Insurance Proceeds Account may only be applied towards the cost of repair or reinstatement.
- (e) The Contractor must give TfNSW records of expenditure from the Insurance Proceeds Account within thirty (30) Business Days of such expenditure.
- (f) If this Agreement is terminated TfNSW will be entitled to any moneys remaining in the Insurance Proceeds Account on the date of termination.

64.7 Evidence of insurance

The Contractor must provide to TfNSW:

- (a) copies of all renewal certificates within ten (10) Business Days after it receives them from the insurer or broker; and
- (b) whenever requested by TfNSW:
 - (i) copies of all cover notes;
 - (ii) a certificate of currency satisfactory to TfNSW (acting reasonably) confirming that the Contractor Insurance Policies have been effected and maintained in accordance with this clause 64; and
 - (iii) the opportunity to view any Contractor Insurance Policy (including policy schedules, wording and endorsements) with the Contractor's Representative present.

64.8 Failure to insure

If the Contractor fails to maintain any Contractor Insurance Policy in accordance with this clause 64, or fails to provide evidence satisfactory to TfNSW under clause 64.7(b), TfNSW may, without prejudice to any other rights it may have:

- (a) terminate this Agreement by giving notice to the Contractor; or
- (b) effect the Contractor Insurance Policy itself, and the cost will be a debt due from the Contractor to TfNSW.

64.9 Proportionate liability and the Contractor Insurance Policies

The Contractor must ensure that the Professional Indemnity Insurance and Asbestos Insurance policies:

- (a) cover any legal liability contractually assumed by the Contractor and its Associates under this Agreement, including to the extent that TfNSW, the Contractor and any other person insured under those Contractor Insurance Policies have contracted out of the operation of Part 4 of the *Civil Liability Act 2002* (NSW) or assumed liability for others under this Agreement;
- (b) without limiting paragraph (a), cover the Contractor for potential liability to TfNSW assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002* (NSW); and

- (c) not exclude any potential liability due to the exclusion of the operation of Part 4 of the *Civil Liability Act 2002* (NSW) the Contractor may have to TfNSW under or in connection with this Agreement.

64.10 Liabilities unaffected

- (a) The effecting of insurance by the Contractor and the approval of any Contractor Insurance Policy, terms of insurance or insurer by TfNSW does not limit any obligations or liabilities of the Contractor (including the obligation to effect the Contractor Insurance Policies).
- (b) The Contractor bears the risk of the Insurance Policies being inadequate to enable the Contractor to fulfil its obligations under this Agreement.

Part M Miscellaneous

65 Notices

65.1 Notice requirements

- (a) A notice, consent or other communication under this Agreement is only effective if it is:
 - (i) in writing and in legible English, signed by or on behalf of the party giving it;
 - (ii) addressed to the party to whom it is to be given; and
 - (iii) subject to paragraph (d), sent through TfNSW's chosen collaboration and document management tool, as notified to the Contractor from time to time, unless that is not technically possible or the parties agree otherwise, in which case:
 - (A) sent by pre-paid mail (by airmail, if the addressee is overseas) or delivered to that party's address; or
 - (B) sent by email to that party's email address,

in each case as set out in paragraph (b), as updated from time to time by a party under paragraph (c).
- (b) For the purposes of this clause 65, the relevant address and email address of each party is set out in Schedule 2 (Agreement Details).
- (c) Where a party notifies the other party of an updated address or email address, the other party must use those updated contact details for the purpose of giving notices under this Agreement.
- (d) A notice terminating this Agreement must be given by pre-paid mail (by airmail, if the addressee is overseas) or delivered to the relevant party's address (although a copy of that notice must also be sent through TfNSW's chosen collaboration and document management tool or by email, as applicable).

65.2 Notice takes effect

- (a) Subject to paragraph (b), a notice, consent or other communication under this Agreement is, in the absence of earlier receipt, regarded as given, provided, served, issued and received:
 - (i) if it is sent through TfNSW's chosen collaboration and document management tool, when it becomes visible to all other participants to that tool;
 - (ii) if it is delivered, on delivery at the address of the relevant party;
 - (iii) if sent by email, at the time it was transmitted by the sender provided that if the sender receives a message indicating that it has not been successfully transmitted provided that where an "out of office" reply, delivery error or similar response is returned in response to that email the email will not be

taken to be received and the sender will use the alternative methods of sending the notice in accordance with this clause; or

- (iv) if it is sent by mail, on the third Business Day after the day of posting, or if to or from a place outside Australia, on the fifth Business Day after the day of posting.
- (b) If a notice, consent or other communication under this Agreement is given and received on a day that is not a Business Day or after 5.00pm (local time in the place of receipt) on a Business Day, it is regarded as being given and received at 9.00am on the next Business Day.

66 Machinery of Government

66.1 Rights and benefits of TfNSW

- (a) Unless expressly stated otherwise, or as the context otherwise requires, each promise by the Contractor (whether by way of warranty, representation, indemnity, undertaking or other form of obligation or promise) is to be taken to be in favour of TfNSW and to create a right or benefit of TfNSW.
- (b) The rights and benefits of TfNSW provided for under this Agreement are intended to be for, and are held by TfNSW for, the benefit of TfNSW in its own right to support the discharge of its duties in relation to, and liabilities arising from, the performance of the Operations Functions, and also for the benefit of:
 - (i) TAHE to the extent it is the owner of the rail property assets, rolling stock and rail infrastructure in NSW; and
 - (ii) the Rail Transport Entities to support the discharge of their respective duties in relation to, and liabilities arising from, the performance of the Operations Functions.

66.2 Benefits held on trust

- (a) TfNSW holds as trustee for the TfNSW Indemnified Persons the benefit of:
 - (i) each indemnity, waiver and release given by the Contractor under this Agreement in favour of the TfNSW Indemnified Persons;
 - (ii) the Parent Company Guarantee; and
 - (iii) each right to the extent that such right is expressly stated to be for the benefit of a TfNSW Indemnified Persons.
- (b) The Contractor acknowledges the existence of such trusts and consents to:
 - (i) TfNSW:
 - (A) having recourse to the Parent Company Guarantee, as trustee for and on behalf of the TfNSW Indemnified Persons; and
 - (B) exercising rights in relation to, or otherwise enforcing such indemnities, releases and their rights on behalf of, the TfNSW Indemnified Persons; and

- (ii) TfNSW having recourse to the Parent Company Guarantee, or otherwise enforcing the Parent Company Guarantee, as if the same had been given directly to and for the benefit of the TfNSW Indemnified Person as a named obligee.
- (c) To the extent that TfNSW does not have actual authority from a TfNSW Indemnified Person to act as trustee on behalf of the TfNSW Indemnified Person as contemplated in this clause 66.2, then as between TfNSW and the Contractor, TfNSW will be deemed to have sought and obtained that authority to act as trustee for that TfNSW Indemnified Person.
- (d) The caps and exclusions of liability in clause 63 (Liability) apply in aggregate as between the Contractor on the one hand and TfNSW and the TfNSW Indemnified Persons on the other hand.

66.3 Transfer of Functions

The Contractor:

- (a) acknowledges that TfNSW may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, liabilities or responsibilities of TfNSW may be transferred to or vested in another entity;
- (b) without limitation to paragraph (a), acknowledges that some or all of the powers, functions, assets, liabilities, responsibilities of TfNSW may be transferred to or vested in Rail Transport Entities;
- (c) agrees to do anything (including to execute any document), and must procure that its Associates do anything (including to execute any document) required to give full effect to any of the matters contemplated in paragraphs (a) and (b); and
- (d) will have no claim or entitlement to payment of any costs arising from any of the above.

66.4 Government Authorities

- (a) This Agreement will not unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
 - (i) the Rail Transport Entities or the ASA to exercise any of their respective functions and powers pursuant to any Law; 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 any Rail Transport Entity pursuant to any Configuration Management Framework.
- (b) Without limiting paragraph (a) or section 6 (Changes in Laws, Approvals and Standards) of Schedule 7 (New SOWs and Variation Procedures), anything the Rail Transport Entities (acting in their capacity as Government Authorities) or the ASA do, or fail to do or purport to do, pursuant to their respective functions and powers either as an AEO or under any Law or the ASA Charter will be deemed not to be an act or omission by that Rail Transport Entity or the ASA (including a breach of contract) under or in connection with this Agreement and will not entitle the Contractor to make any Claim against a Rail Transport Entity or the ASA.

- (c) Without limiting section 6 (Changes in Laws, Approvals and Standards) of Schedule 7 (New SOWs and Variation Procedures), the Contractor:
 - (i) waives any Claims that it may have against TfNSW as a result of the exercise by any Rail Transport Entity (acting in their capacity as a Government Authority) or the ASA of their respective functions and powers either as an AEO or under any Law, the ASA Charter or the Configuration Management Framework; and
 - (ii) acknowledges and agrees that:
 - (A) there are many Government Authorities (other than the Rail Transport Entities and the ASA) with jurisdiction over aspects of the Contractor's Activities;
 - (B) such Government 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 Government Authorities of powers and functions, including as necessary for such Government 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 paragraph (ii)(B) and will not be entitled to make, and TfNSW will not be liable upon, any Claim arising out of or in connection with such occurrences.

66.5 Novation to Government Authorities

- (a) Without prejudice to the generality of clause 67.13(a), TfNSW may at any time, at its sole discretion, novate this Agreement to any Government Authority, any successor in title to TfNSW or any other person that assumes the functions or obligations of TfNSW.
- (b) If TfNSW elects to novate this Agreement in accordance with paragraph (a), TfNSW will provide the Contractor with a duly completed Deed of Novation and the Contractor must execute the Deed of Novation and return it to TfNSW within five (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 TfNSW 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.

66.6 Piggybacking

The Contractor acknowledges and agrees that if a Government 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 Works or other things required to be provided by the Contractor under this Agreement, the Contractor must enter into a separate agreement with the relevant Government Authority on terms no less favourable than the terms of this Agreement, having regard to any necessary changes required to reflect:

- (a) the particulars of the relevant services or other activities (including the volume of the supply) that the Contractor will provide to the relevant Government Authority; and
- (b) that the relevant services or other activities are to be supplied by the Contractor to the relevant Government Authority.

67 General

67.1 Definitions in the Glossary

A term or expression starting with a capital letter:

- (a) which is defined in Schedule 1 (Definitions and Interpretation) has the meaning given to it in Schedule 1 (Definitions and Interpretation);
- (b) which is defined in the Corporations Act, but is not defined in Schedule 1 (Definitions and Interpretation), has the meaning given to it in the Corporations Act; and
- (c) which is defined in the GST Act, but is not defined in the Corporations Act or Schedule 1 (Definitions and Interpretation), has the meaning given to it in the GST Act.

67.2 Interpretation

The interpretation clause in Schedule 1 (Definitions and Interpretation), sets out rules of interpretation for this Agreement.

67.3 Vienna Convention

The *UN Convention on Contracts for the International Sale of Goods (1980)* does not apply to this Agreement.

67.4 No partnership or employment relationship

Nothing in this Agreement:

- (a) may be deemed to constitute a partnership, joint venture, agency or other legal relationship between TfNSW and the Contractor other than that of supplier and purchaser and/or service provider and recipient; and
- (b) authorises either party to waive any obligation for which the other party may be responsible or to incur any liability on behalf of the other party.

67.5 Merger

No term of this Agreement merges on completion of any transaction contemplated by this Agreement.

67.6 Further assurances

Except as expressly provided in this Agreement, each party must, at its own expense, promptly execute all documents and do all things that the other party from time to time

reasonably requires of it to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by them.

67.7 Severability

- (a) If a provision, or the application of any provision, of this Agreement is wholly or partially void or unenforceable in a jurisdiction:
 - (i) it is severed to the extent that it is void or unenforceable from the remainder of this Agreement for the purposes of enforcement in that jurisdiction; and
 - (ii) the remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.
- (b) Paragraph (a) has no effect if the severance:
 - (i) alters the basic nature of this Agreement; or
 - (ii) is contrary to public policy.

67.8 Indemnities

- (a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination of this Agreement.
- (b) It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.
- (c) TfNSW agrees to notify the Contractor of any Third Party Claim to which an indemnity applies as soon as reasonably possible after such Claim is received (unless TfNSW is prevented from doing so at Law, or in TfNSW's opinion to do so would result in TfNSW being in breach of any confidentiality restrictions to which it is subject or otherwise prejudice the outcome of the Claim), and may consider the Contractor's reasonable recommendations in respect of any settlement of such Claim.

67.9 Waivers and exercise of rights

- (a) No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it. Any waiver is only effective in the specific instance and for the specific purpose for which it is granted.
- (b) A single or partial exercise of a right or remedy under this Agreement does not prevent a further exercise of that or of any other right or remedy.
- (c) Failure to exercise or delay in exercising a right or remedy under this Agreement does not operate as a waiver or prevent exercise of that or of any other right or remedy.
- (d) No Inspection, audit, agreement, approval, acceptance, review, attendance, payment of any payment claim, permission or comment by TfNSW:
 - (i) constitutes a waiver of any default, admission of liability or acceptance of any act or omission of the Contractor or its Associates, or that a Contractor's Activity has been properly provided;

- (ii) is an admission of the value of or completion of any work; or
- (iii) affects the Contractor's obligation to perform this Agreement in accordance with its terms.

67.10 Entire agreement

The Transaction Documents constitute the entire agreement between the parties concerning its subject matter and replaces all previous agreements and understandings about that subject matter.

67.11 Governing law and submission to jurisdiction

- (a) This Agreement will be interpreted under and governed by the Laws of the State of New South Wales, Australia.
- (b) Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the State of New South Wales, including for the avoidance of doubt, the Federal Court of Australia sitting in the State of New South Wales.

67.12 Costs and expenses

Unless specified otherwise in this Agreement, each party must pay its own costs and expenses in relation to the negotiation, preparation, execution, delivery, stamping, registration, completion, variation and discharge of this Agreement.

67.13 Assignment

- (a) TfNSW may assign any of its rights, or novate to a Rail Transport Entity, a Government Authority, any successor in title to TfNSW or any other person that assumes the functions or obligations of TfNSW, its rights and obligations, under this Agreement without the consent of the Contractor. The Contractor must execute any document reasonably requested by TfNSW to give effect to the assignment or novation.
- (b) The Contractor must not assign any of its rights, or novate its rights and obligations, under this Agreement without the prior consent of TfNSW.
- (c) A breach of paragraph (b) by the Contractor entitles TfNSW to terminate this Agreement.

67.14 To extent not excluded by Law

The rights, duties and remedies granted or imposed under the provisions of this Agreement operate to the extent not excluded by Law.

67.15 Counterparts

This Agreement may be executed in any number of counterparts which, when taken together, will constitute one instrument.

67.16 Attorneys

Each attorney executing this Agreement states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

67.17 Ambiguous Terms

- (a) If TfNSW considers, or if the Contractor notifies TfNSW that it considers that there is an ambiguity, inconsistency or discrepancy in this Agreement, then TfNSW will resolve such ambiguity, inconsistency or discrepancy in accordance with clause 4.2 (Order of precedence) of this Agreement.
- (b) Only if any ambiguity, inconsistency or discrepancy is not resolved under paragraph (a), then TfNSW may Direct the interpretation of this Agreement. The Contractor must follow any such Direction.
- (c) Any Direction which TfNSW gives in accordance with paragraph (b) will be given within twenty-eight (28) days of receipt of the notice from the Contractor under paragraph (a).

67.18 Time limits

Where in this Agreement any obligation of a party is required to be performed within a specified time or on a specified date, that obligation will be deemed to continue after that time or date if the party fails to comply with that obligation within that time or on that date.

67.19 Approvals and consents

Unless this Agreement expressly provides otherwise, all approvals, consents, decisions, waivers or exercises of discretion required (whether expressly or impliedly) or able to be given or made by TfNSW may be given, not given, made, not made, exercised, not exercised, withheld or conditioned by TfNSW in its absolute discretion and the Contractor acknowledges that TfNSW and the TfNSW Representative, in granting any approval, consent or waiver, or making any decisions or exercising any discretion under or in connection with this Agreement in relation to such matters, will not assume any duty of care, responsibility or liability to the Contractor or any other person and will not be taken to have agreed that any matter that is the subject of any approval, consent, waiver, decision or exercise of a discretion is in compliance with this Agreement.

67.20 Rights do not affect risk allocation

- (a) TfNSW has various rights under this Agreement which are designed to give TfNSW the ability to monitor the performance of the Contractor's obligations. Those rights include:
 - (i) the right to Review Design Documentation, Project Plans, Action Plans, Document Deliverables, Verification Reports, the Contractor's Program and other documents which the Agreement specifies that the Contractor must submit to TfNSW for Review;
 - (ii) rights to inspect, monitor or audit the Contractor's Activities;
 - (iii) the right to notify the ASA of any non-conformance in the performance of the Contractor's Activities that relates to the authorisation granted by the ASA;
 - (iv) the right to Direct the Contractor in relation to certain matters under this Agreement; and
 - (v) rights to attend Verification Activities.
- (b) The Contractor acknowledges that:

- (i) it has sole responsibility for ensuring that the Contractor's Activities comply with this Agreement; and
 - (ii) TfNSW is relying on the skill, expertise and judgment of the Contractor in delivery of the Contractor's Activities.
- (c) Without limiting paragraph (a), no Rail Transport Entity nor the TfNSW Representative assumes or owes any duty of care to the Contractor to:
 - (i) Review, (or if it does Review it, in Reviewing), any Submitted Document for errors, omissions or compliance with this Agreement;
 - (ii) Accept or reject the Contractor's Activities or the Assets;
 - (iii) observe, participate in or conduct any Verification Activity or Inspection or, if it does not observe, participate in or conduct any Verification Activity or Inspection, to identify any non-compliance with this Agreement of any Asset verified; or
 - (iv) inspect the Contractor's Activities or the Assets for Defects, errors, omissions or compliance with the requirements of this Agreement.
- (d) Unless this Agreement expressly provides otherwise, no exercise of, failure to exercise, or notice in respect of such rights or the incorporation of TfNSW's, any Stakeholders' or Other Contractor's comments into any Document Deliverable or any associated feedback or comments will:
 - (i) relieve the Contractor from, or alter or affect, the Contractor's liabilities, obligations or responsibilities under this Agreement or otherwise according to Law;
 - (ii) lessen or otherwise affect the warranties given by the Contractor under this Agreement;
 - (iii) prejudice or limit TfNSW's rights, or the rights of any Rail Transport Entity, against the Contractor whether under this Agreement or otherwise according to Law;
 - (iv) without limiting paragraph (b)(ii), preclude TfNSW or any Rail Transport Entity, from subsequently asserting that the Contractor has not fulfilled its obligations whether under this Agreement or otherwise according to Law;
 - (v) constitute a Variation or a Variation Request;
 - (vi) constitute an EOT Event or Compensation Event or otherwise entitle the Contractor to make any other Claim under this Agreement;
 - (vii) affect the Fees or otherwise entitle the Contractor to be reimbursed for any costs and expenses incurred or otherwise compensated;
 - (viii) be construed as a Direction by TfNSW to do or not do anything;
 - (ix) constitute an instruction to accelerate, disrupt, prolong or vary any of the Contractor's Activities (unless expressly Directed in writing); or
 - (x) affect the time for the performance of the Contractor's obligations.

- (e) The Contractor will not be relieved from compliance with any of its obligations under this Agreement or from any of its liabilities whether under this Agreement or otherwise according to Law, nor will the rights of TfNSW whether under this Agreement or otherwise according to Law be limited or otherwise affected as a result of:
 - (i) implementation of or compliance with the PR, any Action Plan, Contractor Project Plan, any other plan developed under this Agreement or the quality assurance requirements of this Agreement;
 - (ii) any audits or other monitoring by any Rail Transport Entity or any acting on behalf of TfNSW of the Contractor's compliance with this Agreement;
 - (iii) any release, consent, authorisation, approval or agreement by TfNSW, particularly those concerning or relating to the Contractor proceeding past any Hold Point or Witness Point; or
 - (iv) any failure by any Rail Transport Entity, the TfNSW Representative or anyone acting on behalf of TfNSW, to detect any Defect or non-compliance, particularly whilst participating in any Hold Point or Witness Point procedure or witnessing any Verification Activity under clause 10.1(c), including where any failure arises from any negligence on the part of any Rail Transport Entity, the TfNSW Representative or any other person.
- (f) Any certificate, approval or acceptance issued by TfNSW will not:
 - (i) constitute an approval by TfNSW that the Contractor has performed its obligations in accordance with this Agreement;
 - (ii) be taken as an admission or evidence that the Contractor's Activities have been performed in accordance with this Agreement; or
 - (iii) prejudice any rights or powers of TfNSW under this Agreement or otherwise according to Law, including any rights which TfNSW may have in respect of Defects.
- (g) Whether or not this Agreement prescribes a particular work method, or a work method is otherwise a part of this Agreement or reviewed or approved (expressly or impliedly) by TfNSW, the fact that any work method that the Contractor adopts or proposes to adopt is impractical or impossible or that the Contractor, with or without the approval of TfNSW, uses another work method will not:
 - (i) entitle the Contractor to make any Claim against TfNSW arising out of or in connection with the work method proving to be impractical or impossible or any change in the work method; or
 - (ii) cause this Agreement to be frustrated.

67.21 Certification

For the purposes of this Agreement, a copy of a document will be regarded as duly certified by the Contractor if it is certified as a true copy by a director, secretary or general manager of the Contractor.

67.22 Best and reasonable endeavours

- (a) If either party is required under the terms of this Agreement to exercise best or reasonable endeavours, the parties acknowledge that the relevant party:
 - (i) will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities; and
 - (ii) cannot guarantee the relevant outcome.
- (b) By undertaking to exercise best or reasonable endeavours under the terms of this Agreement, TfNSW does not agree to:
 - (i) interfere with or influence the exercise by any person of a statutory power or discretion;
 - (ii) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of the Agreement if TfNSW regards that exercise as not in the public interest;
 - (iii) develop policy or legislate by reference only or predominantly to the interests of the Agreement;
 - (iv) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the Agreement; or
 - (v) act in any other way that TfNSW regards as not in the public interest.

67.23 English language

All communications between the parties and all Materials provided by the Contractor (including the Assets) must be in the English language.

67.24 Discretion

- (a) Subject to any express provision in this Agreement to the contrary:
 - (i) a provision of this Agreement which says that TfNSW “may” do or not do something is not to be construed as imposing an obligation on TfNSW to do or not do that thing; and
 - (ii) there will be no procedural or substantive limitation upon the manner in which TfNSW may exercise any discretion, power or entitlement conferred by the Agreement.
- (b) Without limiting paragraph (a), TfNSW will not 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 Agreement conferring the discretion, power or entitlement.

Schedule 1 Definitions and Interpretation

1 Definitions

The following definitions apply in this Agreement:

Aboriginal Participation Plan means the plan required under the APP Policy and the APIC Policy.

Aboriginal Participation Report means the report required under the APP Policy and the APIC Policy.

Accept, Accepted, or Acceptance means:

- (a) in relation to the Trackside Subsystem, Provisional Acceptance and/or Final Acceptance of the Trackside Subsystem (as applicable); and
- (b) in relation to any other Milestones, that the Milestones meet the relevant Acceptance Criteria.

Acceptance Criteria means:

- (a) in relation to the Trackside Subsystem, the Provisional Acceptance Criteria and the Final Acceptance Criteria for the Subsystem;
- (b) for each Milestone of the type set out in Schedule 6 (Milestones and Acceptance Criteria), the acceptance criteria for such Milestones as set out in that Schedule; and
- (c) in relation to any other Milestone, the acceptance criteria set out in or contemplated by this Agreement with respect to that Milestone.

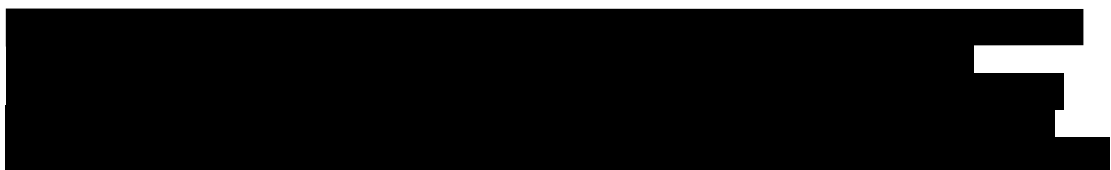
Access Indemnity has the meaning given in clause 8.5(a).

Accreditation means accreditation (including provisional accreditation) in accordance with the requirements of the Rail Safety National Law, including any regulation, guidelines or ordinance made pursuant to the Rail Safety National Law.

Accreditation Variation means the variation to any Accreditation which must be obtained from ONRSR under or in accordance with the Rail Safety National Law as a consequence of the Program.

Accreditation Variation Application means all and any applications or submissions required to be made to ONRSR under or in accordance with the Rail Safety National Law in order to obtain any Accreditation Variation.

Accreditation Variation Documents means all documentation required to be prepared and submitted to ONRSR to support an Accreditation Variation Application.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Action Plan means a plan in a form reasonably satisfactory to TfNSW containing the information required by clause 53 (Action Plans and Enhanced Cooperation).

Additional Verification Activities has the meaning given in clause 10.4(a).

Advanced Train Management System or **ATMS** means a system for the control of trains being implemented by Australian Rail Track Corporation on the Australian Rail Track Corporation Network.

AEO 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, for the purposes of entering into a contract with a Rail Transport Entity.

Affected Activities has the meaning given in clause 54 (Performance Remediation).

Affected Party has the meaning given in clause 57.1(a).

Agreement has the meaning given in clause 4.1(a).

Alert Event means an actual or likely event or circumstance which arises or could arise because of the Contractor's Activities, and which may interfere with or threaten (other than, in respect of paragraphs (a) and (c) only, as explicitly anticipated under and authorised in accordance with this Agreement including a scheduled Track Possession):

- (a) the use of any Rail Transport Entity Sites;
- (b) the current or future safe operation of the Network; or
- (c) the current or future operational capacity or efficiency of the Network,

and including any event or circumstance which has or is likely to have a material detrimental effect on:

- (d) the Network, NSW Rail Assets and any Rail Transport Entity Sites;
- (e) the safety of any Rail Transport Entity's passengers, station patrons or representatives of any Rail Transport Entity; or
- (f) the operation of the Network.

Allocation Table means the table in a Statement of Work setting out allocation of responsibilities between the parties in respect of a Third Party Agreement.

APIC Policy has the meaning given in clause 48.2(b)(i).

APP Policy has the meaning given in clause 48.2(b)(i).

Apprentice means a person who has been employed in a recognised trade vocation and who has entered into a training contract with his/her employer under the *Apprenticeship and Traineeship Act 2001* (NSW).

Approval means any licence, permit, consent, approval, determination, certification or exemption from or by any Government Authority or under a Mandatory Requirement (or any requirement made under any Mandatory Requirement) which must be obtained or satisfied (as the case may be):

- (a) in accordance with this Agreement;
- (b) to carry out the Contractor's Activities including, for the avoidance of doubt, all things required for conducting work within the Rail Corridor or affecting rail operations, and all things required for dealing with, transporting and disposing of Contamination or any other spoil or waste; or
- (c) to enable TfNSW to occupy and use for its intended purpose the completed Works or a part thereof,

and for the avoidance of doubt, includes:

- (d) the Planning Approval;
- (e) the EPL; and
- (f) all Permits to Work,

but does not include the CCB Gates.

Approved for Construction Design means the set of all Design Documentation that:

- (a) have been Confirmed at the end of the Detailed Design Review; and
- (b) which the Contractor has marked 'approved for construction' in accordance with the requirements set out in the TfNSW Configuration Management Plan and the ASA Engineering Drawings & CAD Requirements T MU MD 00006 ST.

Approved Subcontractor means a:

- (a) Pre-Approved Subcontractor; or
- (b) Subcontractor in respect of which TfNSW has provided consent in accordance with clause 27.4 (Seeking TfNSW approval of subcontracting).

ASA Charter means the document which identifies the ASA's objectives, functions, powers and governance and the duties of Rail Transport Entities and AEOs in relation to the ASA (as amended from time to time), a copy of which can be found on the TfNSW website from time to time (as of the Execution Date: www.asa.transport.nsw.gov.au/industry/asset-standards-authority).

ASA Requirements has the meaning given to it in the ASA Charter.

ASA Standards means all standards, codes, specifications, policies and requirements of the Asset Standards Authority located at <https://www.transport.nsw.gov.au/industry/asset-standards-authority>, as updated from time to time.

Asset or **Assets** means all items designed, developed, supplied, procured, delivered, provided, produced, constructed, modified, tested, integrated, commissioned or brought into operational readiness by or on behalf of the Contractor under this Agreement or the TLS Agreement, and includes:

- (a) the Trackside Subsystem and all of the components that make up the Trackside Subsystem, including the Trackside Equipment and Software;
- (b) Document Deliverables; and
- (c) Spares, Tools, consumables and chattels, unfixed goods and materials supplied as part of the Contractor's Activities under this Agreement or the TLS Activities under the TLS Agreement,

including as further described in this Agreement (including any SOW) and the TLS Agreement (including the Services Schedule or any Work Order under the TLS Agreement), but excludes any infrastructure on the Network not supplied or installed by the Contractor as part of the Program.

Asset Lifecycle has the meaning given to it in the ASA Charter.

Asset Management Plan means the plan of that name defined in Appendix 06 (PR Definitions) of the PR.

Asset Management System has the meaning given in Appendix 06 (PR Definitions) of the PR.

Asset Register means the register of Assets contemplated by the PR.

Asset Standards Authority or **ASA** means the unit within TfNSW which sets, controls, maintains, owns and publishes the network and asset standards for NSW Rail Assets. Information about the ASA and the network and asset standards can be found on the TfNSW website from time to time (as of the Execution Date: www.asa.transport.nsw.gov.au/industry/asset-standards-authority).

Assigned IP [REDACTED]

[REDACTED]

[illegible]

Associates means, in relation to a person that is a corporation, any Related Body Corporate of that person, and any of their respective Representatives, and:

- (a) in the case of the Contractor, includes the Subcontractors and their Representatives;
 - (b) in the case of TfNSW, includes the State, Sydney Trains, TAHE, each other entity controlled by the Secretary of Transport for NSW and, in each case, their Representatives; and
 - (c) in the case of the State, includes:
 - (i) the Minister for Transport and Infrastructure;
 - the Secretary of Transport for NSW; and
 - any other person to whom the State delegates a right, power, function or duty from time to time,
- but only insofar as each is acting in connection with the Program.

ATMS Interoperability Subsystem means the component of the System developed to allow an "advanced train management system" (ATMS) fitted train to traverse the Digital Systems Program fitted area.

ATO means automatic train operation.

Australian Rail Track Corporation or **ARTC** means Australian Rail Track Corporation Limited (ABN 75 081 455 754).

Australian Rail Track Corporation Network means the network that is managed by the Australian Rail Track Corporation.

Australian Standards means standards published by Standards Australia.

Authorised Engineering Organisation or **AEO** means an organisation providing a defined engineering service or product that has been assessed and granted authorised engineering organisation status by the Asset Standards Authority.

Batch Defect [REDACTED]

[REDACTED]

[REDACTED]

Batch of Assets means Assets which have been or will be delivered together to the relevant Delivery Location on a particular date.

Benchmarking has the meaning given in clause 31 (Benchmarking).

[REDACTED]

Bill of Materials means the bill of materials set out in Schedule 11 (Pricing Terms) or the relevant Statement of Work.

Breakdown of Fees has the meaning given in clause 29.1(c).

Building Code means the Building Code 2013 issued under subsection 27(1) of the *Fair Work (Building Industry) Act 2012* (Cth).

Business Change means:

- (a) any Divestiture;
- (b) any restructure, dissolution, merger or transfer of a substantial part of the assets, staff, and liabilities of any person's business or operations; or
- (c) any consolidation, reconstitution or replacement (including the performance of common functions) of a person or a part of a person, with any other entity, or the transfer of any of that person's powers or functions to any other entity.

Business Continuity Plan means the business continuity plan approved by TfNSW in accordance with Schedule 21 (Business Continuity and Disaster Recovery).

Business Day means any day other than a Saturday, Sunday, public holidays in New South Wales or 27, 28, 29, 30 or 31 December.

Business Hours means any eight (8) hour period between 7am and 7pm on any Business Day.

Business Requirements Specification or **BRS** means the document that contains TfNSW's business requirements for the System, as set out in Schedule 3 (System Definition and Requirements).

CCB Gate or Configuration Management Gates means each TfNSW Configuration Control Board Gate being the governance stages instituted by TfNSW in order to manage and control any changes to the configuration of assets on the Network, as further described in the ASA Standard T MU AM 04001 PL: Configuration Project Plan.

CCU means the NSW Government's Construction Compliance Unit.

Change in Approval means any one or more of the following that occurs after the relevant SOW Execution Date:

- (a) any amendment to the requirements or conditions attached to an Approval (excluding any Permit to Work) existing at the SOW Execution Date (including in draft form or in standard conditions), as identified in the relevant Statement of Work; or
 - (b) the notification by TfNSW of an Approval (excluding any Permit to Work) obtained by TfNSW or a Third Party and in respect of which the Contractor is required to comply, other than in respect of:
 - (i) an Approval in existence at the SOW Execution Date (including in draft form or in standard conditions), as identified in the relevant Statement of Work; or
- an Approval listed in the Contract Specifications.

Change in Law means any one or more of the following that occurs after the relevant SOW Execution Date:

- (a) the amendment, repeal or change of a Law existing at the SOW Execution Date; or
- (b) the enactment of a new Law not existing at the SOW Execution Date.

Change in Standard

[REDACTED]

[REDACTED]

[REDACTED]

Change Manager means the change manager appointed by TfNSW.

Change of Interest means:

- (a) a change in Ownership; or
- (b) a Business Change,

of the Contractor or any of its Relevant Related Bodies Corporate.

Charges means the charges and Fee components as defined and explained in Schedule 11 (Pricing Terms) to be used in the calculation of the Fees.

Claim means any claim, action, demand or proceeding including any claim, action, demand or proceeding relating to or in respect of any Transaction Document or the Contractor's Activities.

Collaboration Participants has the meaning given in clause 6.4(c).

Collaboration Principles has the meaning given in clause 6.4(c).

Commencement Date means the date on which TfNSW notifies the Contractor under clause 1.4(c) that all of the Conditions Precedent have been satisfied or waived.

Commercial Management Meeting means the governance meeting of that name described in Schedule 17 (Governance and Management).

Compensation Event [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

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;
the level of qualification attained;
if, and when, a re-assessment of competence is to be conducted;
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 TfNSW with respect to the competence of the Rail Safety Worker.

Concept Design means:

- (a) the design for the Trackside Subsystem prepared for the SOW 1 Deployment Area as part of the Contractor's response to the RFP (as attached to Statement of Work 1); and
- (b) the concept design included in the Contractor's SOW Proposal (in respect of any New SOWs) as attached to the relevant SOW.

Condition means each:

- (a) Condition Precedent;
- (b) Condition Subsequent; and
- (c) SOW Condition Precedent.

Conditions Precedent means each of the conditions listed in Item 2A (Conditions Precedent) of Schedule 2 (Agreement Details).

Conditions Subsequent means each of the conditions listed in Item 2B (Conditions Subsequent) of Schedule 2 (Agreement Details).

Confidential Information in relation to a Disclosing Party, means:

- (a) all information relating to the business or affairs of the Disclosing Party disclosed, communicated or delivered to, learnt by, developed by or which otherwise comes to the knowledge of or into the possession of, the Recipient under or in connection with this Agreement or the performance of the Contractor's Activities; and
- (b) the terms of this Agreement (including pricing),

but excludes any such information which the Recipient can establish:

- (c) is or became generally available in the public domain otherwise than through a breach of confidence;
- (d) was independently developed by the Recipient; or
- (e) was rightfully received by the Recipient from a Third Party (that is not a Permitted Sublicensee) who is under no obligation of confidentiality in respect of that information and who has not obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the Disclosing Party.

For the avoidance of doubt, the following information will be TfNSW's Confidential Information:

- (f) the TfNSW IP;
- (g) information developed by the Contractor specifically for TfNSW;
- (h) Confidential Information of a Rail Transport Entity; and

- (i) all information provided to the Contractor by or on behalf of a Rail Transport Entity or their Associates in relation to the Contractor's Activities, the Program or the Works.

Confidentiality and Intellectual Property Deed Poll means the confidentiality and intellectual property deed poll, the form of which the Contractor executed prior to commencement of its participation in the ECI Process is attached to this Agreement in Schedule 24 (Confidentiality and Intellectual Property Deed Poll), as amended from time to time.

Configuration Change Acceptance Notice or **CCN** means a notice of that name (or an equivalent notice that replaces this notice) issued by the Configuration Control Board in respect of Design Documentation.

Configuration Control Board or **CCB** means the TfNSW Infrastructure and Works Configuration Control Board, being a governance body established by TfNSW to manage and control any changes to the configuration of assets on the Network, or its replacement.

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

Confirmed means the document has been submitted for Review and:

- (a) has been returned marked by TfNSW with a statement 'no comments' in accordance with the Review Procedures;
- (b) has been returned by TfNSW with minor comments that TfNSW has agreed to allow the Contractor to address as part of a subsequent Review in accordance with section 7.1 of Schedule 8 (Review Procedures); or
- (c) is deemed under the Review Procedures to have been returned marked 'no comments',

and **Confirmed Documents** and **Confirmed Technical Documents** will be interpreted accordingly.

Conflict of Interest means any conflict of interest of any nature including:

- (a) any proven or alleged breach or default by the Contractor or its Associates of any Law, agreement, order or award binding on the Contractor or its Associates, whether admitted or contested, which may materially affect in an adverse manner the ability of TfNSW to obtain the Contractor's Activities from the Contractor;
- (b) the supply or proposed supply of goods or services or advisory services by the Contractor or its Associates in relation to the other Subsystems; and
- (c) the supply or proposed supply of goods or services to or from a person in a manner or to an extent that may:

adversely affect the ability of TfNSW to obtain the Contractor's Activities from the Contractor;

adversely affect TfNSW's ability to compete in the market; or

prejudice or be likely to prejudice the confidentiality or privacy of any Confidential Information of TfNSW.

Contamination means the presence in, on or under land or any other aspect of the Environment of a substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) which is:

- (a) at a concentration above the concentration at which the substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) is normally present in, on or under land or any other aspect of the Environment in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment; or
- (b) toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals and stone containing silica.

Contract Representatives Meeting means the governance forum of that name described in Schedule 17 (Governance and Management).

Contract Specifications has the meaning given in clause 4.1(b).

Contractor Deed Poll means a deed poll substantially in the form set out in Schedule 26 (Form of Contractor Deed Poll).

Contractor Indemnified Persons means the Contractor and its Associates.

Contractor Infringement Claim means any Claim alleging that the Contractor-Licensed IP, Assigned IP, Assets or Works, or their use (as contemplated by clause 61.2(y)), exploitation or possession by TfNSW or its Associates or any TfNSW Indemnified Persons in accordance with any rights provided under this Agreement, infringe the Intellectual Property Rights or Moral Rights of any person.

Contractor Inputs has the meaning given in section 1.2(a) of Schedule 15 (Interface Requirements).

Contractor Insurance Policies means:

- (a) the insurance policies set out in Item 7 (Contractor Insurance Policies) of Schedule 2 (Agreement Details); and
- (b) such other insurance policies as are required to be obtained by the Contractor pursuant to this Agreement (including any SOW).

Contractor-Licensed IP

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Contractor Personnel means any individuals engaged in the performance of the Contractor's obligations under this Agreement, including the employees, secondees from other entities, individuals engaged by the Contractor as contractors on a labour hire basis, agents and its Subcontractors.

Contractor Sites means those Delivery Locations owned or managed by the Contractor.

Contractor Tools means all Tools other than the Licensed Tools.

Contractor's Activities means all things which the Contractor is required to do to comply with its obligations under this Agreement, including:

- (a) as required by clause 6.1 (Scope of obligations);
- (b) performance of the Works;
- (c) supply of the Assets in accordance with this Agreement;
- (d) the provision of the Contractor's Equipment; and
- (e) unless specified otherwise in this Agreement, anything customarily performed in connection with the performance of, or incidental or ancillary to, the obligations in paragraphs (a) to (d).

Contractor's Commercial Product means the version of the Trackside Subsystem that the Contractor makes generally available to its clients from time to time.

Contractor's Equipment means any hardware, servers, peripherals, tools, appliances, machinery, network or communications infrastructure, or other equipment used by the Contractor in the execution of the Contractor's Activities but not forming part of the Assets.

Contractor's Program means the Contractor's program for delivery of a Statement of Work, the version current as at the execution of that Statement of Work being attached to the Statement of Work, as updated from time to time in accordance with clause 13 (Programming).

Contractor's Representative means the relevant Contractor contact or their delegate, which as at the Execution Date is the person set out in Item 3 (Representatives) of Schedule 2 (Agreement Details), or such other replacement person as is identified in a Statement of Work or notified by the Contractor to TfNSW from time to time, and who will be a Key Person for the purposes of the Agreement.

Contractor's Solution has the meaning given in clause 4.1(d).

Contractor's Spares Inventory has the meaning given in clause 19.2(a)(i).

Control has the meaning given in clause 46.4(a).

Controlling Entity means any entity which has Ownership over the Contractor or a Relevant Related Body Corporate.

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

Corrective Maintenance Services means those maintenance services which are generally corrective, reactive or unplanned in nature, including those described as "Corrective Maintenance Services" in a SOW.

Current SOW Value at the time a Claim is made means the higher of:

- (a) the total aggregate value of all amounts paid or payable to the Contractor under all SOWs which at the time of the Claim have a DLP which is not yet expired; and
- (b) in respect of a Claim made under a SOW, the total aggregate value of all amounts paid or payable to the Contractor under that SOW (whether or not the DLP for that SOW has expired).

For the purposes of this definition “payable” includes amounts that are not yet due and payable but which would be payable if both parties were to continue to properly perform all of their respective obligations under the relevant SOW(s) (as defined in paragraphs (a) and (b)) for the remainder of their SOW Terms. Further, where any fees are time and materials, volume or effort based, the amounts payable will be calculated on pro rata basis having regard to a reasonable forecast or estimate of volume of services to be provided or required during the remaining SOW Term.

Customer’s Damage Spares Inventory means the total inventory of additional Spares delivered by the Contractor under Statement of Work 1 under this Agreement in order for Sydney Trains to repair any damage to an Asset incurred after the commencement of the TLS Activities in the SOW 1 Deployment Area.

Customer’s Maintenance Spares Inventory has the meaning given in clause 19.2(a)(ii).

Customer’s Spares Inventories means the Customer’s Damage Spares Inventory and the Customer’s Maintenance Spares Inventory.

Cut Off Date means:

- (a) in relation to the Conditions Precedent and the Conditions Subsequent, the relevant date set out in Item 2 (Conditions) of Schedule 2 (Agreement Details); and
- (b) in relation to the SOW Conditions Precedent, the date set out in the relevant SOW.

Data Breach means any:

- (a) unauthorised access to, or unauthorised disclosure of, or breach of security relating to any Personal Information or TfNSW Data; or
- (b) loss, corruption or damage of any Personal Information or TfNSW Data.

Deed of Novation means the deed in Schedule 27 (Form of Deed of Novation).

De-Identified or **De-Identify** has the same meaning as in the *Privacy Act 1988* (Cth).

Defect means any Asset, or any aspect of an Asset, which is not in accordance with this Agreement, and including:

- (a) any defect, deficiency, fault, error or omission in an Asset;
- (b) any failure of an Asset to meet the Contract Specifications; and
- (c) any failure of the Trackside Subsystem to pass Acceptance or Verification, or any other issue which would cause the Trackside Subsystem or associated Assets not to pass Acceptance or Verification.

Defects Liability Period or DLP means the period from the date of Acceptance of the “System Provisional Acceptance (System)” Milestone under the relevant Statement of Work until the applicable DLP Expiry Date.

Delay Cap has the meaning given in clause 63.1(c)(i)(A).

Delivery Impact Statement has the meaning given under the TLS Agreement.

Delivery Location means:

- (a) the locations set out in the relevant SOW;
- (b) such additional locations approved by TfNSW from time to time in accordance with clause 8.2(a); and
- (c) any locations from which the Contractor Personnel who are primarily based at a location described in paragraphs (a) or (b) are working from time to time, provided that those Contractor Personnel comply with the remote working policies of the Contractor and such other requirements as TfNSW may nominate from time to time (including, for example, relating to security, confidentiality and workplace health and safety).

Delivery Management Meeting means the governance meeting of that name described in Schedule 17 (Governance and Management).

Delivery Stand Up Meetings means the governance forums of that name described in Schedule 17 (Governance and Management).

Deployment Areas means each section of the Network onto which the Trackside Subsystem will be deployed, and includes the SOW 1 Deployment Area and each Future Deployment Area.

Deposited Materials has the meaning given in clause 39.1(a).

Deposited Software has the meaning given in clause 39.1(b).

Design Activities means the Contractor's Activities required to be undertaken in connection with the design of the Works (or any part thereof) or Assets, including the development of Design Documents in accordance with the Design Development Process.

Design Development Process means the process to be adopted by the Contractor in developing the Design Documents, as detailed in clause 9 (Design).

Design Development Requirements means TfNSW's requirements for the Design Activities, as more specifically identified in clause 9 (Design) and the Design Development Requirements in the PR.

Design Documentation or Design Documents means:

- (a) all Technical Documents that are design documentation (including design standards, design reports, durability reports, construction descriptions, specifications, models, samples, prototypes, calculations, drawings, digital records, Software and all other relevant data) in computer readable and written forms, or stored by any other means, required by this Agreement or necessary to be produced by the Contractor or a Designer to design and construct the Trackside Subsystem; and
- (b) documentation (including certificates and check lists) to evidence that the design documentation complies with the requirements of this Agreement.

Design Life of an Asset means:

- (a) in respect of the Trackside Subsystem deployed in connection with any Deployment Area, a period of twenty (20) years from the Acceptance of the "Subsystem Provisional Acceptance (Trackside Subsystem)" Milestone under the Statement of Work relevant to that Deployment Area; and
- (b) in respect of any other Asset or any component of the Trackside Subsystem, including each item of Trackside Equipment:
 - (i) where the period of serviceable use for which it has been designed has been set out in the relevant SOW or Work Order, that period; and
 - (ii) where the period of serviceable use for which it has been designed has not been set out in the relevant SOW or Work Order, the greater of:
 - (A) twenty (20) years from the Acceptance of the "Subsystem Provisional Acceptance (Trackside Subsystem)" Milestone under the Statement of Work pursuant to which that Asset is being delivered; and
 - (B) any longer period specified in the Contract Specifications or Standards.

Design Phase means the stages through which the Design Documents are to be progressed, as described further in the PR, and include:

- (a) the Preliminary Design Review;
- (b) the Detailed Design Review;
- (c) the Test Readiness Review; and
- (d) the System Verification Review.

Design Presentations has the meaning given in clause 9.6 (Design Presentations).

Design Working Group has the meaning given in clause 9.5 (Collaborative Design).

Designer means each Subcontractor engaged by the Contractor to undertake the Design Activities (or any part of them).

Designer's Team means the team of persons (including the Designers) engaged in the Design Activities (or any part of them).

Designs means the Concept Design, the Preliminary Design, the Detailed Design, the Approved for Construction Design and any design documents produced as a result of the Test Readiness Review or the System Verification Review.

Detailed Design means the Design Documentation submitted for Review, and Confirmed, as part of the Detailed Design Review.

Detailed Design Review or **DDR** means the review conducted in accordance with the PR.

Detailed Early Warning Notice means a notice issued under section 2.1(d) (Issue Resolution Process) of Schedule 18 (Issue Resolution Procedure).

Determinable Matters has the meaning given in clause 63.5 (Insurance cover).

Difference of Conditions has the meaning given in clause 46.6 (Third Party Agreement).

Direct Loss

[REDACTED] [REDACTED]

[REDACTED]

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

Direct and **Directed** have a corresponding meaning.

Direction to Proceed has the meaning given in section 5 (Directions to Proceed) of Schedule 7 (New SOWs and Variation Procedures).

Disabling Code means any computer virus or other code which is intended to or would have the effect of intercepting, accessing, copying, disrupting, impairing, denying or otherwise adversely affecting security, performance, integrity, reliability, access to or use of any information technology, data, equipment, network, including worms, spyware, adware, key loggers, trojans and any new types of programmed threats that may be classified.

Disaster means:

- (a) any unplanned material interruption of the Contractor's Activities, including any material interruption arising as a result of a Force Majeure Event, or any incident or event that has the potential to result in an unplanned interruption of the Contractor's Activities;
- (b) any Force Majeure Events or incidents that affect, or have the potential to affect, the management of critical information and communication systems, including restoration and protection of data; and
- (c) any Force Majeure Events or incidents that affect, or have the potential to affect, the management of critical business processes including rail safety, work health and safety,

operational processes, financial and accounting, human resources and payroll, information and communications technology and procurement.

Disclosing Party means a party which discloses or gives access to its Confidential Information to the other party or whose business or affairs are the subject matter of the Confidential Information.

Disengagement means the process of transferring responsibility for the provision of the whole or any part of the Contractor's Activities from the Contractor to TfNSW or a Replacement Contractor.

Disengagement Commencement Date means the date that TfNSW requests the Contractor to commence providing Disengagement Services in respect of some or all Contractor's Activities as notified pursuant to section 1.2(c) of Schedule 20 (Disengagement).

Disengagement Fees has the meaning given in section 7.3 of Schedule 11 (Pricing Terms).

Disengagement Period has the meaning given in section 1.2(c) of Schedule 20 (Disengagement).

Disengagement Plan means a written plan for Disengagement developed in accordance with section 3 of Schedule 20 (Disengagement) and approved by TfNSW in writing.

Disengagement Services means the services to be provided by the Contractor during the Disengagement Period, described in clause 59.1 (Disengagement Services) and Schedule 20 (Disengagement).

Dispute means an Issue in relation to which a party has issued a Dispute Notice.

Dispute Notice means a notice issued under section 1.1 (Dispute Notice) of Schedule 19 (Dispute Resolution Procedure).

Dispute Resolution Procedures means the procedures set out in Schedule 19 (Dispute Resolution Procedure).

Divestiture means any sale or divestiture of all or part of any person, its business or other assets, in whatever form (including by way of an initial public offering of shares).

DLP Cap means:

(a) in respect of SOW 1, the later to occur of:

thirty-six (36) months from the date of Acceptance of the "System Provisional Acceptance (System)" Milestone under SOW 1; and

the expiry of the manufacturer's warranties in respect of the Assets; and

(b) in respect of any New SOW, the date determined in accordance with that SOW or, where no DLP Expiry Date is specified in the New SOW, the later to occur of:

thirty-six (36) months from the date of Acceptance of the "System Provisional Acceptance (System)" Milestone under that New SOW; and

the expiry of the manufacturer's warranties in respect of the Assets.

DLP Expiry Date [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Document Deliverable means a document that is provided or is required to be provided by or on behalf of the Contractor, and includes:

- (a) Technical Documents (including Design Documentation);
- (b) documents required to be produced under the PR, including those documents listed in Appendix 02 (Schedule of Deliverables) to the PR and each Project Plan;
- (c) any document required to be produced under a SOW;
- (d) plans, processes, programs, manuals, samples, mock-ups, models, approvals or conditions in any format, or any other document or thing; and
- (e) Reports.

Draft Defect Rectification Plan has the meaning given in clause 11.7(b).

Draft Third Party Agreement has the meaning given in clause 46.6 (Third Party Agreement).

DTRS Subsystem means the component of the System that provides wireless communication between the Trackside Subsystem and the Onboard Subsystem through the existing digital train radio system for the Network.

ECI Agreement means the agreement between the Contractor and TfNSW pursuant to which the Contractor was engaged to perform certain activities during the ECI Process.

ECI Process means the Early Contractor Involvement (ECI) phase of the Program involving a number of shortlisted Third Parties, including the suppliers for the Trackside Package and the TMS Subsystem.

Enhancement means a Major Enhancement and a Minor Enhancement.

Environment means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism;
- (d) human-made or modified structures and areas; and

- (e) interacting natural ecosystems that include components referred to in paragraphs (a) to (c).

Environment and Sustainability Management Plan means the plan of that name defined in Appendix 06 (PR Definitions) of the PR.

EOT Event

- [illegible]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

EPL means an environment protection licence issued under the *Protection of the Environment Operations Act 1997* (NSW).

ERA Standards means the “European Union Agency for Railways” (**ERA**) standards and specifications including, for clarity, as updated from time to time.

Escrow Agent has the meaning given in clause 39.1(a)(i)(A) (Contractor to establish Escrow).

Escrow Deed means an escrow deed substantially in the form set out in Schedule 25 (Form of Escrow Deed) together with any amendments proposed by the Contractor and agreed by TfNSW.

ETCS means European Train Control System.

Event of Default has the meaning given in clause 58.1(a).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Execution Date means the date on which this Agreement is signed by the last party to execute it.

Executive Forum means the governance forum of that name described in Schedule 17 (Governance and Management).

Expert Referral Date means the date that the parties agree in writing to refer a Dispute to expert determination under Schedule 19 (Dispute Resolution Procedure).

Extended Term means any period of extension exercised under clause 2.3(a)(i).

Failure has the meaning given in clause 53.1 (Preparation of Action Plans).

Fees means the fees for the provision of the Contractor's Activities, calculated in accordance with Schedule 11 (Pricing Terms) and the relevant SOW.

Final Acceptance means that the Trackside Subsystem has met the Final Acceptance Criteria for the Trackside Subsystem.

Final Acceptance Certificate means a certificate issued by TfNSW in the form of Part B of Schedule 9 (Certificates) certifying that the Trackside Subsystem has achieved Final Acceptance.

Final Acceptance Criteria means the Acceptance Criteria set out against the Milestone for Final Acceptance of the Trackside Subsystem as set out in Schedule 6 (Milestones and Acceptance Criteria).

Final Payment Claim has the meaning given in clause 29.11 (Second Statement of Outstanding Claims and Release).

Financial Assessment has the meaning given in clause 34.3 (Financial Assessment).

First Statement of Outstanding Claims has the meaning given in clause 29.10 (First Statement of Outstanding Claims and Release).

First Statement Submission Date has the meaning given in clause 29.10 (First Statement of Outstanding Claims and Release).

Fit for purpose must be interpreted in accordance with paragraph (w) of section 2 (Interpretation) of this Schedule 1 (Definitions and Interpretation), and similar references in this Agreement (including, for example, "fit for its intended purpose") will be construed accordingly. Any use of the term Fit for purpose or similar terms in this Agreement will be interpreted in accordance with paragraph (w) of section 2 (Interpretation) of this Schedule 1 (Definitions and Interpretation), whether used in their capitalised form or their lower case form.

Fixed Telecommunications Network Subsystem or FTN Subsystem means the fixed telecommunications network used as the backbone for the System.

Force Majeure or Force Majeure Event [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Future Deployment Area means any sections or stages of the rollout of the System not included in the SOW 1 Deployment Area.

Future Project Work means:

- (a) supply and implementation of a Major Enhancement or Upgrade;
- (b) supply and implementation of a Minor Enhancement or Update to be performed prior to commencement of the TLS Agreement; and
- (c) any other project work requested by TfNSW from time to time under a New SOW in accordance with Schedule 7 (New SOWs and Variation Procedures), other than the rollout of the Trackside Subsystem in a Future Deployment Area.

[REDACTED]

Government Authority includes any governmental or semi-governmental or local government authority, administrative or judicial board, tribunal or court, department, commission, public authority, minister, statutory corporation, authority or instrumentality (and includes the ASA) and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the Program, but does not include any of the foregoing to the extent that the relevant entity is TfNSW (excluding the ASA) or another Rail Transport Entity acting solely in their role as a participant in the Program.

Greenhouse Data means all data, information, records and reports of the type that a registered corporation or any other person may be required or entitled to provide under the NGER Legislation, including as to:

- (a) greenhouse gas emissions, energy production or energy consumption; and
- (b) reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project,

relating to any aspect of any Relevant Matters.

GST means the tax imposed by the GST Act and the related imposition Laws of the Commonwealth.

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

GST Determination has the meaning given in clause 29.3 (Recipient Created Tax Invoices).

Guarantor means the entity or entities that are required to execute the Parent Company Guarantee, as further described in Schedule 2 (Agreement Details).

Hold Point means a point identified as such in a SOW, beyond which the relevant part of the Contractor's Activities may not proceed without the verification and subsequent written authorisation of TfNSW.

Incident means:

- (a) any work health and safety incident, environmental incident or Security Incident arising, or which is likely to arise, from the performance of (or failure to perform) the Contractor's Activities including:

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

loss of containment, escape of or migration of Contamination off-site and into the Environment;

any fire or dangerous event on the Delivery Locations;

a Security Incident;

any unauthorised removal of trees;

- (vi) a non-compliance with an Approval or Third Party Agreement; or

- (vii) any public complaint;

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

- (c) any Alert Event,

and includes:

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

- (e) "occurrences" and "notifiable occurrences" under the WHS Legislation and the Rail Safety National Law.

Independent Safety Assessor means the independent safety assessor appointed by TfNSW in accordance with the PR.

Indirect Loss means loss or damage other than Direct Loss.

Industrial Action means industrial action of any description, including industrial action involving:

- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of work;
- (b) a ban, limitation or restriction on the performance of work, or acceptance of or offering for work; and
- (c) a failure or refusal by a majority of the work force employed or engaged by the Contractor or its Associates to attend for work.

Industry Best Practice means:

- (a) in relation to any activity, the exercise of a degree of skill, diligence, prudence and foresight which would be reasonably and ordinarily expected from a skilled and experienced international professional organisation providing goods and services which are substantially similar to the type and complexity of the Contractor's Activities or the relevant part of them; and
- (b) includes compliance with applicable ERA Standards (unless stated otherwise in section 3 (Special Conditions) of the relevant SOW (in respect of that SOW only)).

Information Documents and Materials means all information, data, documents or other material (whether written, non-written or oral) provided to the Contractor by or on behalf of TfNSW, any Other Contractor or any Stakeholder in relation to the Program prior to the Execution Date (in respect of this Agreement and Statement of Work 1) and each SOW Commencement Date (in respect of each SOW other than Statement of Work 1) other than the Reliance Material and includes any documents referred to in the Transaction Documents.

Infringement Claim means a Contractor Infringement Claim or TfNSW Infringement Claim as the context requires.

Initial Early Warning Notice means a notice issued under section 2.1(c) (Issue Resolution Process) of Schedule 18 (Issue Resolution Procedure).

Initial Project Plans means the Project Plans listed in Appendix 05 (Initial Project Plans) of the PR.

Initial Term has the meaning given in clause 2.2 (Initial Term).

Insolvency Event in relation to a party (**insolvent party**) means the happening of any one or more of the following events:

- (a) an application is made to a court for an order (which application is not set aside within twenty-one (21) days of being made), or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator is appointed to it under the Corporations Act ss 436A, 436B or 436C;
- (d) a controller (as defined in the Corporations Act s 9) is appointed to it or any of its assets;
- (e) a receiver is appointed to it or any of its assets;

- (f) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (g) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (h) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable Law (including under the Corporations Act ss 459C(2) or 585) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (i) it is taken to have failed to comply with a statutory demand as a result of the Corporations Act s 459F(1);
- (j) a notice is issued under the Corporations Act ss 601AA or 601AB;
- (k) a writ of execution is levied against it or a material part of its property;
- (l) it ceases to carry on business or threatens to do so; or
- (m) anything occurs under the Law of any jurisdiction which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.

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

Institution means any authorised deposit taking institution holding an authority to carry on banking business in Australia under the terms of the *Banking Act 1959* (Cth).

Insurance Policies means:

- (a) the Contractor Insurance Policies; and
- (b) the TfNSW Insurance Policies.

Insurance Proceeds has the meaning given in clause 64.6(a).

Insurance Proceeds Account has the meaning given in clause 64.6(b).

Integrated Program means the current:

- (a) integrated schedule of works that comprises all of the activities of the Contractor, Other Contractors, TfNSW and the Stakeholders required to deliver the Program; and
- (b) schedule of dependencies existing between the Contractor, Other Contractors, TfNSW and the Stakeholders required to deliver the Program,

as presented by TfNSW to the System Integration Committee.

Intellectual Property Register has the meaning given in clause 37.8 (Intellectual Property Register).

Intellectual Property Rights includes any and all industrial and intellectual property rights of any nature both in Australia and throughout the world, and includes any patents, registered designs and domain names, copyright (including future copyright), trade or service marks

(whether registered or unregistered), trade secrets, know-how, rights in relation to circuit layouts, or other proprietary right or right to registration of such rights.

Interface Contractor means:

- (a) any Rail Transport Entity;
- (b) any Third Party, including an Other Contractor but excluding any Subcontractors, that supplies goods or services to a Rail Transport Entity or who has otherwise has a reason to be working in the Rail Corridor;
- (c) each Lead Supplier to an interface where the Contractor is also a Participating Supplier; and
- (d) each Participating Supplier to an interface where the Contractor is also a Lead Supplier or Participating Supplier.

Interface Contractor Agreement means an agreement between a Rail Transport Entity and an Interface Contractor.

Interface Contractor Matrix means the table set out in Attachment A (Interface Contractor Matrix) to Schedule 15 (Interface Requirements), as updated from time to time.

Interface Control Document or **ICD** means a document detailing a technical interface relevant to the Trackside Subsystem. The Interface Control Documents will be developed in accordance with the Statements of Work and the PR based on the Interface Specification Documents.

Interface Requirements means the Interface Requirements set out in Schedule 15 (Interface Requirements).

Interface Specification Document or **ISD** means a document detailing technical interfaces relevant to the Trackside Subsystem, as contained in Schedule 3 (System Definition and Requirements).

Interface Work or **Interfacing Work** means any work or activities undertaken by any Other Contractor which will:

- (a) interface or integrate with or affect or be affected by the Contractor's Activities, the Works or the Assets; or
- (b) require the Contractor to interface or co-ordinate works with the Other Contractor,

including any such work described in the PR, any SOW, the Interface Contractor Matrix, the ICDs and ISDs and the interface and integration of any Interfacing System.

Interfacing System means:

- (a) each Subsystem with which the Trackside Subsystem is required to interface or integrate; and
- (b) each other system, solution, hardware, network or Software, including legacy or new, with which the Trackside Subsystem is required to interface or integrate,

as set out in any SOW, the PR, the SSRS or the Interface Contractor Matrix.

Investigative Authority means any Government Authority authorised to undertake investigative action under the Rail Safety National Law, Rail Safety National Regulations or the *Transport Safety Investigations Act 2003* (Cth). It includes the ONRSR, the Independent Transport Safety Regulator, the Australian Transport Safety Bureau and the Office of Transport Safety Investigations.

Issue has the meaning given in clause 33.1 (Issue Resolution).

Issue Resolution Procedures means the procedure set out in section 2 (Issue Resolution Procedure) of Schedule 18 (Issue Resolution Procedure).

Key Delivery Positions means those positions or roles designated as key by TfNSW in a SOW.

Key People or **Key Person** means those Contractor Personnel filling Key Delivery Positions and identified as Key People in a SOW, and includes any additional persons or replacement persons approved by TfNSW in writing to fill such Key Delivery Positions.

Key Subcontract Novation has the meaning given in clause 27.5(c).

Key Subcontracts means:

- (a) any Subcontract with a “Key Subcontractor” that is identified as such in a Statement of Work;
- (b) any Subcontract with an Approved Subcontractor that is identified as a Key Subcontractor in Item 4 (Subcontractors) of Schedule 2 (Agreement Details); and
- (c) such other subcontracting of particular Contractor’s Activities as nominated by TfNSW as a condition of its granting consent in respect of a Subcontractor pursuant to clause 27.4 (Seeking TfNSW approval of Subcontracting).

Labour Rates has the meaning given in Schedule 11 (Pricing Terms).

Law means:

- (a) any acts or delegated legislation (including ordinances, regulations, by-laws, orders, awards and proclamations) of any relevant jurisdiction, and any document or policy enforceable under such act or delegated legislation, as they exist from time to time;
- (b) any judgement or decision of a court, judicial authority or tribunal, including principles of law or equity established by decisions of courts; and
- (c) common law.

LD Cap has the meaning given in clause 15.2(a).

LD Milestone means a Milestone to which Liquidated Damages attach, as set out in a SOW.

Lead Supplier means, in respect of a technical interface, the entity identified as the “Lead Supplier” in any SOW, the Interface Contractor Matrix or otherwise in the relevant ISD in respect of that technical interface.

Learning Workers means Trainees (completing a training contract), Apprentices and workers, current and new, who are updating their qualifications to meet the needs of the Program. This includes full and part qualification accredited training. Learning Workers excludes Trainees, Apprentices and workers who undertake training required by Mandatory Requirements or for the

various approvals, licences, and permits that may be necessary for commencement, implementation and control of the Contractor's Activities.

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 Agreement 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;
- (b) which states that it may be relied upon by TfNSW; and
- (c) in a form and substance reasonably satisfactory to TfNSW.

Licensed Tools means those Tools identified in a Statement of Work or a Work Order under the TLS Agreement as being "Licensed Tools".

Life Cycle Cost or **LCC** mean the total cost to all Rail Transport Entities of supply, ownership, operation, maintenance and disposal (both direct and indirect) of NSW Rail Assets over their design life.

Linked Claim has the meaning given to it in section 1.4 (Linked Claims) of Schedule 19 (Dispute Resolution Procedure).

Liquidated Damages in respect of a Milestone means an amount calculated in accordance with the rates stated in the relevant SOW with respect to that Milestone (if any).

Loss [REDACTED]

Major Enhancement [REDACTED]

[REDACTED]

[REDACTED]

Mandatory Requirements has the meaning given in clause 43.1 (Mandatory Requirements).

Material means material in any form, including documents, reports (including the Reports), Assets, Contractor's Equipment, information, data, Software (including all Materials relating to that software and/or its design, development, Modification, operation, support or maintenance) and Tools.

Material Breach [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Matter means any direction, event, circumstance, act, omission, fact, matter, exercise of entitlement, demand or thing (and includes any allegation, Claim, exercise of entitlement or demand) of any nature, whether present or future, fixed or unascertained, actual or contingent, at Law, in equity, under statute, under or in connection with this Agreement or otherwise (including in connection with the existence, validity or termination of the Agreement or for an increase in the Fees, the payment of money (including damages), for an extension of time or for any other form of relief).

MCD means the Maintenance Concept Definition set out in Schedule 3 (System Definition and Requirements).

Milestone means any milestone set out in a SOW.

Milestone Date means the date by which a Milestone must be Accepted, as specified in a SOW and as extended under clause 14 (Timing obligations) or 15 (Delay, extension of time and compensation) or amended pursuant to a Variation.

Minimum Commitment Period means the minimum amount of time a Key Person (including any replacement Key Person) is required to be committed by the Contractor to be retained in a Key Delivery Position, as set out in a SOW.

Minor Defect

[REDACTED]

Minor Enhancement means a Modification to the Trackside Subsystem (bespoke or commercial off-the-shelf) that provides the Trackside Subsystem with amended functionality or minor additional functionality and that is not a Major Enhancement. Minor Enhancements performed prior to commencement of the TLS Agreement are intended to be performed under this Agreement, and Minor Enhancements performed after commencement of the TLS Agreement are intended to be performed under the TLS Agreement.

Modern Slavery Laws means any anti-slavery and human trafficking Laws, including:

- (a) Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth);
- (b) sections 80D, 80E, 91G(1)-(3), 91H, 91HAA and 93AA-93AC of the *Crimes Act 1900* (NSW); and
- (c) where Delivery Locations are outside of NSW, Laws equivalent to any of the Laws referred to in paragraphs (a) and (b) in the relevant jurisdictions.

Modification means an alteration, adaptation, enhancement or development of a work.

Moral Rights means the rights conferred by Part IX of the *Copyright Act 1968* (Cth).

Network means the TfNSW Metropolitan Heavy Rail network as set out in ASA TS TOC.3. At the Execution Date, the TfNSW Metropolitan Heavy Rail means the network bounded by Newcastle Interchange (165.746km), Woodville Junction (163.981 km and 164.045 km), Bomaderry (153.630 km), Unanderra (91.080 km), Macarthur (57.965 km), and Bowenfels (158.800 km) but does not include the South Sydney Freight Line and Metropolitan Freight Network (bound by Marrickville 6.370 km, Flemington South Junction 18.909 km, and Sefton Park East Junction 21.285 km). In addition, Light Rail Networks and Metro Networks are not included in the TfNSW Metropolitan Heavy Rail network.

New SOW means a SOW that is not part of this Agreement as at the Execution Date.

NGER Legislation means the *National Greenhouse and Energy Report Act 2007* (Cth), related regulations and legislative instruments.

Non-NSW Based Resource means those Contractor Personnel that are located at Delivery Locations outside of NSW.

Notifiable Incident means any Incident which is required to be or, in the opinion of TfNSW ought to be, notified to a Government Authority or regulator.

NSW Based Resource means those Contractor Personnel that are located at Delivery Locations in NSW as set out in a SOW.

NSW Code means the New South Wales Government Code of Practice for Procurement (January 2005).

NSW Guidelines means the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (as published by the NSW Treasury July 2013).

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

NSW Trains mean the operator of intercity and regional trains in NSW constituted by Part 2B of the *Transport Administration (General) Regulation 2005* (NSW).

Objectives has the meaning given in clause 3.1 (Objectives).

Obsolescent means where any Asset (or any part of it) transitions from being available from the original manufacturer to being not available.

Obsolete means where any Asset (or any part of it) transitions from:

- (a) being fully supported to being not fully supported, whether by the original manufacturer or the Contractor; or

- (b) operability to non-functionality or non-operability due to external reasons, other than on a temporary basis.

Obsolescence means when an Asset has become either Obsolescent or Obsolete.

OCD means the Operations Concept Definition set out in Schedule 3 (System Definition and Requirements).

Onboard Subsystem means the components of the System to be implemented on board Rollingstock, including an upgrade to ETCS Level 2 and ATO. There may be more than one Onboard Subsystem.

ONRSR means the Government Authority or other person having jurisdiction in New South Wales from time to time responsible for reviewing and evaluating matters relating to the safe operation of railway operations and advising or making recommendations to the NSW Minister for Transport and Infrastructure, as appropriate, and, at the Execution Date, is the Office of the National Rail Safety Regulator.

Open Source Software means any Software which, as a condition of its use, Modification or distribution, requires that such Software, any Modification to that Software or any other Software with which such Software is combined or distributed be:

- (a) disclosed or distributed in source code or object code form;
- (b) licensed for the purposes of making Modifications; or
- (c) redistributable,

to any Third Parties.

Operational Integration and Operational Readiness Plans means TfNSW's operational integration Project Plan and TfNSW's operational readiness Project Plan as provided to the Contractor by TfNSW.

Operational Readiness Plan means the plan of that name to be developed by the Contractor pursuant to the PR.

Operations Functions means the functions and responsibilities of TfNSW and the Rail Transport Entities as passenger transport operators of the Network and elsewhere or as the owners or managers of the rail infrastructure or Rollingstock.

Option has the meaning given in section 2 (Options) of Schedule 7 (New SOWs and Variation Procedures).

Option Notice has the meaning given in section 2(b) of Schedule 7 (New SOWs and Variation Procedures).

Organisational Chart has the meaning given in clause 26.7(a)(i).

Other Confidentiality Agreement has the meaning given in clause 40.2(e) and includes any deed poll entered into by a Permitted Sublicensee which is on substantially the same terms as the Confidentiality and Intellectual Property Deed Poll.

Other Contractor means a Third Party that provides goods or services to a Rail Transport Entity in relation to the Program, and includes:

- (a) the System Integrator;
- (b) the Independent Safety Assessor;
- (c) the Change Manager;
- (d) the actual and potential suppliers for each of the Subsystems (including the Rail Transport Entities solely in their role as a participant in the Program); and
- (e) the subcontractors engaged by the Third Parties listed above in the provision of goods or services to a Rail Transport Entity in relation to the Program (but not a Subcontractor of the Contractor).

Other Trackside Subsystem means each deployment on the Network of ETCS Level 2 trackside elements and signalling equipment as part of the Program where that deployment is to be provided by a Third Party.

Ownership has the meaning given to 'control' in section 50AA of the Corporations Act.

Packages means each of the contract packages for the Subsystems.

Parent Company Guarantee means a guarantee substantially in the form set out in Schedule 28 (Form of Parent Company Guarantee).

Participating Supplier means, in respect of a technical interface, an entity identified as a "Participating Supplier" in any SOW, the Interface Contractor Matrix or otherwise in the relevant ISD in respect of that technical interface.

Payment Claim Date means:

- (a) within five (5) Business Days of the end of each calendar month; or
- (b) on completion of a Payment Event (depending on the Fee model adopted under the relevant Statement of Work, as further described in Schedule 11 (Pricing Terms) and the relevant SOW); and
- (c) for the Provisional Acceptance Payment Claim and Final Payment Claim, within the time required by and clause 29.10 (First Statement of Outstanding Claims and Release) and clause 29.11 (Second Statement of Outstanding Claims and Release) respectively.

Payment Event means a Milestone or other event that entitles the Contractor to payment of an amount, as further described in Schedule 11 (Pricing Terms) and as detailed in the relevant SOW.

Payment Milestone means a Milestone that is a Payment Event.

Performance Monitoring System or PMS means a system to be developed by the Contractor to TfNSW's reasonable satisfaction to meet the requirements of clause 6.2 of the TLS Agreement and to enable the Contractor to monitor the operational performance of the Contractor under the TLS Agreement.

Permit to Work means the Permit to Work from Sydney Trains issued in accordance with Sydney Trains Procedure TMB A1419 Authority to Work on RailCorp Signalling Infrastructure – Permit to Work.

Permitted Sublicensee has the meaning given in clause 37.3(b).

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion, or any combination of them.

Physical Works means any activity involving:

- (a) access to the Rail Corridor; or
- (b) installation or construction work.

Planning Approval means:

- (a) the “Planning Approval” and associated conditions set out or referred to in the SOW which as of the SOW Execution Date for Statement of Work 1 is in draft form, as it may be modified from time to time;
- (b) any other Approvals issued from time to time by either TfNSW or the Minister for Planning and Infrastructure (acting in their capacity as determining authority under the *Environmental Planning and Assessment Act 1979* (NSW)) in respect of the Works; and
- (c) any measure, action, standard or precaution to mitigate the impact of the Works, and statement of commitments that are required to be complied with or fulfilled in the documents referred to in paragraphs (a) and (b).

Possession Relief Event has the meaning given in section 5 of Schedule 10 (Physical Works).

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

Pre-Approved Subcontractors means:

- (a) any Subcontractor specified in Item 4 (Subcontractors) of Schedule 2 (Agreement Details) as an Approved Subcontractor; and
- (b) any “Approved Subcontractors” identified in a Statement of Work.

Pre-Existing IPR means Intellectual Property Rights:

- (a) existing as at the Execution Date; and
- (b) created after the Execution Date independently of the Program,

but does not include the Intellectual Property Rights created by the Contractor for purposes of the Program during the ECI Process to the extent that those Intellectual Property Rights constitute a new work for the purposes of the *Copyright Act 1988* (Cth).

Preliminary Design means the Design Documentation submitted for Review, and Confirmed, as part of the Preliminary Design Review.

Preliminary Design Review means the review conducted in accordance with the PR.

Preliminary Issue has the meaning given in paragraph (d) of Attachment B (ADR Agreement) to Schedule 19 (Dispute Resolution Procedure).

Pricing Principles means the pricing principles detailed in section 3 of Schedule 11 (Pricing Terms).

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Laws means:

- (a) the Privacy Act;
- (b) the *Privacy and Personal Information Protection Act 1998* (NSW);
- (c) the *Health Records and Information Privacy Act 2002* (NSW);
- (d) any legislation (to the extent that such legislation applies to TfNSW or the Contractor or any other recipient of Personal Information) from time to time in force in:
 - (i) any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
 - (ii) any other jurisdiction (to the extent that TfNSW, the Contractor or any Personal Information processed or handled in connection with this Agreement is subject to the laws of that jurisdiction),affecting or regulating privacy or Personal Information; and
- (e) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraphs (a), (b), (c) and (d), as amended from time to time.

Probity Event means an event, matter, situation or thing that in TfNSW's opinion:

- (a) has a material adverse effect on the honesty or integrity of the Contractor, an Associate of the Contractor, or any of the Contractor Personnel;
- (b) relates to the Contractor, an Associate of the Contractor or the Contractor Personnel and has a material adverse effect on:
 - (i) the public interest; or
 - (ii) the reputation of, or public confidence in, TfNSW or the NSW Government; or
- (c) involves a material failure by the Contractor to achieve or maintain:
 - (i) reasonable standards of ethical behaviour; or
 - (ii) standards of behaviour expected of a party engaged on a Government project.

Probity Event Notice means a notice given by the Contractor or TfNSW to the other party in accordance with clause 35.1 (Notice) or 35.2 (Investigations) (as applicable) in relation to a Probity Event.

Proceed at Risk has the meaning given in section 7.1 of Schedule 8 (Review Procedures).

Proceed at Risk Notice has the meaning given in section 7.1 of Schedule 8 (Review Procedures).

Process Requirements or **PR** means the document contained in Schedule 4 (Process Requirements (PR)).

Program has the meaning given in Recital B.

Program Executive Forum means the governance forum of that name described in Schedule 17 (Governance and Management).

Prohibited Change of Interest [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Project Management Plan means the document of that name required to be provided and implemented by the Contractor pursuant to the PR.

Project Plan means each plan, system or strategy referenced in, or developed or subsequently updated pursuant to, the PR (whether developed by TfNSW or the Contractor) including:

- (a) the Initial Project Plans;
- (b) the Significant Project Plans set out in Appendix 07 to the PR;
- (c) the Systems Engineering Management Plan; and
- (d) all subsidiary plans, programs, and supporting documents and information.

Project Related Bodies Corporate means a Related Body Corporate of the Contractor that performs some or all of the obligations of the Contractor under this Agreement and includes:

- (a) any Related Body Corporate that performs any part of the Contractor's Activities; and
- (b) any Related Body Corporate that owns or licences any of the Contractor-Licensed IP.

Proposed Key Person has the meaning given in clause 26.5(e).

Provisional Acceptance means that the Trackside Subsystem has met the Provisional Acceptance Criteria for the Trackside Subsystem.

Provisional Acceptance Certificate means a certificate issued by TfNSW in the form of Part A of Schedule 9 (Certificates) certifying that the Trackside Subsystem has achieved Provisional Acceptance.

Provisional Acceptance Criteria means the Acceptance Criteria set out against the Milestone for Provisional Acceptance of the Trackside Subsystem as set out in Schedule 6 (Milestones and Acceptance Criteria).

Provisional Acceptance Payment Claim has the meaning given in clause 29.10 (First Statement of Outstanding Claims and Release).

Qualified Subcontractor has the meaning given in clause 27.1(d).

Qualifying Change in Approval

[REDACTED]

Qualifying Change in Law

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Radio Block Centre or RBC means the centralised safety unit provided by the Contractor that receives train position information via radio and sends movement authorities via radio to trains.

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

Rail Safety has the meaning given in the Rail Safety National Law.

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 Entity means:

- (a) TfNSW (and each of its divisions);
- (b) TAHE;
- (c) Sydney Trains;
- (d) NSW Trains;
- (e) any other entity or entities from time to time established, constituted or appointed to operate railway passenger services on the Network;
- (f) Australian Rail Track Corporation; and
- (g) any other Government Authority in New South Wales that owns or operates railway infrastructure or Rollingstock from time to time.

Rail Transport Entity Sites means those Delivery Locations owned or managed by a Rail Transport Entity, and includes a TfNSW Site.

Railway Track or **Rail Track** or **Track** or **Line** means the rails fastened on sleepers or transoms and founded on ballast or bridge decking or concrete slab, associated signalling and overhead wiring components (in electrified areas).

Recipient means the party which receives, possesses or is given access to Confidential Information from the Disclosing Party.

Recipient Created Tax Invoice means an invoice generated by TfNSW in accordance with clause 29 (Invoices and Payment) that satisfies the requirements of the GST Act, *Goods and Services Tax: Recipient Created Tax Invoice Determination 2017 for Agricultural Products, Government Related Entities and Large Business Entities*.

Records has the meaning given in clause 34.1 (Records).

Reimbursable Expense has the meaning given in Schedule 11 (Pricing Terms).

Rectifying Party has the meaning given in clause 23.5 (Defect Rectification by Rectifying Party).

Rejection Certificate means a certificate issued by TfNSW in the form of Part C of Schedule 9 (Certificates).

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Relevant Matter has the meaning given in clause 50 (Environmental).

Relevant Related Bodies Corporate means:

- (a) the Guarantor;
- (b) any Related Body Corporate that performs any part of the Contractor's Activities;
- (c) any Related Body Corporate that owns or licences any of the Contractor-Licensed IP;
- (d) any Related Body Corporate that has Ownership of the Contractor or any of the entities covered by paragraphs (a) to (c) above; or
- (e) any entity in the ownership chain beginning with the ultimate parent company of the Contractor and ending with the Contractor.

Reliance Material means in respect of each Statement of Work, the information and documents identified in that Statement of Work as Reliance Material.

Replacement Contractor means one or more Third Parties nominated by TfNSW to whom the Contractor's Activities are transitioned in accordance with clause 59 (Disengagement).

Replacement Third Party Agreement has the meaning given in clause 46.6 (Third Party Agreement).

Report means each of the reports required pursuant to this Agreement, including pursuant to the PR, Schedule 16 (Reports) or any SOW.

Representative means, in respect of an entity, any person acting for or on behalf of that entity and includes any director, officer, employee, contractor or professional advisor of that entity.

Request for Proposal or **RFP** means the request for proposal issued by TfNSW as outlined in Recital E.

Required Rating [REDACTED]

- [REDACTED]
- [REDACTED]

Resolution Institute means the Resolution Institute of 13-15 Bridge Street, Sydney NSW 2000.

Resource Plan means the resource plan annexed to each SOW and which meets the requirements set out in clause 26.7 (Organisational Chart and Resource Plan).

Review of a document means the review of that document in accordance with the Review Procedures.

Review Period means the period for Review of a Submitted Document in accordance with the Review Procedures.

Review Procedures means the procedures for Review of Submitted Documents described in Schedule 8 (Review Procedures).

Reviewing Party means the party responsible for conducting a Review in accordance with the Review Procedures.

Revised Allocation has the meaning given in clause 46.6 (Third Party Agreement).

RFP Process the process outlined in the RFP including the submission of a response to the RFP, the assessment of responses by TfNSW and the short-listing of certain respondents.

Rollingstock means a vehicle that operates on or uses the Network.

Safety Interface Agreement means an interface agreement, as defined in the Rail Safety National Law, in a form reasonably required by TfNSW.

Safety Management Plan means the Project Plan of that name.

Safety Management System means the safety management system to be developed, implemented and maintained by the Contractor pursuant to the PR.

Safety Report means the report required to be prepared by a designer of a structure by section 295 of the WHS Regulation.

Safe Work Method Statement (SWMS) has the meaning given in section 5 of the *Work Health and Safety Regulation 2017* (NSW).

Schedule of Rates means the schedule of rates set out in section 4 of Schedule 11 (Pricing Terms).

Second Statement of Outstanding Claims has the meaning given in clause 29.11 (Second Statement of Outstanding Claims and Release).

Second Statement Submission Date has the meaning given in clause 29.11 (Second Statement of Outstanding Claims and Release).

Security Incident means any actual or suspected:

- (a) Data Breach;
- (b) breach of the Contractor's obligations or any requirements with respect to privacy, data protection or security under this Agreement or in the Contractor's Specifications; or
- (c) any other security incident, event or breach, including:

- (i) any contaminated, malicious, harmful or disabling code introduced into an Asset; and

any weakness, failure or vulnerability in the data security environment or controls of the Contractor or any Contractor Personnel (including regardless of whether or not that security incident, event or breach, weakness, failure or vulnerability was exploited).

Security Interest means any:

- (a) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements);
- (b) 'security interest' as defined in the PPSA; and/or
- (c) thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset,

and includes any agreement to create any of them or allow them to exist.

Sensitive Information has the meaning given in clause 49.3 (Compliance with USA Export Regulations).

Small & Medium Enterprises Participation Plan means the Contractor's plan referred to in clause 48.1(a) (SME Participation Plan – Reporting and Compliance).

SMERPP has the meaning given in clause 48.1 (SME Participation Plan – Reporting and Compliance).

Software is any computer program or programming (including source code and object code) and includes Modifications to that Software and any software, tools or object libraries embedded in that Software.

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

SOW or **Statement of Work** means Statement of Work 1 and each New SOW entered into in accordance with section 3 (Future Deployments and Future Project Work) of Schedule 7 (New SOWs and Variation Procedures).

SOW 1 Deployment Area means the T4 Eastern Suburbs and Illawarra section of the Network between Cronulla and Sutherland, with the exact transition points being defined in Statement of Work 1.

SOW Commencement Date means the later of:

- (a) the date specified as the commencement date in a SOW; and
- (b) the date on which TfNSW notifies the Contractor under clause 1.4(c) that all SOW Conditions Precedent have been satisfied or waived.

SOW Condition Precedent means any conditions specified in a SOW or nominated by TfNSW under section 3.2 (Provision of SOW Proposal) of Schedule 7 (New SOWs and Variation Procedures) relating to the commencement of a particular SOW.

SOW Execution Date means the date on which the relevant Statement of Work is signed by the last party to execute it.

SOW Proposal has the meaning given in section 3.2 (Provision of SOW Proposal) of Schedule 7 (New SOWs and Variation Procedures).

SOW Value means all amounts paid or payable to the Contractor under the relevant SOW. For the purposes of this definition "payable" includes amounts that are not yet due and payable but

which would be payable if both parties were to continue to properly perform all of their respective obligations under the relevant SOW. Further, where any fees are time and materials, volume or effort based, the amounts payable will be calculated on a pro rata basis having regard to a reasonable forecast or estimate of volume of services to be provided or required during the remaining SOW Term.

SOW Variations means a Variation to a SOW made in accordance with the Variation Procedure.

Spares means rotables and capital spares for the Assets (including the Trackside Equipment) and other spare parts for the Assets (including the Trackside Equipment).

Spares and Consumables Strategy means the strategy so described in the Contractor's Asset Management Plan once it is Confirmed and includes any updates made to that strategy under this Agreement or the TLS Agreement that are Confirmed.

Special Conditions means any terms and conditions specified in the "Special Conditions" section of any SOW.

Specification means a document that fully describes a design element or its interfaces in terms of requirements (functional, performance, constraints, and design characteristics) and the qualification (validation) conditions and procedures for each requirement (and includes the SRS and SSRS).

Stakeholders means Third Parties who are connected with the Program, including:

- (a) Rail Transport Entities;
- (b) ONRSR; and
- (c) the Asset Standards Authority,

but does not include Other Contractors (including Sydney Trains in its capacity as an Other Contractor).

Standards

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[illegible]

State means the State of New South Wales.

State Record has the meaning given in section 3 of the *State Records Act 1998* (NSW).

Statement of Work 1 or SOW 1 means the Statement of Work(s) relating to the initial stage of the Trackside rollout, executed by the parties on or around the Execution Date.

Subcontractor Deed means a deed in the form set out in Schedule 22 (Form of Subcontractor Deed).

Subcontractors means any persons engaged by the Contractor or a Subcontractor to perform, or to assist the Contractor with the performance of, the Contractor's Activities, including those Subcontractors under a Key Subcontract and any Approved Subcontractors.

Submitted Document means a document that has been submitted for Review.

Subsystem means the components of the System, and includes:

- (a) the Trackside Packages;

- (b) the TMS Subsystem;
- (c) the Onboard Subsystems;
- (d) the DTRS Subsystem;
- (e) the Fixed Telecommunications Network Subsystem;
- (f) the ATMS Interoperability Subsystem; and
- (g) other components as identified by the parties from time to time,

each of which will be delivered by Rail Transport Entities under individual supply contracts with the Contractor and Other Contractors.

Subsystem Requirements Specification or SSRS means each Specification for each Subsystem. The SSRS for the Trackside Subsystem is as set out in Schedule 3 (System Definition and Requirements).

Supplied Items means those items, goods, materials and things (whether at a Delivery Location or not) entrusted to the Contractor by a Rail Transport Entity, an Other Contractor or an Interface Contractor for the purposes of carrying out the Contractor's Activities, as described as 'Supplied Items' in a SOW under this Agreement or the Services Schedule or a Work Order under the TLS Agreement.

Suspension Notice has the meaning given in clause 55 (Suspension).

Sydney Trains or ST means the operator and maintainer of the Network constituted by Part 2A of the *Transport Administration (General) Regulation 2005* (NSW).

System means a signalling and train control system comprising:

- (a) cab signalling;
- (b) a Traffic Management System;
- (c) Automated Train Operations Grade of Automation 2 (once the ATO has been incorporated into the System as contemplated under a SOW); and
- (d) relevant Subsystems,

and which is European Train Control System (Level 2) compliant and meets the BRS.

System Architecture Description or SAD means:

- (a) the Contractor's System Architecture Description, being the description of the architecture of the Trackside Subsystem prepared by the Contractor as part of the Contractor's response to the RFP which forms part of the Concept Design; and
- (b) TfNSW's System Architecture Description, being the description of the architecture of the Trackside Subsystem prepared by or on behalf of TfNSW which forms part of Schedule 3 (System Definition and Requirements).

System Definition and Requirements has the meaning given in clause 4.1(c).

Systems Engineering Management Plan means the Project Plan of that name described in the PR.

System Integration Committee means the governance forum of that name described in Schedule 17 (Governance and Management).

System Integrator means the entity appointed by TfNSW as its systems integrator for the Program pursuant to a System Integration Services Agreement between TfNSW and the System Integrator entered into on 30 November 2018.

System Requirements Specification or **SRS** means the specification for the System, as set out in Schedule 3 (System Definition and Requirements).

System Verification Review or **SVR** means the review conducted in accordance with the PR.

TAHE means Transport Asset Holding Entity of New South Wales (ABN 59 325 778 353) who is the owner of rail property assets, rolling stock and rail infrastructure in NSW constituted by section 4(1) of the *Transport Administration Act 1988* (NSW).

Tax Deduction means a deduction or withholding for or on account of Taxes from a payment.

Taxes means a tax, levy, duty, charge, deduction or withholding, including stamp duties and other fees payable in respect of the execution of this Agreement and the performance of obligations under this Agreement, however described, imposed by Law or a Government Authority acting in their capacity as a taxation authority, together with any related interest, penalty, fine or other charge, other than a tax on net income and Australian GST.

Technical Documents means all technical documents associated with the specification, design, development, construction, verification, operation, maintenance, and disposal of the Trackside Subsystem, including those which the Contractor is required to create as part of, or for the purposes of, performing the Contractor's Activities. It includes all technical documents whether they are Assigned IP or Contractor-Licensed IP.

Technical Glossary means Part H of Schedule 3 (System Definition and Requirements).

Technical Package has the meaning given in Appendix 06 (PR Definitions) of the PR.

Technology Evolution

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Template Statement of Work means the standard terms that apply:

- (a) to the deployment of the Trackside Subsystem in a Future Deployment Area; and
- (b) for the performance of any Future Project Work not connected with the rollout of the Trackside Subsystem in a Future Deployment Area,

as set out in Attachment A (Statement of Work Template) of Schedule 7 (New SOWs and Variation Procedures).

Term means the Initial Term and (if applicable) the Extended Term(s), and includes any Disengagement Period(s).

Termination Costs has the meaning given in clause 58.7(d).

Test Readiness Review means the review conducted in accordance with the PR.

Testing and Commissioning Plan means TfNSW's Project Plan of that name as provided to the Contractor by TfNSW.

TfNSW Data means all data, documents or records (including data, documents or records in relation to the customers, employees or suppliers of a Rail Transport Entity) of whatever nature and in whatever form relating to the business, networks and operations of a Rail Transport Entity, whether subsisting before, during or after the Execution Date and whether created, generated or processed by the Contractor as part of, or in connection with, the Contractor's Activities or its other obligations under this Agreement or the TLS Agreement or provided by a Rail Transport Entity or a Third Party to the Contractor in connection with this Agreement or the TLS Agreement, and includes:

- (a) data that may cause a Rail Transport Entity reputational or brand damage or may cause a Rail Transport Entity to become subject to fines or other action by applicable governmental or regulatory authorities if the subject of unauthorised information disclosure, loss or corruption;
- (b) data that is Personal Information;
- (c) data that is corporate proprietary or financial information such as may be subject to the Corporations Act or would be the subject of Intellectual Property Rights owned by TfNSW;
- (d) diagrammatic or schematic data, including data representing networks, maps or technology;
- (e) any data (including metadata) processed, communicated or generated in performance of the Works or operation of the Trackside Subsystem, including coding and performance data; and
- (f) any transformations, modifications, derivations or insights created or generated from any other TfNSW Data.

TfNSW Dependency means the activities and tasks that TfNSW, a Stakeholder, an Interface Contractor or an Other Contractor is required to perform that are expressly identified as a 'TfNSW Dependency' in any SOW, as amended from time to time in accordance with the process in section 4 (Variations) of Schedule 7 (New SOWs and Variation Procedures).

TfNSW Environment means the Network and TfNSW's technology environment.

TfNSW Indemnified Persons means:

- (a) TfNSW;
 - (b) TfNSW's Associates;
 - (c) TAHE;
 - (d) the State, including:
 - (i) the Minister for Transport and Infrastructure;
 - the Secretary of Transport for NSW; and
 - any other person to who the State delegates a right, power, function or duty from time to time;
 - (e) each other entity controlled by the Secretary of Transport for NSW; and
 - (f) each Rail Transport Entity,
- and each of their respective Representatives.

TfNSW Infringement Claim means any Claim alleging that the TfNSW IP infringes the Intellectual Property Rights or the Moral Rights of any person.

TfNSW Insurance has the meaning given in clause 64.1(a).

TfNSW Insurance Policies means:

- (a) the insurance policies set out in Item 8 (TfNSW Insurance Policies) of Schedule 2 (Agreement Details); and
- (b) such other insurance policies as are obtained by TfNSW pursuant to any SOW.

TfNSW IP [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

TfNSW Personnel means the officers, employees, consultants, agents and contractors of TfNSW.

TfNSW Policies means:

- (a) the TfNSW policies, standards, guidelines and procedures set out in the PR, the SSRS or the relevant SOW, as updated by notice from TfNSW from time to time; and
- (b) all other TfNSW policies, standards, guidelines and procedures as notified by TfNSW to the Contractor from time to time after the relevant SOW Execution Date.

TfNSW Provided Materials means the:

- (a) Transaction Documents (excluding the Contractor's Solution);
- (b) Reliance Material;
- (c) Information Documents and Materials; and
- (d) System Definition and Requirements.

TfNSW Representative means the relevant TfNSW contact or delegate, which as at the Execution Date is the person set out in Item 3 (Representatives) of Schedule 2 (Agreement Details), or such other replacement contact as notified by TfNSW to the Contractor from time to time.

TfNSW Sites means those Delivery Locations owned or managed by TfNSW.

TfNSW Statement of Business Ethics means the document titled 'Transport for NSW Statement of Business Ethics' which can be found on the TfNSW website from time to time (as at the Execution Date:
https://www.transport.nsw.gov.au/sites/default/files/media/documents/2017/statement-business-ethics_0.pdf).

TfNSW Systems means any system which is physically or functionally attached to, associated with, or required to be attached, associated or interfaced with the System or Subsystems (including systems of a Rail Transport Entity).

Third Party means a person who is not a:

- (a) party to this Agreement; or
- (b) Related Body Corporate of the Contractor.

Third Party Agreement means:

- (a) the agreements listed in Schedule 32 (Third Party Agreements), if any;
- (b) the agreements defined in the relevant SOW as 'Third Party Agreements', in respect of which:
 - (i) where the agreement has been executed by all parties to the agreement, a copy of the agreement; or
 - where the agreement has not been executed, a draft of the agreement; and
- (c) each Replacement Third Party Agreement (as defined in clause 46.6 (Third Party Agreement)).

Third Party Material means any work (including Software) the Intellectual Property Rights in which is owned by a Third Party (including Open Source Software), and includes Material supplied by:

- (a) a Subcontractor; and
- (b) Other Contractors.

TLS Activities has the meaning given in the TLS Agreement.

TLS Agreement means an agreement for the through life support and maintenance of the Trackside Subsystem to be entered into as a Condition Subsequent to this Agreement.

TLS Impact Statement

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

TMS Subsystem means the Traffic Management System component of the System providing control, timetable and regulation functionality for the Network, and includes those elements of any interfaces required to be built, maintained or supported by the TMS Supplier as contemplated by the Contract Specifications.

TMS Supplier means the contractor engaged by TfNSW to deliver the TMS Subsystem.

Tools means all tools required for the efficient use, maintenance, modification, operation, support, configuration, repair or monitoring of the Trackside Subsystem (or any component of it) that do not form part of the Trackside Subsystem, including:

- (a) the Contractor Tools; and
- (b) the Licensed Tools.

Track Possession means a period during which the Contractor has access to the Rail Track for the purpose of carrying out the Contractor's Activities including for the purpose of rectifying Defects.

Trackside Equipment means the physical components of the Trackside Subsystem supplied or to be supplied by the Contractor. The Trackside Equipment includes any part of the Trackside Subsystem that is intended to be installed on the Network, stations, depots or Rail Transport Entity Sites (including those Spares and communications links and power up to the existing points of interconnection to the existing networks, systems and services), including as further described in the relevant Statement of Work.

Trackside Package means each of the Trackside Subsystem and each Other Trackside Subsystem.

Trackside Subsystem means the deployment on the Network of ETCS Level 2 trackside elements and signalling equipment that is to be provided by the Contractor under this Agreement. The Trackside Subsystem includes all Assets required to meet the Contract Specifications, including all items of the Trackside Equipment, the Licensed Tools and the Supplied Items and those elements of any interfaces required to be designed, developed, configured, built, supplied, installed, tested, validated, commissioned or supported by the Contractor as contemplated by the Contract Specifications and each Statement of Work, but excludes any infrastructure on the Network not supplied or installed by the Contractor as part of the Program. References to the Trackside Subsystem are to the Trackside Subsystem as Modified from time to time.

Traffic Management System means an electronic system that is capable of generating and receiving information such as the train status and location, providing fault diagnosis information, identifying rectification action required and storage of vehicle data.

Trainee means a person who has been employed in a recognised traineeship vocation and who has entered into a training contract with his/her employer under the *Apprenticeship and Traineeship Act 2001* (NSW).

Transaction Documents means:

- (a) this Agreement (including any SOW entered into under this Agreement);
- (b) the TLS Agreement;
- (c) the Parent Company Guarantee;
- (d) the Confidentiality and Intellectual Property Deed Poll; and
- (e) any other documents entered into under or in connection with the documents listed in (a) to (d).

Trigger Event has the meaning given in clause 46.6 (Third Party Agreement).

Unit Rate has the meaning given in Schedule 11 (Pricing Terms).

Update means Software or firmware that has been produced primarily to overcome defects in, or to improve the operation of, the relevant part of the Software or firmware without significantly altering the Contract Specifications, whether or not that Software or firmware has also been extended, altered or improved by adding additional functionality or performance enhancement.

Upgrade means a newer and/or superior model or version of an Asset including any new release that has been produced primarily to extend, alter or improve the Asset by adding additional functionality or performance enhancement (whether or not defects in that Asset are also corrected).

Valuable Find means:

- (a) valuable minerals, fossils or coins;
- (b) articles or objects of value or antiquity; and
- (c) objects or things of scientific, geological, historical, heritage, aesthetic, social, spiritual, cultural, archaeological, anthropological or other special interest,

found on or under the surface of a Delivery Location.

Variation has the meaning given in clause 5.3 (Variations).

Variation Procedures means the Variation Procedures set out in section 4 (Variations) of Schedule 7 (New SOWs and Variation Procedures).

Variation Proposal means the proposal for how to implement a Variation that meets the requirements of section 4.1 (Variation Proposal) of Schedule 7 (New SOWs and Variation Procedures).

Variation Request means a request for a Variation issued by TfNSW in accordance with section 4.1 (Variation Request) of Schedule 7 (New SOWs and Variation Procedures) and setting out details of the proposed Variation, including TfNSW's requirements for the proposed Variation.

Verification or **Verified** means the process by which the Contractor demonstrates to TfNSW that the Assets identified as requiring Verification in a SOW or the PR meet the requirements of this Agreement, including the Contract Specifications.

Verification Activity means:

- (a) any and all Verification activities required by a SOW and/or the Contract Specifications;
- (b) any and all Verification activities identified in the Verification Plan;
- (c) any and all Verification activities supporting and participating in the testing of interfaces between the Trackside Subsystem and other components of the System;
- (d) any and all Verification activities supporting and participating in testing, verification and validation of the System, including system integration and operational testing; and/or
- (e) any and all Verification activities which are otherwise (in the opinion of TfNSW) reasonably required for TfNSW to verify whether the Contractor has performed its obligations under this Agreement, including any additional Verification of the Contractor's Activities:
 - (i) that have previously failed a Verification Activity; or
 - (ii) after the rectification of those Contractor's Activities,

and for the avoidance of doubt includes the Additional Verification Activities.

Verification Plan means the Project Plan of that name to be developed by the Contractor pursuant to the PR.

Verification Procedure means the Contractor's procedure used to carry out the Verification Activities developed pursuant to the PR.

Verification Program means the Contractor's program relating to the Verification Activities developed pursuant to the PR.

Verification Report means a report (including supporting documentation) on the conduct of a Verification Activity, as amended and updated in accordance with this Agreement and which meets the requirements of the PR.

WHS means work health and safety.

WHS Act means the *Work Health and Safety Act 2011* (NSW) and equivalent legislation in other jurisdictions.

WHS Guidelines means the NSW Government Work Health and Safety Management Systems and Auditing Guidelines (5th edition) (May 2014) or any document issued from time to time which amends or substitutes this document.

WHS Legislation means:

- (a) the WHS Act;
- (b) the WHS Regulation; and
- (c) any legislation in other States and Territories of Australia addressing work health and safety which applies to the Contractor's Activities.

WHS Regulation means the *Work Health and Safety Regulation 2017* (NSW) and equivalent legislation in other jurisdictions.

Withdrawal Notice has the meaning given in section 2.4(a)(i) of Schedule 18 (Issue Resolution Procedure).

Witness Point means a point identified as such in the relevant Statement of Work, where TfNSW may review, witness, inspect, or undertake tests on any component, method, or process of the Contractor's Activities.

Women in Non-Traditional Roles means women working in non-traditional trades or vocational education and training pathways and/or occupations where women are underrepresented. For example:

- (a) all trades in construction, metals, engineering and electrical; and
- (b) completing Certificate 3, Diplomas and Advanced Diplomas in surveying, environmental, drafting and project management.

Women in Non-traditional Roles excludes women working as traffic controllers.

Working Groups means the governance forums of that name described in Schedule 17 (Governance and Management) and the relevant SOWs.

Workplace Relations Management Plan means the plan which is required to be provided and implemented by the Contractor pursuant to the NSW Implementation Guidelines and the PR.

Works means:

- (a) the works, functions, tasks and responsibilities described in SOW 1 and any New SOW entered into in accordance with this Agreement, including any works, functions, tasks or responsibilities related to that SOW required to be performed under this Agreement;
- (b) the works, functions, tasks and responsibilities described in the PR, including any Variations thereto, including any works, functions, tasks or responsibilities related to the PR required to be performed under this Agreement; and
- (c) unless specified otherwise in this Agreement, anything customarily performed in connection with the performance of, or incidental or ancillary to, the works, functions, tasks and responsibilities in paragraphs (a) or (b).

Year means each period of twelve (12) months commencing from the Commencement Date.

2 Interpretation

In this Agreement:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) a reference to “dollar”, “\$” or “AUD” is to Australian currency;
- (d) a reference to time is to Sydney, Australia time;
- (e) a reference to a document or instrument (including this Agreement) is to that document or instrument as varied, novated, ratified or replaced from time to time and, unless the contrary intention appears, a reference in this Agreement to any Project Plan or Document Deliverable is a reference to the latest version of that Project Plan or Document Deliverable;
- (f) a reference to a party is to a party to this Agreement, and a reference to a party includes a reference to that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation or statutory transfer;
- (g) a reference to a part, clause, party, Schedule, Attachment or Annexure is a reference to a part and clause of, and a party, Schedule, Attachment or Annexure to, this Agreement and a reference to this Agreement includes any part, clause, Schedule, Attachment or Annexure;
- (h) a reference to the PR includes all Sections, Appendices and Annexures to the PR;
- (i) an expression importing a natural person includes any individual, estate of an individual, company or other body corporate, partnership, trust, joint venture (whether incorporated or unincorporated), association, Government Authority and other entity;
- (j) a reference to a position, body, or authority of or within TfNSW includes a reference to any position, body or authority which replaces or supersedes it or takes over its duties;
- (k) a reference to any Government Authority, institute, association or body is:
 - if that Government Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Government 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
 - if that Government Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Government Authority, institute, association or body;
- (l) a reference to a statute, regulation, proclamation, ordinance, by-law, code or other law includes all statutes, regulations, proclamations, ordinances, by-laws, codes or

other laws amending, consolidating, re-enacting or replacing it, whether passed by the same or another Government Authority with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;

- (m) headings and boldings are inserted for convenience and do not affect interpretation;
- (n) where a word or phrase is specifically defined, other parts of speech or grammatical forms of that word or phrase have a corresponding meaning;
- (o) a reference to anything (including any right) includes a part of that thing but nothing in this clause 2 (Interpretation) implies that performance of part of an obligation constitutes performance of the obligation;
- (p) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision;
- (q) the meaning of general words is not limited by specific examples introduced by “including”, or “for example” or similar expressions;
- (r) terms used that are defined in the GST Act have the meaning given in that Act, unless the context makes it clear that a different meaning is intended;
- (s) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably;
- (t) a reference to TfNSW standards, operating principles, or company policies includes any variations, amendments, updates, or replacements of them;
- (u) a reference to an organisational role or position includes any replacement or substitute position as notified from time to time;
- (v) a provision requiring the Contractor to do something will be interpreted as requiring the Contractor to do that thing at no additional cost to TfNSW, unless explicitly stated otherwise, and any reference in this Agreement to something being at “no additional cost to TfNSW” or “at the Contractor’s cost” or similar is for clarity only;

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

- [REDACTED]
- [REDACTED]
- (x) a reference to “construction” includes development, manufacture, supply, installation, integration, testing and commissioning;
 - (y) any reference to information will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
 - (z) in addition to the meaning given in the GST Act, the term “GST” includes a notional liability for GST;
 - (aa) if the day on or by which a person must do something under this Agreement is not a Business Day, the person must do it on or by the next Business Day;
 - (bb) where the term ‘Supplier’ is used in any Transaction Document, it shall be deemed to be a reference to the ‘Contractor’ as defined in this Agreement, unless the context requires otherwise; and
 - (cc) where a document is referenced to in this Agreement, only those parts of the document that are relevant having regard to the term of this Agreement that references it will be incorporated into and form part of this Agreement.



Schedule 2 Agreement Details

1	Parties	TfNSW	Transport for NSW (ABN 18 804 239 602) of Level 1, 18 Lee Street, Chippendale NSW 2008
		Contractor	Siemens Mobility Pty Ltd (ABN 39 625 304 556) of 160 Herring Road, Macquarie Park NSW 2113
2	Conditions (clause 1)	A - Conditions Precedent	<p>(a) Delivery to TfNSW of copies of certificates of currency evidencing that the Contractor Insurance Policies (other than the [REDACTED] project specific component of the professional indemnity Contractor Insurance Policy and the Asbestos Contractor Insurance Policy) required under this Agreement have been effected and are current;</p> <p>(b) Unconditional delivery to TfNSW of an original Contractor Deed Poll, duly executed by the Contractor in favour of TAHE, NSW Trains and Sydney Trains;</p> <p>(c) Delivery to TfNSW of evidence of AEO Authorisation and required Accreditations;</p> <p>(d) Unconditional delivery to TfNSW of an original Confidentiality and Intellectual Property Deed Poll duly executed by the Contractor; and</p> <p>(e) Written confirmation by TfNSW that it agrees to any changes proposed by the Contractor to the form of escrow deed set out in Schedule 25 (Form of Escrow Deed). For the avoidance of doubt, any additional costs incurred by TfNSW as a result of changes proposed by the Contractor to the form of escrow deed set out in Schedule 25 (Form of Escrow Deed) will be borne by the Contractor and not by TfNSW.</p>
		B - Conditions Subsequent	<p>(a) Unconditional delivery to TfNSW of an original Parent Company Guarantee duly executed by the parent company of the Contractor;</p> <p>(b) Where a guarantor to the Parent Company Guarantee is incorporated outside of Australia, delivery to TfNSW of a Legal Opinion in a form reasonably acceptable to TfNSW from lawyers reasonably acceptable to TfNSW;</p> <p>(c) Unconditional delivery to TfNSW of an original TLS Agreement in a form and in substance</p>

		<p>acceptable to TfNSW, duly executed by the Contractor and Sydney Trains;</p> <p>(d) Unconditional delivery to TfNSW of an original “Contractor Deed Poll” (as that term is defined in the TLS Agreement) in respect of the TLS Agreement, duly executed by the Contractor in favour of TAHE, NSW Trains and TfNSW; and</p> <p>(e) Delivery to TfNSW of copies of certificates of currency evidencing that the [REDACTED] project specific component of the professional indemnity Contractor Insurance Policy and the Asbestos Contractor Insurance Policy required under this Agreement has been effected and is current.</p>
	Cut Off Date	<p>A: Conditions Precedent: five (5) Business Days after the Execution Date.</p> <p>B: Conditions Subsequent:</p> <ul style="list-style-type: none"> paragraphs (c) and (d) - thirty (30) Business Days after the Execution Date; and paragraphs (a), (b) and (e) – 7 days after paragraphs (c) and (d) are both satisfied.
3	Representatives (clause 32.2)	Contractor’s Representative
		[REDACTED]
		[REDACTED]
	TfNSW Representative	[REDACTED]
		[REDACTED]
4	Subcontractors (clause 27.3)	Pre-Approved Subcontractors
		[REDACTED]
5	Key People (clause 26.5)	[REDACTED]

<p>6 Liability Cap (clause 63.1)</p>	<p>Liability Cap</p> <p>Subject to clauses 63.2 (Uncapped liability) and 63.3 (Indirect and consequential damages), and to the extent permitted by Law, each party's liability to the other party and their Associates (and, in the case of the Contractor, to the TfNSW Indemnified Persons) in respect of any and all Claims arising under or in connection with this Agreement (whether arising in contract, tort (including negligence), statute, equity or otherwise) is capped in the aggregate at the higher of:</p> <p>■ [REDACTED]</p> <p>■ [REDACTED]</p> <p>Paragraph (a) of the liability cap above will be automatically adjusted (without the need for further action by either party) to account for cost of living adjustments as follows:</p> <p>(c) the adjustment takes effect on the first day of each Year, commencing on the first anniversary of the Execution Date (Adjustment Date);</p> <p>(d) the adjustment occurs once for each Year; and</p> <p>(e) the adjustment is calculated by applying the following formula:</p> $LC \text{ (Indexed)} = LC \times CPI_r / CPI_a$ <p>Where:</p> <p>LC is the value set out in paragraph (a) of the liability cap;</p> <p>CPI means the Escalation Factor (being the All Groups Consumer Price Index Weighted Average of Eight Capital Cities (ABS Cat No. 6401.0 Series ID A2325846C) published quarterly by the Australian Bureau of Statistics, or as otherwise determined in accordance with paragraph (f));</p> <p>CPI_r the most recently published CPI for the quarter ending 30 June prior to the Adjustment Date; and</p>

		<p>CPIa is the CPI published for the quarter ended 30 June 2019.</p> <p>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 TfNSW and any necessary consequential amendments are to be made..</p>		
<p>7 Contractor Insurance Policies (clause 64)</p>	<p>Professional Indemnity insurance</p>	<p>In respect of each Statement of Work, from the SOW Execution Date to the end of the Defects Liability Period and an extended reporting period for [REDACTED] following the end of the Defects Liability Period for that SOW, a professional indemnity policy (or policies) with a total cover of [REDACTED] per claim and in the annual aggregate, which may be provided by:</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>The policies must cover the Contractor in respect of liability of TfNSW and Third Parties in respect of any claim arising out of any damage caused by the wrongful professional advice of the Contractor and its Representatives in the course of carrying out the Contractor’s Activities in respect of that Statement of Work.</p> <p>Without limiting clause 27.9(a), the Contractor must ensure that unless stated otherwise in a SOW or TfNSW agrees otherwise, its Subcontractors performing works listed in the table below effect and maintain professional indemnity insurance on equivalent terms for the equivalent durations. The professional indemnity insurance to be obtained by the Subcontractors must:</p> <p>(c) cover the Subcontractor for liability to TfNSW or the Contractor; and</p> <p>(d) unless stated otherwise in a SOW or TfNSW agrees otherwise, be for the relevant minimum amounts set out below.</p> <table><tr><td>Installation Works Subcontractor</td><td>[REDACTED] per claim and in the annual aggregate.</td></tr></table>	Installation Works Subcontractor	[REDACTED] per claim and in the annual aggregate.
Installation Works Subcontractor	[REDACTED] per claim and in the annual aggregate.			

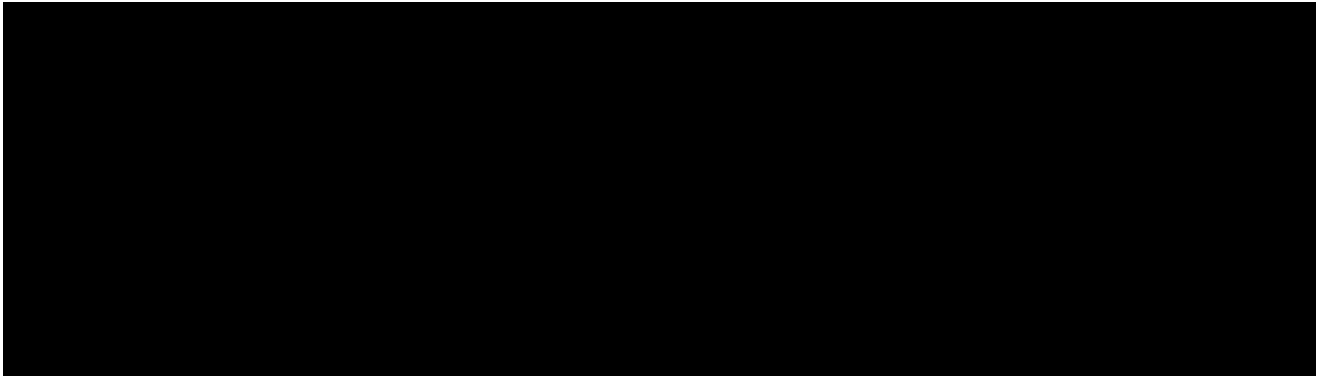
		Subcontractors carrying out rail systems, signalling, structural or civil design works	██████████ per claim and in the annual aggregate.
		Subcontractors carrying out design or providing professional services	██████████ per claim and ██████████ in the annual aggregate.
	Construction Plant insurance	<p>The Contractor must insure any plant and equipment (whether owned, hired, leased or acquired by the Contractor) which is used in connection with the carrying out of the Contractor's Activities for the replacement market value of that plant and equipment.</p> <p>The Contractor must ensure that each of its Subcontractors insure any plant and equipment (whether owned, hired, leased or acquired by the Subcontractor) which is used in connection with the carrying out of the Contractor's Activities for the replacement value of that plant and equipment.</p> <p>The insurance must be maintained for the Term of this Agreement.</p>	
	Own Damage Motor Vehicle insurance	<p>The Contractor must ensure that there is insurance in place to cover all physical loss or damage to motor vehicles (whether owned, hired, leased or acquired by the Contractor or any Subcontractors) which are used in connection with the carrying out of the Contractor's Activities for the market value of the motor vehicle.</p> <p>The insurance must be maintained for the Term of this Agreement.</p> <p>The insurance must list TfNSW, Sydney Trains, NSW Trains and TAHE as principal indemnity insureds.</p>	
	Third Party Property Damage Motor Vehicle insurance	<p>The Contractor must hold cover (or arrange for cover to be held) for an amount of ██████████ for any one occurrence and unlimited in the aggregate for third party property damage related to any motor vehicles (whether owned, hired, leased or acquired by the Contractor or any Subcontractors) which are used in connection with the carrying out of the Contractor's Activities.</p> <p>The insurance must be maintained for the Term of this Agreement.</p>	

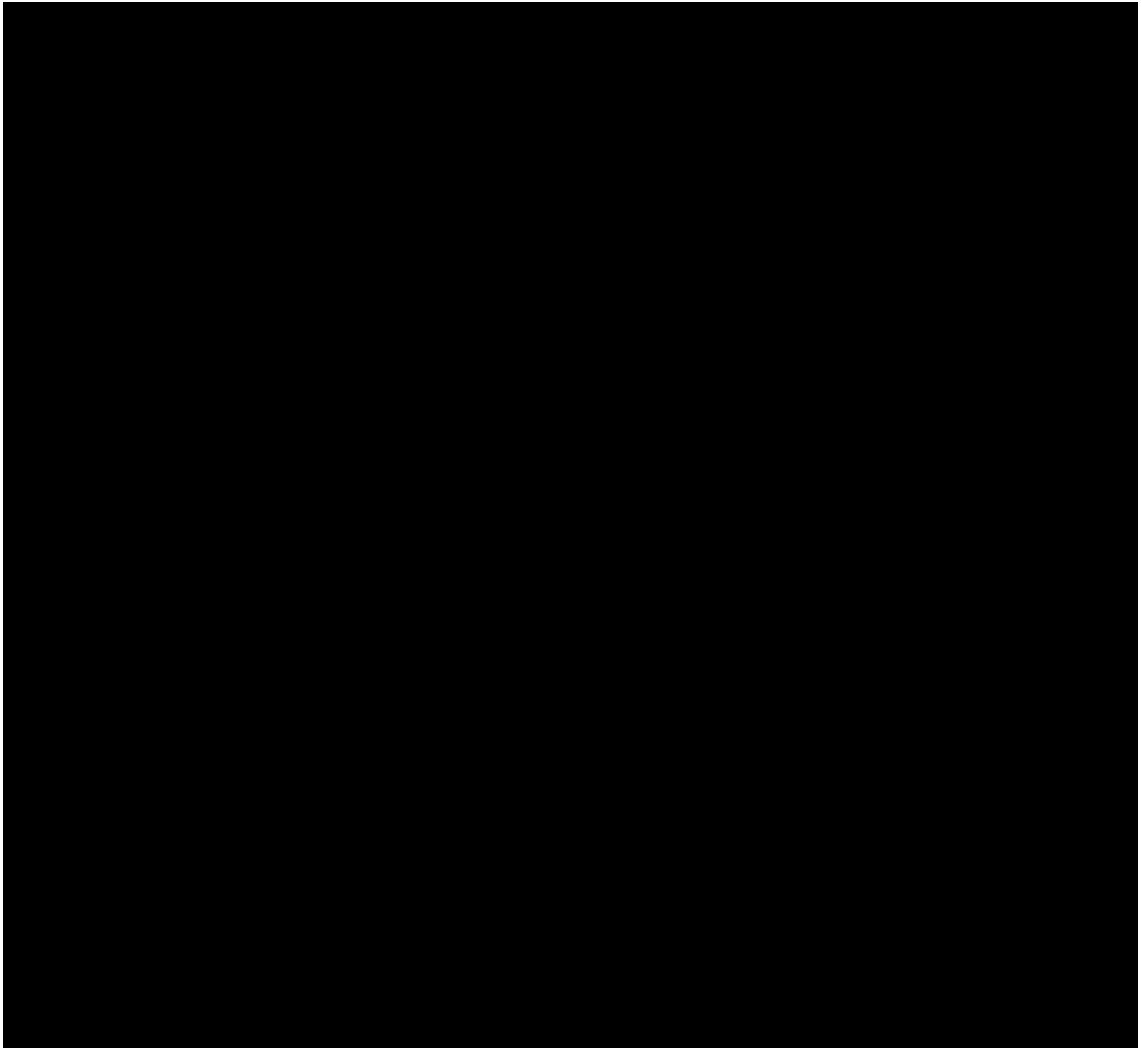
		The insurance must list TfNSW, Sydney Trains, NSW Trains and TAHE as principal indemnity insureds.
	Compulsory Third Party Motor Vehicle insurance	<p>The Contractor must hold cover (or arrange for cover to be held) as required by Law in respect of all registrable motor vehicles (whether owned, hired, leased or acquired by the Contractor or any Subcontractors) which are used in connection with the carrying out of the Contractor's Activities.</p> <p>The insurance must be maintained for the Term of this Agreement.</p>
	Marine Transit insurance	<p>The Contractor must hold worldwide to worldwide (including transits anywhere within Australia) cover for any materials, equipment or components which are used in connection with the Contractor's Activities for the full replacement value of property in transit including insurance and freight.</p> <p>The maximum deductibles permitted are: [REDACTED]</p> <p>The insurance must be maintained for the Term of this Agreement plus [REDACTED].</p>
	Asbestos insurance	<p>The Contractor must hold cover for an amount of no less than [REDACTED] for any one occurrence and [REDACTED] in the aggregate.</p> <p>The insurance must be maintained for [REDACTED] from the SOW Commencement Date for each SOW (being [REDACTED] delivery plus [REDACTED] completed operations cover).</p> <p>The insurance must list TfNSW as an additional insured party.</p>
	Workers compensation insurance	<p>Insurance in respect of all claims and liabilities arising whether at common law or under statute relating to workers' compensation or employer's liability from any accident or injury to any person employed by the Contractor in connection with this Agreement. The insurance must comply with the Laws of the relevant jurisdiction in which the obligations of this Agreement are to be carried out.</p> <p>Where permitted by Law, the insurance cover must be extended to indemnify the TfNSW Indemnified Persons for the TfNSW Indemnified Persons' statutory liability for persons employed by the Contractor.</p>

		The Contractor must ensure that its Subcontractors are similarly insured in respect of their employees.
8	TfNSW Insurance Policies (clause 64)	Public and Product Liability insurance
		<p>Amount: [REDACTED] for any one occurrence and in the annual aggregate in respect to product liability</p> <p>Minimum Period: Rolling [REDACTED] adjustable policy</p> <p>Coverage: Australia only</p> <p>The Contractor and its Subcontractors are to be noted as 'Insureds' under the policy.</p>
		Contract Works insurance
		<p>Amount: Actual value of works conducted during the twelve-month period</p> <p>Minimum Period: Rolling [REDACTED] adjustable policy</p> <p>Coverage: Australia only</p> <p>The Contractor and its Subcontractors are to be noted as 'Insureds' under the policy.</p>
9	Notices (clause 65.1(b))	TfNSW
		<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
		Contractor
		<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>



Schedule 3 System Definition and Requirements

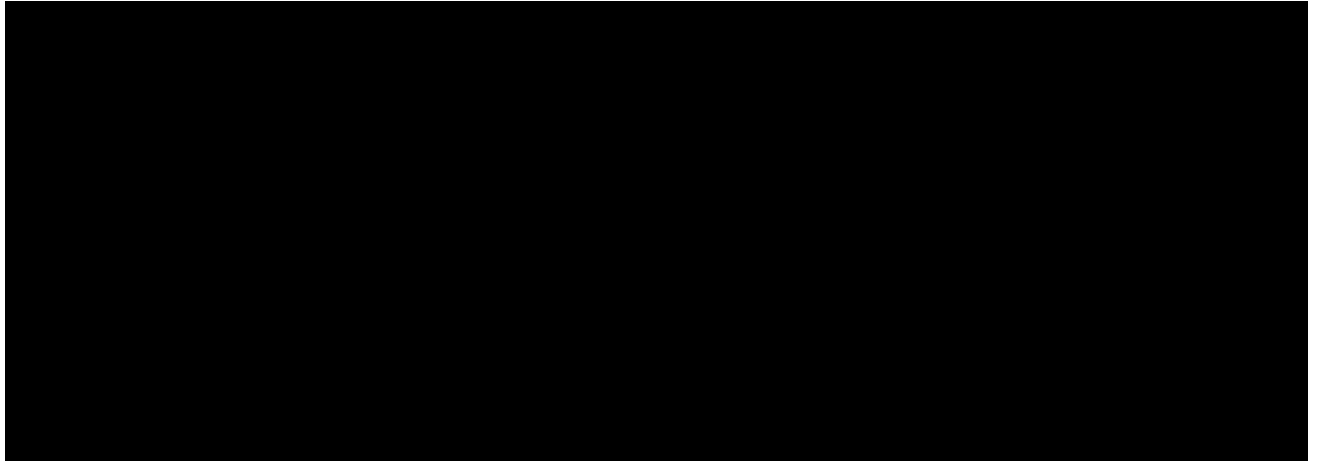


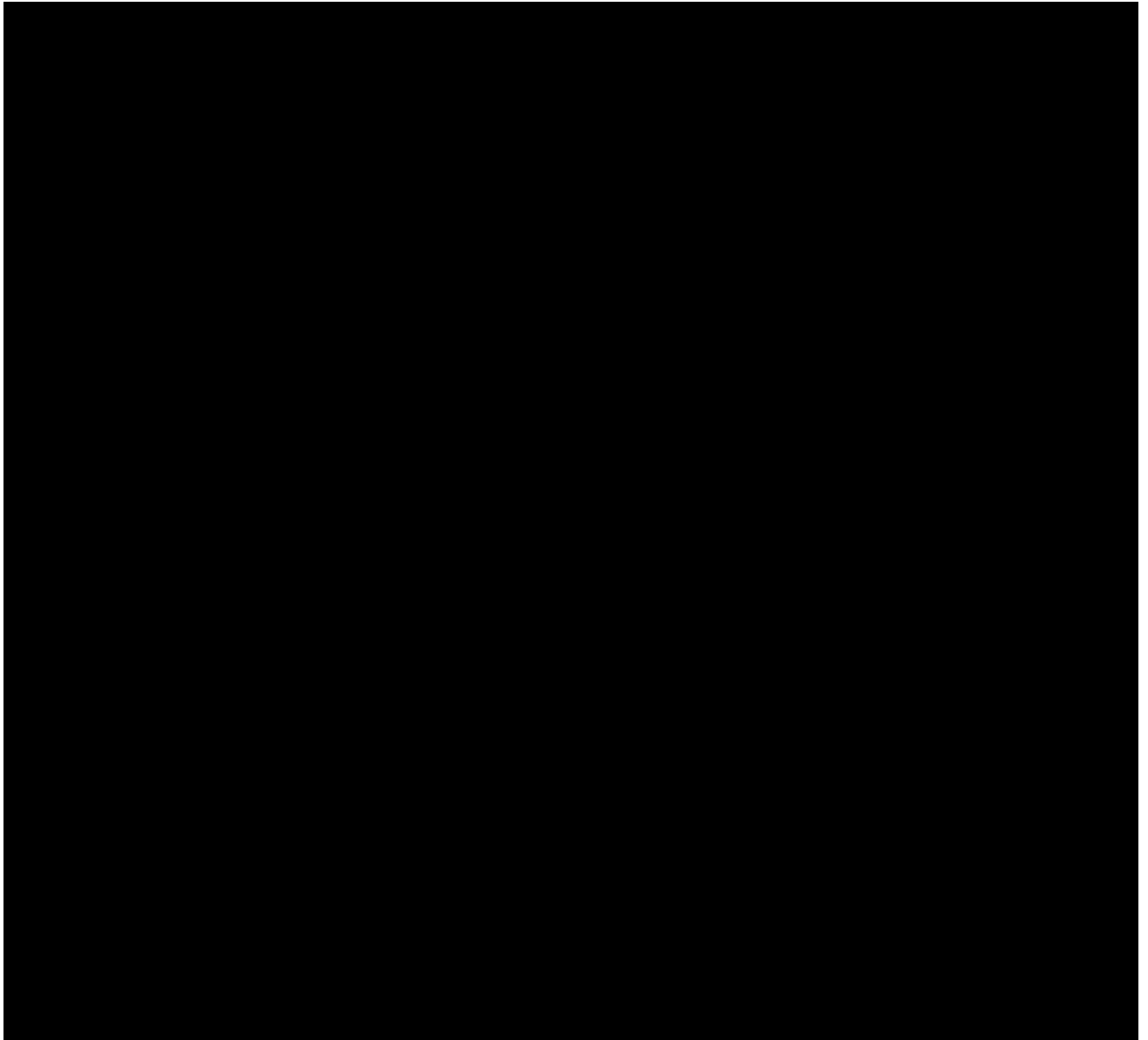






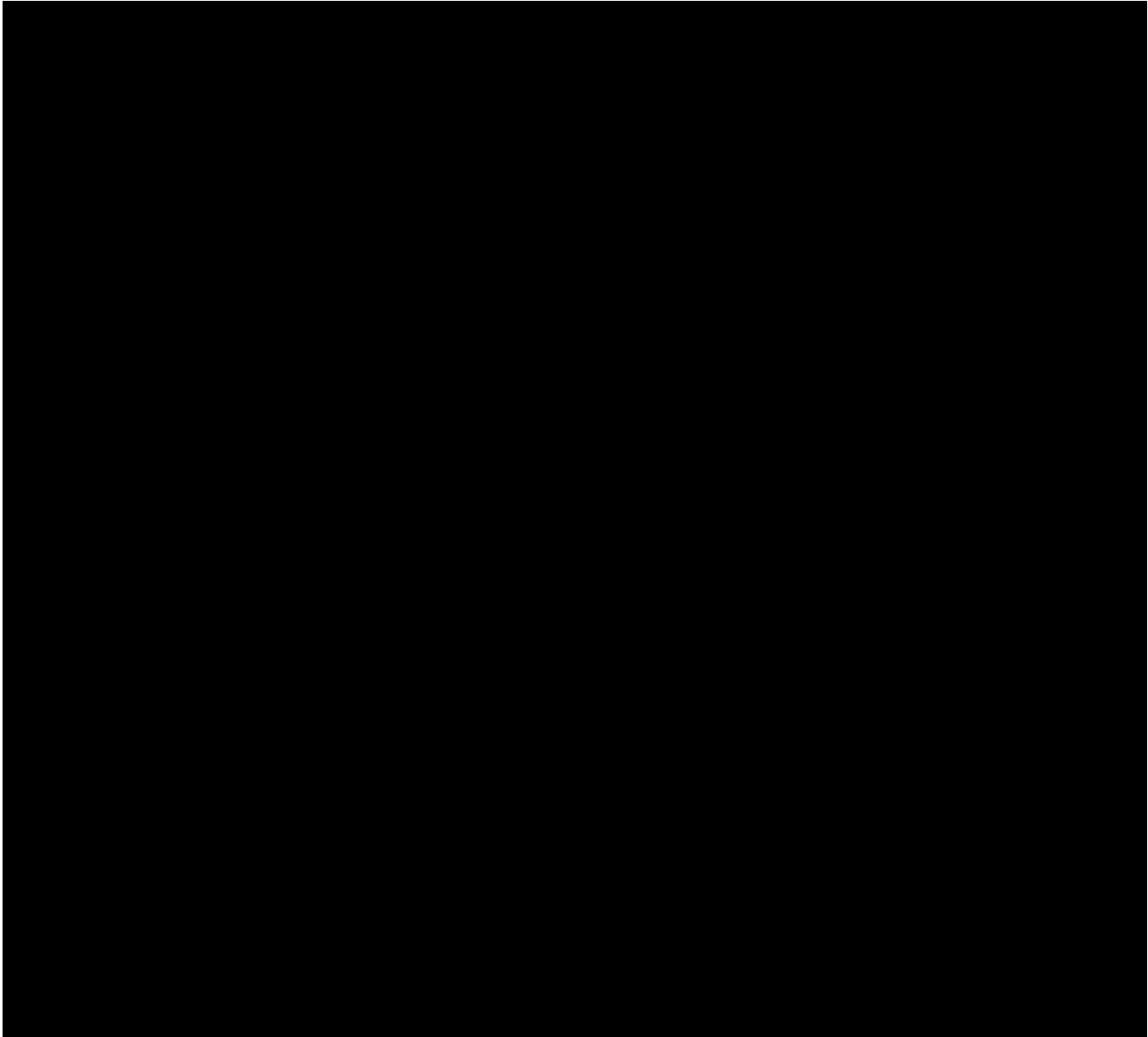








Schedule 4 Process Requirements (PR)

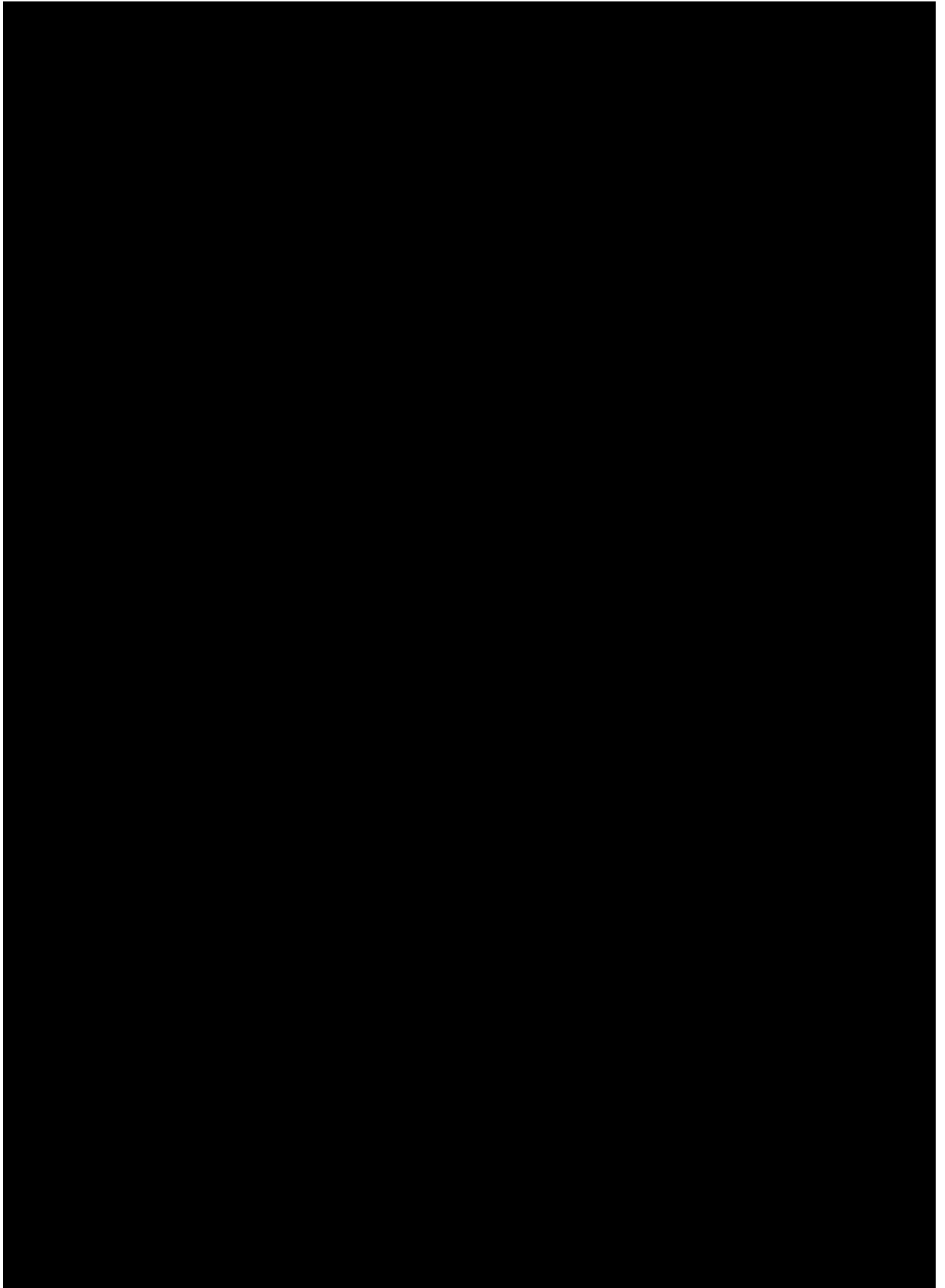


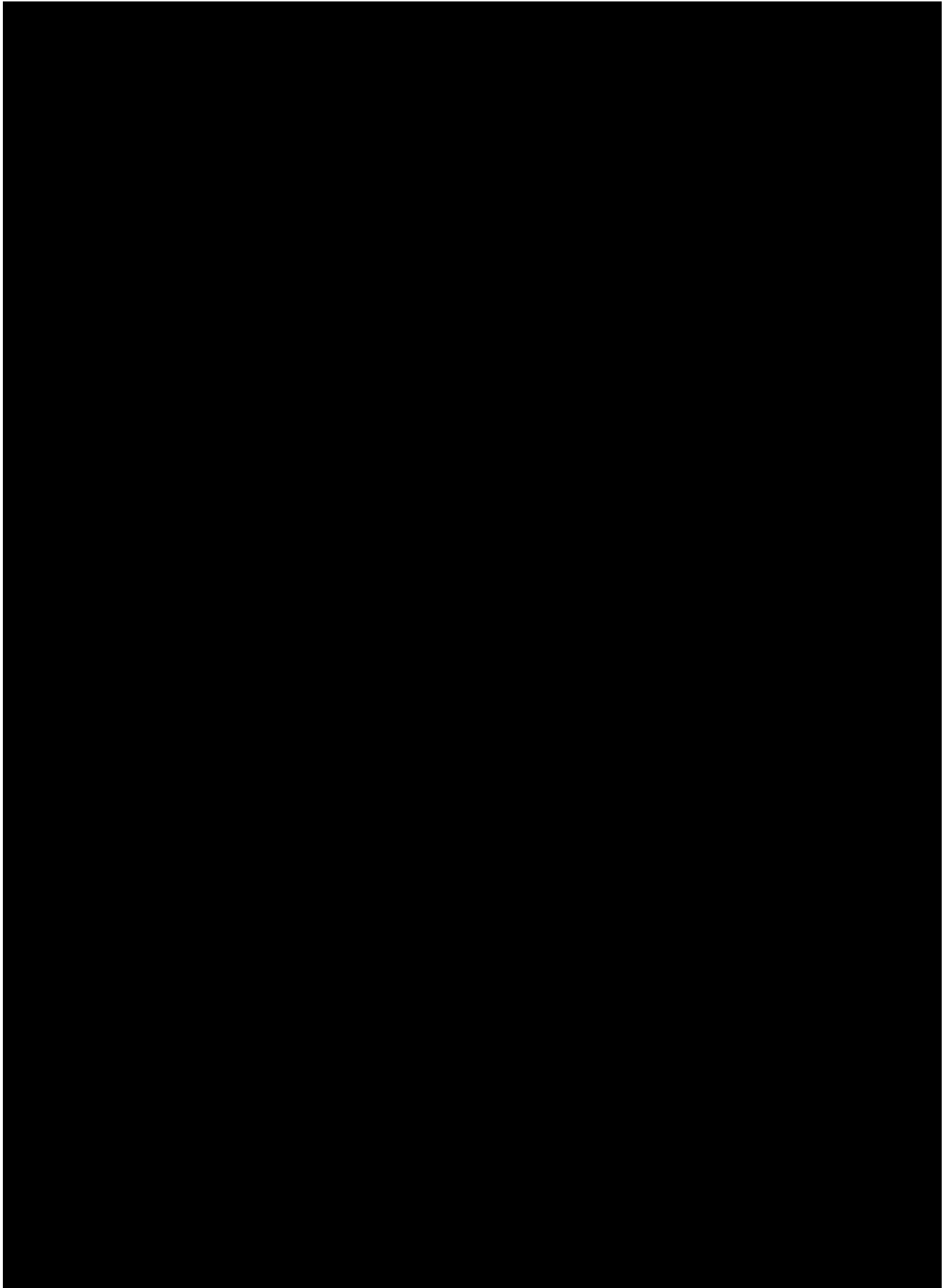


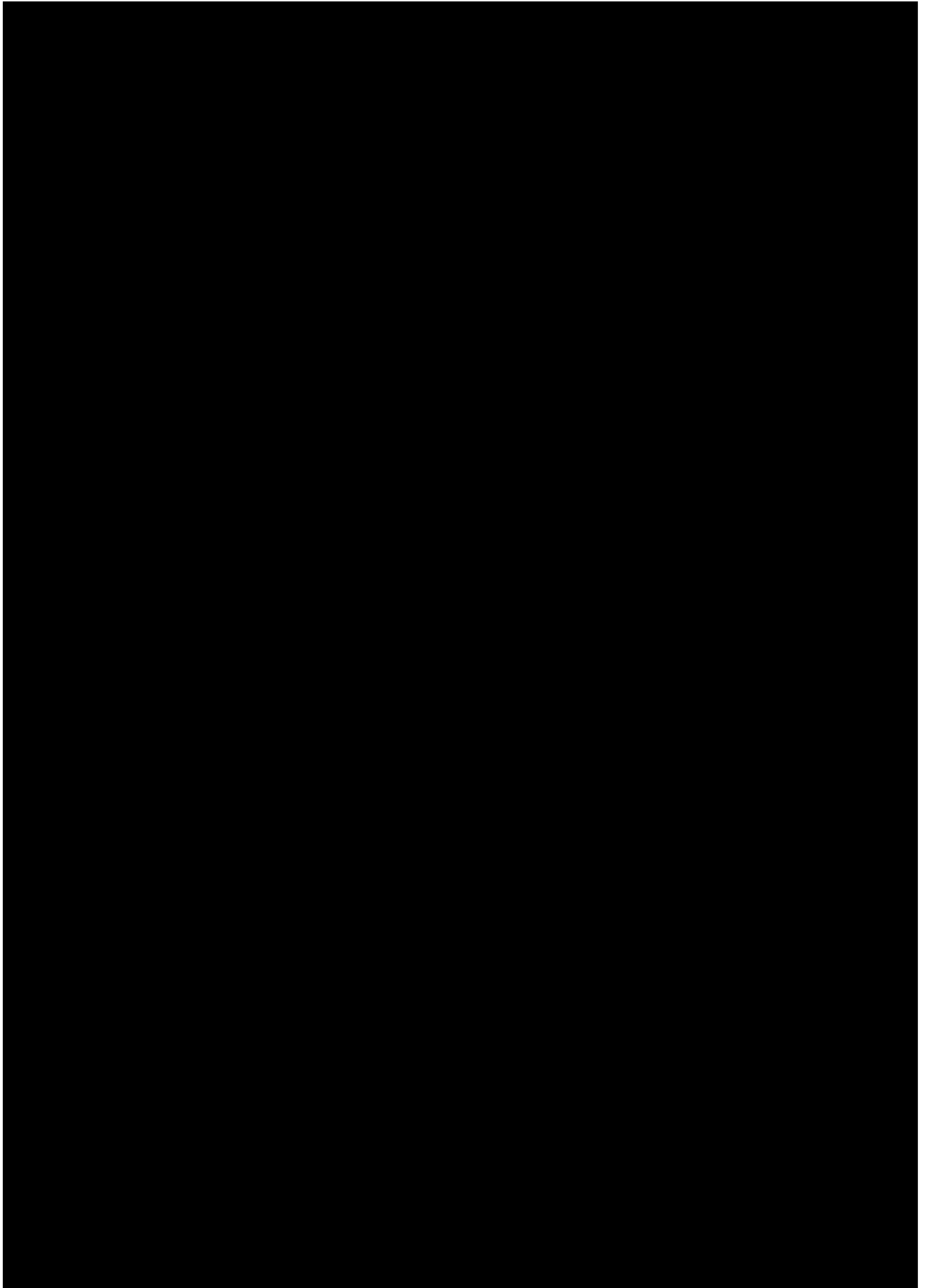
Schedule 5 Not Used

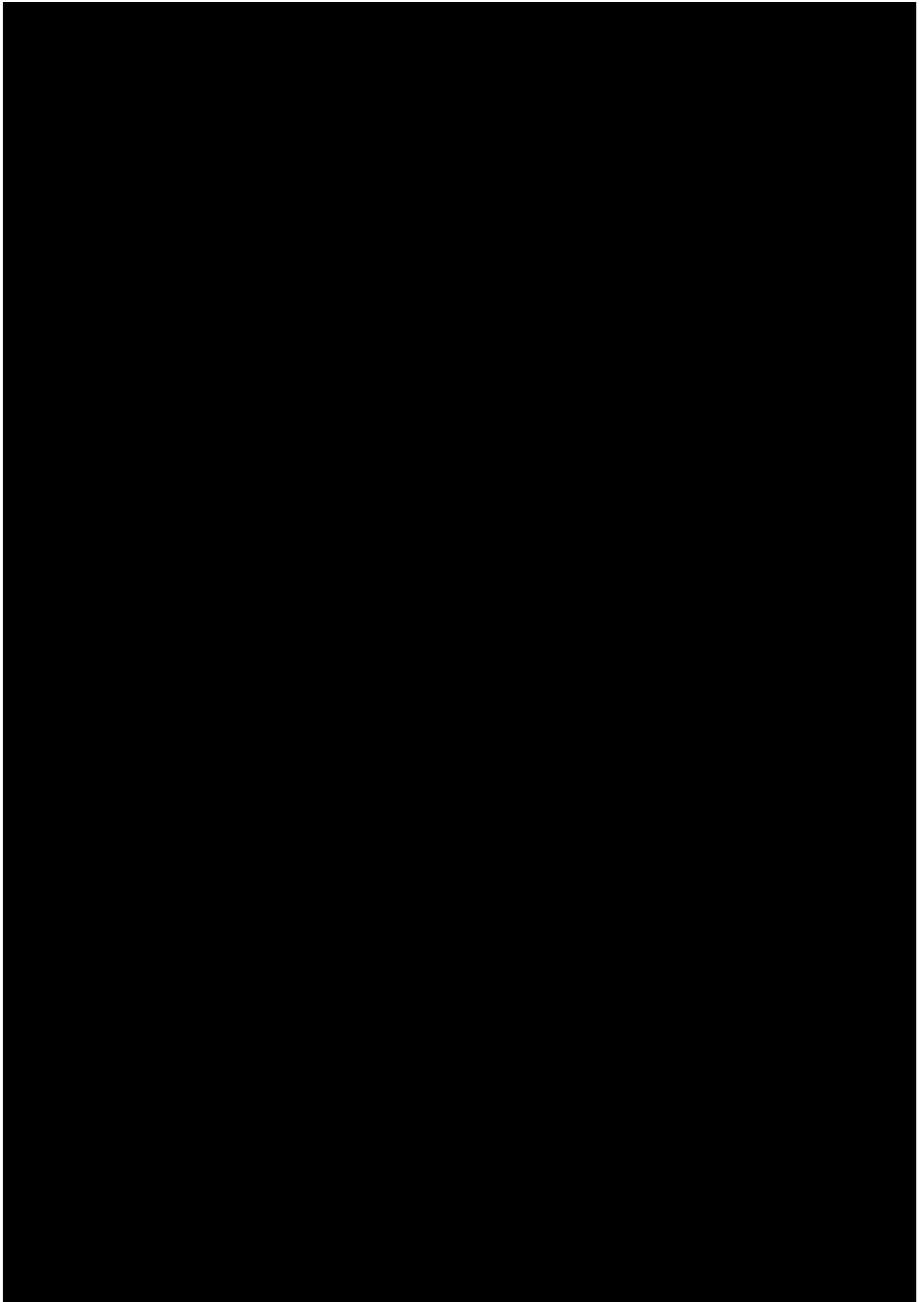


Schedule 6 Milestones and Acceptance Criteria











Schedule 7 New SOWs and Variation Procedures

1 General

1.1 Coverage

- (a) This Schedule 7 sets out the process the parties must comply with:

subject to paragraph (b), to agree a New SOW for:

- (A) deployment of the Trackside Subsystem (or any part of it) in, or the procurement of additional goods and/or services from the Contractor for, a Future Deployment Area (as set out in section 3 (Future Deployments and Future Project Work)); or
- (B) performance of Future Project Work (as set out in section 3 (Future Deployments and Future Project Work));

in order to implement a Variation (as set out in section 4 (Variations));

where TfNSW wishes to issue a Direction to Proceed (as set out in section 5 (Directions to Proceed)); and

in the event of a Change in Laws, Change in Approvals and Change in Standards (as set out in section 6 (Changes in Laws, Approvals and Standards)).

- (b) From time to time TfNSW may elect to conduct an alternative procurement process in respect of the rollout of the Trackside Subsystem in a Future Deployment Area. Where that occurs, the Contractor:

acknowledges that the procurement process will be conducted in accordance with any conditions (including timeframes) prescribed by TfNSW and may not follow the process set out in section 3 (Future Deployments and Future Project Work); and

may elect whether or not to participate in the alternative procurement process at its discretion.

1.2 TfNSW discretion and binding nature

- (a) Save as provided otherwise in section 6 (Changes in Laws, Approvals and Standards), TfNSW is under no obligation to proceed with any Variation Request, Variation Proposal, SOW Proposal or Direction to Proceed.
- (b) A Variation Proposal or SOW Proposal is only binding on the parties when it has been executed by TfNSW, following which it will be incorporated into and governed by the terms and conditions of this Agreement.
- (c) The Contractor must not make any Claim in respect of, or commence implementing, a Variation Proposal or SOW Proposal unless and until TfNSW has either Directed it to do so in accordance with section 5 (Directions to Proceed) or executed the Variation Proposal or SOW Proposal in accordance with this Schedule 7.

- (d) TfNSW is under no obligation to pay the Contractor for the preparation of a SOW Proposal unless:
 - (i) the Contractor has submitted a statement of its anticipated costs to TfNSW prior to preparing the SOW Proposal; and
 - (ii) the reimbursement of those costs has been approved in advance by TfNSW (in its sole discretion).
- (e) If:
 - (i) TfNSW does not approve the Contractor's costs for preparation of a SOW Proposal under paragraph (d);
 - (ii) preparation of the SOW Proposal would require preparation of a Concept Design; and
 - (iii) in order to prepare the SOW Proposal the Contractor would be required to engage additional Resources not already deployed by the Contractor on the Program,

then the Contractor will not be required to prepare a SOW Proposal under section 3. The Contractor will be required to prepare any other SOW Proposal required under section 3, notwithstanding that TfNSW may not have approved the payment of costs under paragraph (d) and the Contractor will not be entitled to submit any Claim in respect of costs incurred in preparing such a SOW Proposal unless approved by TfNSW.
- (f) The Contractor will not be entitled to submit any Claim in respect of costs incurred in preparing a Variation Proposal.

1.3 Obligation to supply

- (a) The Contractor must not withhold its consent to a Variation Proposal or a SOW Proposal to the extent such Variation Proposal or SOW Proposal is required to give effect to a Change in Laws, Change in Approvals or Change in Standards.
- (b) The parties agree to work together so as to effect any Variation Proposal or SOW Proposal without, where possible, detriment to the Assets or the Program. Where it is not possible to effect any Variation Proposal or SOW Proposal without detriment to the Assets or the Program, the parties must use all reasonable endeavours to minimise the detriment to the Assets or the Program and to mitigate the extent and impact of the Variation Proposal or SOW Proposal.
- (c) Notwithstanding any provision of this Agreement to the contrary, if:
 - (i) any Variation (or Direction to Proceed) is required to any part of the Contractor's Solution to enable the Contractor's Solution or the Trackside Subsystem to meet or comply with any other part of the Contract Specifications or this Agreement; or
 - (ii) the Contractor otherwise proposes or requests a Variation to (or a Direction to Proceed to vary) any part of the Contractor's Solution, the Contractor's Activities or the Contractor's Program to meet the requirements of the Contract Specifications or this Agreement in a different way than is currently proposed,

the Contractor is not entitled to any increase in Fees or any extension of time (including under any associated Variation or Direction to Proceed) and the Contractor will have no Claim against TfNSW arising out of or in connection with such a Variation or Direction to Proceed, except where the relevant Variation or Direction to Proceed referred to in paragraphs (i) or (ii) is necessitated by a Variation separately initiated by TfNSW to this Agreement. For clarity, this paragraph (c) does not limit the operation of section 6 (Changes in Laws, Approvals and Standards) of this Schedule 7 (New SOWs and Variation Procedures).

2 Options

- (a) Schedule 35 (Options) or any SOW may set out a number of SOW Proposals, Variation Proposals or other options that contain terms on which the Contractor has agreed, and offered to, provide goods and/or services to TfNSW on the basis that TfNSW may accept those terms at a later date (each an **Option**).
- (b) TfNSW may, by notice to the Contractor at any time, exercise any Option (**Option Notice**). Each Option Notice must set out the relevant details identified in the Option.
- (c) Without limiting paragraphs (a) and (b), promptly on receipt of an Option Notice, the Contractor must execute the relevant SOW Proposal or Variation Proposal and deliver it to TfNSW for execution or, where the Option is not a SOW Proposal or Variation Proposal, then this Agreement is deemed to be amended to incorporate and reflect the exercise of the Option by TfNSW.
- (d) The Contractor acknowledges that a failure by TfNSW to exercise an Option:
 - (i) does not entitle the Contractor to any Claim against TfNSW in relation to same; anddoes not constitute a termination of this Agreement.
- (e) Where TfNSW does not exercise its discretion to exercise an Option, TfNSW may, either by itself or by Third Parties, undertake the work contemplated by the relevant Option.

3 Future Deployments and Future Project Work

3.1 Request for SOW Proposal

- (a) TfNSW may request a SOW Proposal from the Contractor for:
 - deployment of the Trackside Subsystem (or any part of it) in a Future Deployment Area (that is not already covered by an Option) or the procurement of any goods and/or services from the Contractor for a Future Deployment Area; or
 - Future Project Work.
- (b) If TfNSW wishes to request a SOW Proposal TfNSW may:
 - (i) give a draft New SOW to the Contractor; or

- (ii) provide the Contractor with a description of the Assets and/or Works that are required in connection with the Future Deployment Area or Future Project Work,

and require the Contractor to prepare and submit a SOW Proposal in response.

- (c) Each SOW Proposal must be in the form set out in and contain the relevant information anticipated in Attachment A (Statement of Work Template) and must be valued in accordance with section 7 (Pricing Principles).
- (d) For the avoidance of doubt, a New SOW may be for the provision of all or any part of the Trackside Subsystem, including all or any of the Assets and/or Works required in respect of the Trackside Subsystem.
- (e) The Contractor acknowledges and agrees that, in respect of any New SOW, TfNSW may request that any interfaces are designed as open interfaces and the Contractor must confirm in its SOW Proposal whether it agrees to this request.

3.2 Provision of SOW Proposal

Unless a longer timeframe is stipulated by TfNSW or otherwise agreed between the parties, the Contractor must (regardless of whether TfNSW has approved the Contractor's request for reimbursement of its costs associated with the preparation of the SOW Proposal) within forty (40) Business Days (for a New SOW relating to the deployment of the Trackside Subsystem in a Future Deployment Area) or twenty (20) Business Days (for any other New SOW) of receiving a request from TfNSW pursuant to section 3.1(a), provide to TfNSW (as applicable):

- (a) the Contractor's proposed amendments to the draft New SOW; or
- (b) a proposed New SOW,

which proposal will constitute a **SOW Proposal** for the purposes of this Schedule, together [REDACTED]

3.3 TfNSW discretion as to SOW Proposal

- (a) Without limiting section 1.2(a), following TfNSW's receipt of the Contractor's SOW Proposal, TfNSW may:

- (i) approve the SOW Proposal as-is, in which case each party will execute the draft SOW as soon as reasonably practicable and the Contractor must implement the New SOW in accordance with its terms;

approve the SOW Proposal subject to the satisfaction of certain SOW Conditions Precedent, in which case each party will execute the draft SOW (as applicable) as soon as reasonably practicable, however the SOW Commencement Date will be the date on which those SOW Conditions Precedent have been satisfied to TfNSW's reasonable satisfaction;

reject the SOW Proposal, in which case section 3.4(b) will apply; or

notify the Contractor that it requires changes to the SOW Proposal, in which case section 3.4(a) will apply.

3.4 Rejection of or changes to SOW Proposal

- (a) If TfNSW notifies the Contractor that it requires any changes to a SOW Proposal, then the Contractor must, within twenty (20) Business Days (for a New SOW relating to the deployment of the Trackside Subsystem in a Future Deployment Area) or ten (10) Business Days (for any other New SOW), respond to the requested changes following which the process in section 3.2 (Provision of SOW Proposal) shall apply to the re-submitted SOW Proposal.
- (b) If TfNSW rejects the SOW Proposal, then, the parties must work together to agree on a mutually acceptable resolution to the matters set out in the SOW Proposal. If the parties are unable to reach an agreement within ten (10) Business Days (or such longer period agreed between the parties) after the date of TfNSW's rejection of the SOW Proposal, then (subject to paragraph (c)) TfNSW may:
 - (i) treat the non-agreement as an Issue for the purposes of clause 33 (Resolution of Matters); or
 - (ii) notify the Contractor under section 1.2(a) that it elects not to proceed with the SOW Proposal in which case the Contractor is not entitled to treat such rejection as an Issue for the purposes of clause 33 (Resolution of Matters).
- (c) In relation to a new SOW for a new Deployment Area, if the parties are unable to agree on the terms for the delivery of a new SOW after the matter has progressed through the Issue Resolution Procedures set out in Schedule 18 (Issue Resolution Procedure) then the matter will not be classified as a Dispute and the SOW shall not proceed.

4 Variations

4.1 Variation Request

- (a) Subject to paragraph (b):
 - (i) TfNSW may require a Variation by issuing a Variation Request (in the form set out in Attachment B (TfNSW Initiated Variation) as updated by TfNSW from time to time) to the Contractor; and

subject to paragraph (c), which applies in respect of Variations relating to TfNSW Dependencies, the Contractor may recommend to TfNSW a Variation by setting out the reasons for the Variation, in which case TfNSW may issue a Variation Request (in the form set out in Attachment C (Contractor Initiated Variation) as updated by TfNSW from time to time) to the Contractor in response to any such recommendation.
- (b) Subject to paragraph (c), which applies in respect of Variations relating to TfNSW Dependencies, the parties agree to discuss any potential Variation at the next occurring meeting of the Commercial Management Meeting prior to the issue of a formal Variation Request by TfNSW.
- (c) The Contractor may recommend to TfNSW a Variation in relation to adding new TfNSW Dependencies into the relevant SOW by giving TfNSW four (4) months' notice prior to the date on which the Contractor requires the TfNSW Dependency to come into effect.

4.2 Provision of Variation Proposal

Following:

- (a) TfNSW's issuance of a Variation Request under section 4.1 (Variation Request); or
- (b) where this Agreement otherwise requires the parties to agree a Variation,

the Contractor must, within twenty (20) Business Days (or as otherwise agreed between the parties) of receipt of TfNSW's Variation Request, or of the event giving rise to the requirement to agree a Variation where paragraph (b) applies, provide TfNSW with a Variation Proposal in the form set out in and containing the information anticipated in Attachment B (TfNSW Initiated Variation) or Attachment C (Contractor Initiated Variation) (as applicable) and a [REDACTED]

4.3 TfNSW discretion as to Variation Proposal

Without prejudice to section 1.2(a), following TfNSW's receipt of the Contractor's Variation Proposal, TfNSW may:

- (a) subject to paragraph (d) which applies in respect of Variations relating to TfNSW Dependencies, approve the Variation Proposal as-is, in which case each party will execute the Variation and the Contractor must implement the relevant Variation without delay in accordance with the terms of this Agreement;
- (b) reject the Variation Proposal, in which case section 4.4(b) will apply;
- (c) notify the Contractor that it requires any changes to the Variation Proposal, in which case section 4.4(a) will apply; or
- (d) in respect of Variations relating to TfNSW Dependencies only, approve the Variation Proposal as-is, in which case each party will execute the Variation and such TfNSW Dependency will take effect on the later of (i) the date it is agreed between the parties, and (ii) the date that is sixty (60) Business Days after the date that the Variation is approved by TfNSW.

4.4 Rejection of or changes to Variation Proposal

- (a) If TfNSW notifies the Contractor that it requires any changes to the Variation Proposal, then the Contractor must, within ten (10) Business Days or as otherwise agreed between the parties, respond to the requested changes following which the process in section 4.3 (TfNSW discretion as to Variation Proposal) shall apply to the re-submitted Variation Proposal.
- (b) If TfNSW rejects the Variation Proposal, the parties must work together to agree on a mutually acceptable resolution to the matters set out in the Variation Proposal.
- (c) If the Variation Request was:
 - (i) initiated by the Contractor under section 4.1(a)(ii); or
 - (ii) initiated by the Contractor under section 2.4.7 of Schedule 11 (Pricing Terms),

and the parties are unable to reach an agreement under paragraph (b) within ten (10) Business Days (or such longer period agreed between the parties) after the date of TfNSW's rejection of the Variation Proposal, then either party will be entitled to treat such rejection as an Issue for the purposes of clause 33 (Resolution of Matters).

4.5 Omissions

If a Variation or Direction to Proceed requires the omission or deletion of any part of the Works or Contractor's Activities:

- (a) TfNSW may thereafter either perform this work itself or employ or engage any other person or persons to carry out and complete the omitted or deleted work;
- (b) TfNSW will not be liable upon any Claim by the Contractor arising out of or in connection with any work being omitted or deleted from the Contractor's Activities whether or not TfNSW thereafter performs this work itself or employs or engages any other person or persons to carry out and complete the omitted or deleted work, provided that where the omission or deletion results in a reduction in the Fees payable under the relevant Statement of Work(s) for the Contractor's Activities of more than 20% (compared to the Fees payable for the Contractor's Activities being performed under the relevant Statement of Work(s) immediately prior to the Variation or Direction to Proceed taking effect) the relevant Variation or Direction to Proceed will take into account Termination Costs payable to the Contractor in respect of the reduction with those Termination Costs to be calculated as though the Variation or Direction to Proceed was a partial termination for convenience pursuant to clause 58.4 (Termination for Convenience). Any calculation of Termination Costs pursuant to this paragraph will be taken into account for the purposes of assessing the adjustment to the Fees under the Variation;
- (c) the adjustment to the Fees arising from the work that has been omitted or deleted will be valued in accordance with the Pricing Principles set out in section 3 of Schedule 11 (Pricing Terms);
- (d) the Contractor:
 - (i) may (no later than ten (10) Business Days after the Direction) provide whatever information it considers may assist TfNSW to determine; and
 - (ii) must provide whatever programming or other information TfNSW Directs (and within the time Directed) so that TfNSW can determine, what (if any) adjustment should be made to Milestones; and
- (e) the relevant Milestones may be reduced by a reasonable period determined by TfNSW having regard to the impact of the Variation or Direction to Proceed and notified to the Contractor within twenty (20) Business Days of the date of the Variation or Direction to Proceed.

4.6 Contractor's Entitlements

This Schedule and the rights provided in the Agreement are an exhaustive code of the Contractor's rights in any way in connection with any Variation or Direction to Proceed. The Contractor waives all rights at Law to make any Claim against TfNSW in any way in connection with any of the matters set out in this Schedule and the rights provided in the Agreement otherwise than in accordance with the terms of this Agreement.

5 Directions to Proceed

- (a) Whether or not the parties have agreed the terms of a Variation Proposal or SOW Proposal in accordance with this Schedule or the pricing for a direction as to rate of progress or an acceleration under clause 14.5 (Acceleration by TfNSW) or compression under clause 15.5(c) (**Direction to Proceed Event**), but subject to paragraph (g), TfNSW may at any time Direct the Contractor to commence implementing the Direction to Proceed Event before it is agreed (**Direction to Proceed**) by giving the Contractor notice stating that it is a “Direction to Proceed” under this section. TfNSW may also issue a Direction to Proceed subject to conditions, including any capped pricing. If the Contractor receives such a Direction to Proceed:
 - (i) the Contractor must implement the relevant Direction to Proceed Event without delay in accordance with the terms of this Agreement, subject to any conditions specified by TfNSW; and
 - (ii) unless agreed otherwise between the parties, the Direction to Proceed Event will be valued in accordance with section 7 (Pricing principles) and the Contractor may submit a payment claim in accordance with clause 29.1 (Payment claims) in respect of the Contractor’s Activities performed to implement the Direction to Proceed Event in accordance with the Direction to Proceed, subject to any cap that applies as a condition to the Direction to Proceed.
- (b) The Contractor must where reasonably possible comply with a Direction to Proceed irrespective of:
 - (i) the nature, extent or value of the work the subject of the Direction to Proceed;
 - (ii) the location or timing (including the impact on any Milestone) of the work involved in the Direction to Proceed;
 - (iii) whether or not it agrees with any or all of the terms of the Direction to Proceed; or
 - (iv) any Issue or Dispute related to the Direction to Proceed (or any associated Direction to Proceed Event, including in respect of Fees).
- (c) A Direction to Proceed issued under this section does not:
 - (i) relieve the Contractor from its obligations to provide a Variation Proposal or SOW Proposal (as applicable) or estimate under clauses 14.5 (Acceleration by TfNSW) or 15.5(c) (and any amendments to a Variation Proposal or SOW Proposal);
 - (ii) subject to paragraph (d), relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Agreement); or
 - (iii) limit or otherwise affect either party’s rights under this Agreement.

- (d) If the Contractor considers that a Direction to Proceed issued under this section prevents it performing its obligations or meeting its liabilities in accordance with this Agreement:
- (i) the Contractor must, within ten (10) Business Days (other than in respect of matters which TfNSW, acting reasonably, determines are urgent in which case the Contractor must as soon as reasonably practicable and in any event within no more than ten (10) Business Days), notify TfNSW, and must provide in the notice as much detail as is reasonably practicable about the obligations or liabilities which it considers are being impacted and the relief it is seeking;
- TfNSW will, within ten (10) Business Days (or a shorter timeframe in respect of matters which TfNSW, acting reasonably, determines are urgent), notify the Contractor whether or not it agrees with the Contractor's assessment and whether or not it wishes to proceed with the Direction to Proceed;
- if TfNSW agrees with the Contractor's assessment, and Directs the Contractor to proceed with the Direction to Proceed, the Contractor will be relieved from performance of the affected obligations or the affected liabilities to the extent agreed by TfNSW until the Variation or New SOW (as applicable) is signed; or
- if TfNSW does not agree with the Contractor's assessment, the Contractor must proceed to perform the Direction to Proceed but will be entitled to treat such disagreement as an Issue for the purposes of the Issue Resolution Procedure.
- (e) Once a Variation or New SOW is executed for such Direction to Proceed:
- (i) any adjustment to the Fees for such Variation or the agreed Fees under the Variation or New SOW will apply retrospectively from the date of the Direction to Proceed;
- any amounts paid under paragraph (a)(ii) are deemed to be amounts paid under the Variation or New SOW; and
- to the extent that there has been any over or under payment for any month, then the difference will be paid by the relevant party to the other party to true-up such amounts.
- (f) If, at any time after the issue of a Direction to Proceed and prior to the execution of a Variation or a New SOW, TfNSW elects not to proceed with the relevant Direction to Proceed, TfNSW will so notify the Contractor and:
- (i) this section will no longer apply in respect of the relevant Direction to Proceed and any corresponding Direction to Proceed will cease; and
- (ii) the Fees payable in respect of the Contractor's Activities performed in accordance with the Direction to Proceed to the date of TfNSW's notice under this paragraph (f) will be calculated in accordance with section 7 (Pricing principles).
- (g) There is no limitation on the power of TfNSW to issue a Direction to Proceed, provided that the Direction is in the general nature of the Works to be provided under this Agreement, and no Direction to Proceed will invalidate this Agreement.

However, TfNSW acknowledges and agrees that it will not issue a Direction to Proceed under this Agreement in respect of the terms of a SOW Proposal relating to the deployment of the Trackside Subsystem in a Future Deployment Area only.

6 Changes in Laws, Approvals and Standards

6.1 Changes in Laws

- (a) If a Change in Law occurs, the Contractor must within ten (10) Business Days of becoming aware of the Change in Law, submit a notice to TfNSW stating that it considers this section 6.1 applies:
 - (i) containing details of the Change in Law and stating whether the Contractor considers it a Qualifying Change in Law;
 - (ii) stating the impact that the Change in Law has on the Contractor's ability to meet the Milestones (if any);
 - (iii) stating the impact the Change in Law would have on the Contract Specifications (if any); and
 - (iv) stating the Contractor's estimate of any increase or decrease (as the case may be) in the Contractor's cost of carrying out the Contractor's Activities arising out of or in connection with complying with the Qualifying Change in Law (if any), including sufficient information to support the estimates.
- (b) If any Change in Law necessitates a Variation, TfNSW will:
 - (i) issue a Variation Request requiring the Contractor to prepare a Variation Proposal in accordance with section 4.2 (Provision of Variation Proposal) for the Change in Law;
 - (ii) issue a Direction to Proceed under section 5 (Directions to Proceed) directing that the requirements of this Agreement be varied to implement the Change in Law; or
 - (iii) take such other action as TfNSW considers necessary to ensure that the Trackside Subsystem complies with the Change in Law.
- (c) Whether or not a Change in Law requires a Variation:
 - (i) the Contractor is not entitled to any increase in Fees in respect of any of the actions in paragraphs (b)(i) to (iii) (including any Variation or Direction to Proceed) except under and in accordance with clause 15.6 (Compensation Events) in respect of a Qualifying Change in Law to the extent that it is a Compensation Event; and

the Contractor is not entitled to any extension of time in respect of any of the actions in paragraphs (b)(i) to (iii) (including any Variation or Direction to Proceed) except under and in accordance with clause 15.3 (Extension of Time) in respect of a Qualifying Change in Law to the extent that it is an EOT Event.
- (d) Whether or not TfNSW considers that a Change in Law necessitates a Variation, the Contractor must implement and comply with each Change in Law.

6.2 Changes in Approvals

- (a) If a Change in Approval occurs the Contractor must:
- (i) if the relevant Approval was obtained by TfNSW or is an Approval obtained by a Third Party with which the Contractor is required to comply, within ten (10) Business Days of the date on which the Contractor becomes aware or ought reasonably to have become aware of the Change in Approval taking effect; or
- otherwise, within ten (10) Business Days of the Change in Approval taking effect,
- notify TfNSW of the Change in Approval and (if applicable) provide detailed particulars of the reason why the Change in Approval necessitates a Variation.
- (b) If the Contractor gives a notice under paragraph (a) and the Change in Approval necessitates a Variation, TfNSW will:
- issue a Variation Request requiring the Contractor to prepare a Variation Proposal in accordance with section 4.2 (Provision of Variation Proposal) for the Change in Approval; or
 - issue a Direction to Proceed under section 5 (Directions to Proceed) directing that the requirements of this Agreement be varied to implement the Change in Approval.
- (c) Whether or not a Change in Approval requires a Variation:
- (i) the Contractor is not entitled to any increase in Fees in respect of any of the actions in paragraphs (b)(i) or (b)(ii) (including any Variation or Direction to Proceed) except under and in accordance with clause 15.6 (Compensation Events) in respect of a Qualifying Change in Approval to the extent that it is a Compensation Event; and
- the Contractor is not entitled to an extension of time in respect of any of the actions in paragraphs (b)(i) or (b)(ii) (including any Variation or Direction to Proceed) except under and in accordance with clause 15.3 (Extension of Time) in respect of a Qualifying Change in Approval to the extent that it is an EOT Event.
- (d) Whether or not TfNSW considers that the Change in Approval necessitates a Variation, the Contractor must implement and comply with each Change in Approval.

6.3 Changes in Standards

- (a) Where:
- (i) the Contractor notifies TfNSW of a Change in Standard in accordance with clause 43.1(b)(i); or
- TfNSW notifies the Contractor of a Change in Standard (other than in respect of the Assets comprising the RBC),

the parties will discuss the Change in Standard at the next occurring meeting of the Commercial Management Meeting.

- (b) Within no more than twenty (20) Business Days of such meeting, TfNSW must either:

issue a Variation Request requiring the Contractor to prepare a Variation Proposal in accordance with section 4.2 (Provision of Variation Proposal) for the Change in Standard, on the basis that TfNSW wishes to consider the full impact of the requirement to comply with the Change in Standard;

- (ii) issue a Direction to Proceed under section 5 (Directions to Proceed) Directing that the requirements of this Agreement be varied to implement, or to avoid or mitigate the consequences of, the Change in Standard; or

Direct the Contractor to disregard the Change in Standard for the purposes and period set out in the notice, provided that TfNSW must Direct the Contractor to comply with the relevant Change in Standard if a failure to comply with that Change in Standard would result in the Contractor being in breach of any Law or Approval.

- (c) Where either:

- (i) TfNSW notifies the Contractor of an additional Standard in respect of the Assets comprising the RBC that the Contractor is not required to comply with at the SOW Execution Date; or
- (ii) the Contractor notifies TfNSW of an additional Standard in respect of the Assets comprising the RBC that the Contractor is not required to comply with at the SOW Execution Date but which the Contractor has identified as potentially applicable to such Assets,

the parties will discuss the relevant Standard at the next occurring meeting of the Commercial Management Meeting.

- (d) Following such meeting referred to in paragraph (c), TfNSW may issue a Variation Request requiring the Contractor to prepare a Variation Proposal in accordance with section 4.2 (Provision of Variation Proposal) in respect of the proposed additional Standard, on the basis that TfNSW wishes to consider the full impact of the requirement to comply with such Standard. Without limitation, any such Variation Proposal shall include full details of:

- (i) any non-compliance of the Contractor's commercial off the shelf RBC with any element of the proposed Standard;
- (ii) the Contractor's reasonable assessment of the prospects of obtaining a waiver or concession in respect of any such non-compliance; and
- (iii) the cost and delay associated with compliance with the Standard if no such waiver or concession were to be obtained.

- (e) If the Variation Proposal identifies non-compliance of the Contractor's commercial off the shelf RBC with any element of the proposed Standard and TfNSW approves the Variation Proposal in accordance with section 4.3 (TfNSW discretion as to Variation Proposal):

- (i) the Contractor must use its reasonable endeavours to obtain a waiver or concession in respect of any non-compliance with the Standard identified in the Variation Proposal; and
 - (ii) if the Contractor is unable to obtain such a waiver or concession, and if TfNSW nevertheless requires compliance with such Standard, the Contractor shall be entitled to an increase in Fees in accordance with clause 15.6 (Compensation Events) and an extension of time in accordance with clause 15.3 (Extension of Time).
- (f) In respect of any additional Standard referred to in section 6.3(c), if:
 - (i) TfNSW does not issue a Variation Request under section 6.3(d); or
 - (ii) if TfNSW issues a Variation Request under section 6.3(d), TfNSW does not approve the Variation Proposal in accordance with section 4.3 (TfNSW discretion as to Variation Proposal),

TfNSW must Direct the Contractor to disregard the additional Standard for the purposes and period set out in the notice, provided that TfNSW must Direct the Contractor to comply with the relevant additional Standard if a failure to comply with that additional Standard would result in the Contractor being in breach of any Law or Approval.

- (g) Whether or not a Change in Standard requires a Variation:
 - (i) the Contractor is not entitled to any increase in Fees in respect of any of the actions in paragraphs (b)(i) to (iii) (including any Variation or Direction to Proceed) except (subject to paragraph (h) below) under and in accordance with clause 15.6 (Compensation Events) if and to the extent that the Change in Standard is a Compensation Event; and
 - (ii) the Contractor is not entitled to an extension of time in respect of any of the actions in paragraphs (b)(i) to (iii) (including any Variation or Direction to Proceed) except under and in accordance with clause 15.3 (Extension of Time) if and to the extent that the Change in Standard is an EOT Event.
- (h) Notwithstanding anything to the contrary, in respect of a Compensation Event for a Change in Standard that relates to a change to an ERA Standard or another international Standard referred to in the SSRS, the PR or a SOW, where the Contractor has already performed and owns the development work in respect of that Change in Standard for any of its other customers, the Contractor is only entitled to Claim and TfNSW is only liable for, an increase in Fees in respect of additional Contractor's Activities directly associated with the implementation of any updated parts of the Trackside Subsystem for TfNSW and not for the development (including any associated testing) of such updates to the Trackside Subsystem.
- (i) If the Contractor submits a Variation Proposal pursuant to section 6.3(a)(i) or section 6.3(d):
 - (i) if TfNSW accepts the Variation Proposal, the parties must execute the Variation Proposal and the Contractor must implement the relevant Variation and comply with the relevant Change in Standard without delay in accordance with the terms of this Agreement; or

- (ii) if TfNSW rejects the Variation Proposal, TfNSW must issue a Direction pursuant to either section 6.3(a)(ii) or (iii) or pursuant to section 6.3(f).

6.4 General

- (a) Other than where the Contractor is entitled to an extension of time or compensation in accordance with clauses 15.3 (Extension of Time) and 15.6 (Compensation Events) in respect of a Change in Law, Change in Standard or Change in Approval, the Contractor is liable for the consequences of, and will have no Claim in respect of the Contractor's Activities against TfNSW arising out of or in connection with a Change in Law, Change in Standard or Change in Approval and any Variation or Direction to Proceed to reflect, implement or comply with such Change in Law, Change in Standard or Change in Approval will be at no additional cost or charge to TfNSW.
- (b) TfNSW's intention is that Changes in Law, Changes in Standard or Changes in Approval that require a:

Major Enhancement or Upgrade, or Minor Enhancement or Update to be performed prior to commencement of the TLS Agreement, will be addressed under this Agreement; and

Minor Enhancement or Update to be performed after commencement of the TLS Agreement will be addressed under the TLS Agreement.

7 Pricing principles

The Fees applicable to each New SOW, Variation and Compensation Event will be determined in accordance with the Pricing Principles in section 3 of Schedule 11 (Pricing Terms).

8

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]





[Redacted]











Schedule 8 Review Procedures

1 General

This Schedule applies:

- (a) where any documents, plans, processes, programs, manuals, samples, mock-ups, models, approvals or conditions in any format, or any other document or thing must be submitted for Review under this Agreement (including updates to a document submitted for Review) (**Submitted Document**); and
- (b) to define the Review Procedures.

2 Submission and review

2.1 Submission

When Submitted Documents are submitted for Review, the submission must include:

- (a) details of the Submitted Document, its nature and the relevant clause, schedule or annexure of this Agreement under which it is submitted for Review;
- (b) the Submitted Document itself; and
- (c) any other information required under this Agreement or otherwise necessary for TfNSW to review the Submitted Document and respond in accordance with these Review Procedures.

2.2 Review

- (a) Where this Agreement requires the Contractor to submit a Submitted Document for Review, TfNSW may elect to review the Submitted Document(s) itself or to appoint another entity to perform the review on its behalf (the entity responsible for conducting the review being the **Reviewing Party**).
- (b) The Reviewing Party may review, or may appoint another person to review (which person will be the Reviewing Party for the purposes of this Schedule), the Submitted Document and provide any comments in writing to the Contractor in accordance with these Review Procedures and this Agreement within the Review Period.

2.3 Review Period

- (a) Subject to paragraphs (b) and (c), the 'Review Period' for a Submitted Document is twenty (20) Business Days (or such longer period as the parties may agree) from the date on which the Submitted Document is received by the Reviewing Party for Review.
- (b) If within five (5) Business Days from the date on which the Submitted Document is received by the Reviewing Party for Review the Reviewing Party notifies the Contractor that:

the Submitted Document is incomplete, of poor quality or otherwise is not in a condition to allow the Reviewing Party to adequately review it;

the Submitted Document is otherwise not in accordance with, or is not submitted in accordance with, the requirements of this Agreement in respect of the Submitted Document; or

it reasonably requires additional information concerning the request for Review or comment or in order to make the election or determination, and such information is available or able to be obtained if the Contractor uses reasonable endeavours to obtain it,

then the Review Period will end when the Reviewing Party provides the Contractor with its notice and this process will not count as a Review Period for purposes of the maximum number of 'Review Cycles' described in section 7.1 (Comments on Submitted Documents).

- (c) Without limiting paragraph (b) or section 3 (Further Information), at any point during the Review Period for a Submitted Document, the Reviewing Party may notify the Contractor that it reasonably requires additional information concerning the request for Review or comment. If such information is available or able to be obtained if the Contractor uses reasonable endeavours to obtain it, then the parties will work together in good faith to agree a reasonable extension to the Review Period to reflect the amount of time that the Contractor will require to provide the information.

3 Further Information

The Contractor must as soon as reasonably practicable upon request by the Reviewing Party submit any further information, data or documents, and make available appropriately qualified Contractor Personnel, that the Reviewing Party reasonably requires in order to be able to review the Submitted Document and respond in accordance with these Review Procedures.

4 Comments on Submitted Documents

4.1 No Comment on Submitted Document

The Reviewing Party may return a Submitted Document to the Contractor with or without comments. If the Reviewing Party has no comments on a Submitted Document, the Reviewing Party may mark that document with a statement 'No comment'.

4.2 No intention to comment

If the Reviewing Party decides that it does not intend to Review, comment on or respond to any Submitted Document submitted in accordance with section 2.1 (Submission) within the Review Period it may notify the Contractor of the same, and upon receipt of such notification, the Reviewing Party will be deemed to have returned the Submitted Document to the Contractor marked with the statement 'No comment'.

4.3 Failure to comment

Subject to section 4.4 (Late comments), if a Reviewing Party has not commented on or responded to any Submitted Document in accordance with section 2.1 (Submission) by the day that is fifteen (15) Business Days into the Review Period, then:

- (a) the Contractor must immediately notify TfNSW; and
- (b) if the Reviewing Party has not, within the Review Period, commented or responded or requested additional time to Review,

the Reviewing Party will be deemed to have returned the Submitted Document to the Contractor marked with the statement 'No comment'.

4.4 Late comments

If the Reviewing Party fails to comment on or respond to any Submitted Documents within the relevant Review Period, or otherwise wishes to raise a comment on a Submitted Document after the expiry of the Review Period for the Submitted Document, the Reviewing Party may nevertheless later raise comments on the relevant Submitted Document, in which case these Review Procedures will apply to those comments as if they had been provided within the Review Period.

4.5 Response to Submitted Document

The Reviewing Party may provide comments in respect of a Submitted Document in accordance with section 5 (Grounds on which the Reviewing Party may make comments).

4.6 Substantial comments

If the Reviewing Party provides the Contractor with comments in respect of the Submitted Document under section 5 (Grounds on which the Reviewing Party may make comments), the Reviewing Party must provide sufficient details to the Contractor to substantiate those comments.

5 Grounds on which the Reviewing Party may make comments

5.1 General

- (a) The Reviewing Party may provide comments in respect of a Submitted Document and the Contractor must address those comments on the Submitted Document where the Reviewing Party considers that:
 - (i) a Submitted Document:
 - (A) is incomplete, of poor quality or otherwise is not in a condition to allow the Reviewing Party to adequately review it;
 - (B) is not fit for purpose;
 - (C) does not comply with the relevant Mandatory Requirements; or
 - (D) is otherwise not in accordance with, or is not submitted in accordance with, the requirements of this Agreement or the Contract Specifications in respect of the Submitted Document;

the Contractor's performance of its obligations under this Agreement would be adversely affected by proceeding on the basis of the Submitted Document;

TfNSW's rights or obligations under this Agreement or its ability to exercise or enforce any such right or perform any such obligations would be adversely affected by proceeding on the basis of the Submitted Document;

the ability of TfNSW or other Rail Transport Entity to undertake their Operations Functions or to otherwise perform their responsibilities in respect of the Network would be adversely affected by proceeding on the basis of the Submitted Document; or

- (v) proceeding on the basis of the Submitted Document would be likely to result in an increase to a Rail Transport Entity's obligations or responsibilities or liabilities or potential or contingent liabilities under this Agreement.
- (b) The Reviewing Party may provide comments in respect of a Submitted Document and the Contractor must address those comments on the Submitted Document where the Reviewing Party considers that (without limiting Schedule 15 (Interface Requirements)):

any Other Contractor's or any Interface Contractor's performance of its activities, including any obligations under any relevant Interface Contractor Agreement, would be adversely affected by proceeding on the basis of the Submitted Document;

proceeding on the basis of the Submitted Document would adversely affect any right of any Rail Transport Entity under any Interface Contractor Agreement or its ability to enforce any such right;

the ability of any Rail Transport Entity to exercise their respective rights or to perform their respective obligations or responsibilities, including under any Interface Contractor Agreement, would be adversely affected by proceeding on the basis of the Submitted Document; or

proceeding on the basis of the Submitted Document would be likely to result in an increase to a Rail Transport Entity's obligations or responsibilities or liabilities or potential or contingent liabilities, including under any Interface Contractor Agreement.

- (c) In respect of the matters listed in paragraph (b), if addressing the Reviewing Party's comments on the Submitted Document causes the Contractor to incur Loss, the Contractor will be entitled to treat such action as an EOT Event or a Compensation Event which may entitle the Contractor to an extension of time or compensation (as applicable) in accordance with clause 15.3 (Extension of Time) or clause 15.6 (Compensation Events).
- (d) The Contractor acknowledges that the Reviewing Party may provide comments in respect of a Submitted Document which may constitute both a matter listed in paragraph (a) and a matter listed in paragraph (b). Where this is the case:
 - (i) for any sections of the Submitted Document in respect of which the Reviewing Party provides comments in respect of a matter listed in paragraph (a), the Contractor will not be entitled to claim compensation for any actions taken in addressing the Reviewing Party's comments on the relevant Submitted Document; and
 - (ii) for any sections of the Submitted Document in respect of which the Reviewing Party provides comments in respect of a matter listed in paragraph (b), if addressing the Reviewing Party's comments on such section causes the Contractor to incur Loss or will delay the Contractor's Activities, the Contractor will be entitled to treat such action as an EOT Event or a Compensation Event which may entitle the Contractor to an extension of

time or compensation (as applicable) in accordance with clause 15.3 (Extension of Time) or clause 15.6 (Compensation Events).

5.2 Contractor's Programs

- (a) Where the Submitted Document is a Contractor's Program under this Agreement, in addition to its rights under section 5.1 (General), the Reviewing Party may provide comments in respect of the Submitted Document and the Contractor must address those comments on the Submitted Document where the Reviewing Party considers that:

- (i) without limiting section 5.1(a)(i)(D), it does not comply with the requirements for the Contractor's Program set out in this Agreement;

subject to clause 13.3 (Updating the Contractor's Program), compliance with the Contractor's Program would (on the balance of probabilities):

- (A) without reasonable justification, not allow for any Milestone to be achieved by its relevant Milestone Date;
- (B) adversely affect the Integrated Program, including any Rail Transport Entity's, Other Contractor's or Interface Contractor's ability to meet the Integrated Program;
- (C) create a risk that the safety of any person would be adversely affected;
- (D) impact on the performance of any "TfNSW Dependency" or similar under any Interface Contractor Agreement that has been notified to the Contractor or of which the Contractor is aware;
- (E) mean that the period of carrying out programmed work exceeds or falls short of the period reasonably required for that work; or
- (F) increase the likelihood of disruption to the conduct of the operation functions of a Rail Transport Entity in respect of the Network; or

compliance with the Contractor's Program would (on the balance of probabilities) increase the risk of any claim against any Rail Transport Entity by any Other Contractor or Interface Contractor.

- (b) In respect of the matters listed in paragraph (iii), if addressing the Reviewing Party's comments on the Submitted Document causes the Contractor to incur Loss, the Contractor will be entitled to treat such action as an EOT Event or a Compensation Event which may entitle the Contractor to an extension of time or compensation (as applicable) in accordance with clause 15.3 (Extension of Time) or clause 15.6 (Compensation Events).
- (c) The Contractor acknowledges that the Reviewing Party may provide comments in respect of a Submitted Document which may constitute both a matter listed in paragraphs (i) or (ii) or and a matter listed in paragraph (iii). Where this is the case:
- (i) for any sections of the Submitted Document in respect of which the Reviewing Party provides comments in respect of a matter listed in paragraphs (i) or (ii), the Contractor will not be entitled to claim

compensation for any actions taken in addressing the Reviewing Party's comments on the relevant Submitted Document; and

for any sections of the Submitted Document in respect of which the Reviewing Party provides comments in respect of a matter listed in paragraph (iii), if addressing the Reviewing Party's comments on such section causes the Contractor to incur Loss or will delay the Contractor's Activities, the Contractor will be entitled to treat such action as an EOT Event or a Compensation Event which may entitle the Contractor to an extension of time or compensation (as applicable) in accordance with clause 15.3 (Extension of Time) or clause 15.6 (Compensation Events).

5.3 Project Plans

- (a) Where the Submitted Document is a Project Plan, or any revision of such plan, in addition to its rights under section 5.1 (General), the Reviewing Party may provide comments in respect of the Submitted Document and the Contractor must address those comments on the Submitted Document where:

the Reviewing Party considers that without limiting section 5.1(a)(i)(D), it does not comply with the requirements for the relevant Project Plan set out in this Agreement;

the Reviewing Party considers that:

- (A) save to the extent identified in a Track Possession, carrying out the relevant Contractor's Activities in the period or at the times suggested is reasonably likely to interfere with the carrying out of the Operations Functions of a Rail Transport Entity in respect of the Network;
- (B) there is a risk that the safety of any person would be adversely affected;
- (C) the plan is otherwise not in accordance with Industry Best Practice; or
- (D) other than to the extent anticipated pursuant to the TLS Agreement, the Life Cycle Costs to a Rail Transport Entity for the NSW Rail Assets will be increased; or

the Reviewing Party considers that:

- (A) without limiting Schedule 15 (Interface Requirements), carrying out the relevant Contractor's Activities in the period or at the times suggested is reasonably likely to interfere with the activities of any Other Contractor or Interface Contractor; or
- (B) the period for carrying out work under the plan would exceed or fall short of the period reasonably required for the relevant work.

- (b) In respect of the matters listed in paragraph (iii), if addressing the Reviewing Party's comments on the Submitted Document causes the Contractor to incur Loss, the Contractor will be entitled to treat such action as an EOT Event or a Compensation Event which may entitle the Contractor to an extension of time or compensation (as applicable) in accordance with clause 15.3 (Extension of Time) or clause 15.6 (Compensation Events).

- (c) The Contractor acknowledges that the Reviewing Party may provide comments in respect of a Submitted Document which may constitute both a matter listed in paragraphs (i) or (ii) and a matter listed in paragraph (iii). Where this is the case:
- (i) for any sections of the Submitted Document in respect of which the Reviewing Party provides comments in respect of a matter listed in paragraphs (i) or (ii), the Contractor will not be entitled to claim compensation for any actions taken in addressing the Reviewing Party's comments on the relevant Submitted Document; and
- for any sections of the Submitted Document in respect of which the Reviewing Party provides comments in respect of a matter listed in paragraph (iii), if addressing the Reviewing Party's comments on such section causes the Contractor to incur Loss or will delay the Contractor's Activities, the Contractor will be entitled to treat such action as an EOT Event or a Compensation Event which may entitle the Contractor to an extension of time or compensation (as applicable) in accordance with clause 15.3 (Extension of Time) or clause 15.6 (Compensation Events).

5.4 Technical Documents

Where the Submitted Document is a Technical Document, in addition to its rights under section 5.1 (General), the Reviewing Party may provide comments in respect of the Submitted Document and the Contractor must address those comments on the Submitted Document where the Reviewing Party considers that the relevant Technical Document:

- (a) fails to mitigate safety risk so far as is reasonably practicable;
- (b) is not a consistent or logical extension of the Confirmed Technical Document;
- (c) is not consistent with the physical configuration of the NSW Rail Assets;
- (d) fails to consider or (where reasonably practicable) address feedback from Stakeholders; or
- (e) is not in accordance with Industry Best Practice.

6 Document Management

The Contractor must compile and maintain a register of the date of receipt and content of each Submitted Document submitted, and must regularly update that register to record each Submitted Document to which it receives:

- (a) a response or comment from the Reviewing Party, including that response or comment; and
- (b) no response or comment or is deemed not to receive any response or comment from the Reviewing Party in accordance with sections 4.1 (No comment on Submitted document) to 4.3 (Failure to comment).

7 Compliance with Submitted Documents

7.1 Comments on Submitted Documents

- (a) Subject to paragraphs (b) and (c), where any Reviewing Party comments on a Submitted Document under section 5 (Grounds on which the Reviewing Party may make comments), the Contractor must, prior to proceeding with any relevant part of the Contractor's Activities (or anything else the subject of the Submitted Document) in accordance with the Submitted Document:

- (i) amend the Submitted Document in accordance with the Reviewing Party's comments to ensure that the Submitted Document meets the requirements of this Agreement; and

re-submit the Submitted Document (as amended) to the Reviewing Party,

(each, a **Review Cycle**) and the provisions of sections 2 to 8 (inclusive) will re-apply until such time as the Submitted Document is returned to the Contractor without any comment or with the statement 'No comment'.

- (b) If the Submitted Document does not achieve Confirmed status within three (3) Review Cycles, then:

either party will be entitled to treat the failure as an Issue for the purposes of clause 33 (Resolution of Matters);

except where the Review is being conducted in respect of a Document Deliverable that is required in order to enable the Contractor to proceed past a Hold Point or where the Submitted Document is the Approved for Construction Design and the relevant Contractor's Activities include construction work or Physical Work, subject to paragraph (iii) the Contractor may proceed with the relevant Contractor's Activities at its own risk pending the Issue being resolved; and

the Contractor may only proceed at risk pursuant to paragraph (ii) if the Contractor has:

- (A) complied with its obligations under the Review Procedures (other than completion of the process required to be completed under section 7.1(a)); and
- (B) notified TfNSW of its intention to proceed at risk in relation to the relevant Contractor's Activities,

and the Contractor is not entitled to make any Claim against TfNSW arising out of or in connection with the exercise by the Contractor of its right to proceed at risk in accordance with paragraph (ii).

For the avoidance of doubt, if the Reviewing Party exercises its rights pursuant to section 2.3(b) and the Contractor is required to re-submit the relevant Submitted Document for Review, such re-submission will not constitute a Review Cycle for the purposes of this clause.

- (c) Where minor comments that have no material impact have been made on a Submitted Document, TfNSW may agree that the Submitted Document may be

amended and re-submitted in accordance with paragraph (a) as part of a subsequent Review rather than prior to the Contractor proceeding with any relevant part of the Contractor's Activities (or anything else the subject of the Submitted Document). In such circumstances the Contractor must amend and re-submit the Submitted Document in accordance with paragraph (a) at the relevant time for Review agreed to by TfNSW.

7.2 Proceeding at risk to implement Technical Package

- (a) Subject to paragraph (b), the Contractor may proceed with the relevant Contractor's Activities in respect of a Technical Package at its own risk notwithstanding that a Reviewing Party has:

not reviewed one or more Technical Documents related to that Technical Package in accordance with the Review Procedures; or

issued comments in respect of one or more Technical Documents related to that Technical Package in accordance with section 5 (Grounds on which the Reviewing Party may make comments) and the Contractor has not completed the process required to be completed under section 7.1(a) (Comments on Submitted Documents),

(Proceed at Risk).

- (b) The Contractor:

may not perform Contractor's Activities that include construction work or Physical Work until the Contractor has the Approved for Construction Design;

may not Proceed at Risk past a Hold Point without the verification and subsequent written authorisation of TfNSW; and

subject to paragraphs (i) and (ii), otherwise may only Proceed at Risk if the Contractor has:

- (A) complied with its obligations under the Review Procedures (other than completion of the process required to be completed under section 7.1(a)); and
- (B) notified TfNSW of its intention to Proceed at Risk in relation to the relevant Technical Package (**Proceed at Risk Notice**).

- (c) If the Contractor Proceeds at Risk in accordance with paragraph (a):

the Contractor must prepare the Technical Documents required for the next stage (if any) of Review contemplated in the Systems Engineering Project Plan for Review and submit it to the Reviewing Party within the times and in the manner required by this Agreement notwithstanding that the Contractor may have Proceeded at Risk in relation to that Technical Package;

the Reviewing Party may review any Submitted Documents in respect of that Technical Package in accordance with section 5 (Grounds on which the Reviewing Party may make comments) notwithstanding that the Contractor may have Proceeded at Risk in relation to that Technical Package;

TfNSW may, in addition to the rights of a Reviewing Party under section 5 (Grounds on which the Reviewing Party may make comments) of the Review Procedures, Direct the Contractor to amend, rectify, change or modify any as-built (or partially completed) Assets or Works which relate to that Technical Package to resolve any issues identified by the Reviewing Party as part of its Review under section 5 (Grounds on which the Reviewing Party may make comments) of the Review Procedures with respect to the relevant Submitted Documents; and

the Contractor must promptly comply with any Direction given by TfNSW in accordance with paragraph (iii).

- (d) The Contractor is not entitled to make any Claim against TfNSW arising out of or in connection with the exercise by the Contractor of its right to Proceed at Risk in accordance with paragraph (a).

8 Significance of Review

- (a) The parties acknowledge and agree that these Review Procedures are solely for the purposes of enabling TfNSW to monitor the progress of, and provide feedback on, the Contractor's compliance with the requirements of this Agreement in its conduct of the Contractor's Activities.
- (b) Nothing which occurs under these Review Procedures will:
 - relieve the Contractor from, or alter or affect, the Contractor's liabilities, obligations or responsibilities in relation to the Submitted Document under this Agreement or under any Mandatory Requirement;
 - prejudice TfNSW's rights against the Contractor under this Agreement or under a Mandatory Requirement; or
 - be construed as a Direction by TfNSW to do or not do anything.
- (c) TfNSW does not assume or owe any duty of care to the Contractor to review or, if it does review, in reviewing the Submitted Documents submitted by the Contractor for errors, omissions or compliance with this Agreement or any Mandatory Requirement.

Schedule 9 Certificates

Part A – Form of Provisional Acceptance Certificate

Provisional Acceptance Certificate

Date:

To: Siemens Mobility Pty Ltd (ABN 39 625 304 556) (Contractor)

From: Transport for NSW (ABN 18 804 239 602) (TfNSW)

This certificate is given in accordance with the Trackside Delivery Agreement between TfNSW and the Contractor dated , with respect to the Program. Words defined in the Trackside Delivery Agreement have the same meaning in this certificate.

In accordance with the terms of clause 11.3 of the Trackside Delivery Agreement, TfNSW certifies that the Trackside Subsystem meets the Provisional Acceptance Criteria.

TfNSW hereby gives notice of the Minor Defects (if any) affecting the abovementioned Trackside Subsystem, as identified in the attached list.

For the purposes of the Trackside Delivery Agreement, the date of this certificate is the date of Provisional Acceptance in respect of the above Trackside Subsystem.

Signed for and on behalf of TfNSW by:

<hr/>	
<hr/>	<hr/>
Name	Signature
<hr/>	<hr/>
Position (TfNSW Representative)	Date
<hr/>	<hr/>

Attachment – List of Minor Defects

No.	Minor Defect
1	[Insert]



Part B – Form of Final Acceptance Certificate

Final Acceptance Certificate

Date:

To: Siemens Mobility Pty Ltd (ABN 39 625 304 556) (Contractor)

From: Transport for NSW (ABN 18 804 239 602) (TfNSW)

This certificate is given in accordance with the Trackside Delivery Agreement between TfNSW and the Contractor dated _____, with respect to the Program. Words defined in the Trackside Delivery Agreement have the same meaning in this certificate.

In accordance with the terms of clause 11.4 of the Trackside Delivery Agreement, TfNSW certifies that the Trackside Subsystem meets the Final Acceptance Criteria.

For the purposes of the Trackside Delivery Agreement, the date of this certificate is the date of Final Acceptance in respect of the above Trackside Subsystem.

Signed for and on behalf of TfNSW by:

Name

Signature

Position (TfNSW Representative)

Date

Part C – Form of Rejection Certificate

Rejection Certificate

Date:

To: Siemens Mobility Pty Ltd (ABN 39 625 304 556) (Contractor)

From: Transport for NSW (ABN 18 804 239 602) (TfNSW)

This certificate is given in accordance with the Trackside Delivery Agreement between TfNSW and the Contractor dated , with respect to the Program. Words defined in the Trackside Delivery Agreement have the same meaning in this certificate.

In accordance with the terms of clause 10.5 of the Trackside Delivery Agreement, TfNSW gives notice that the Trackside Subsystem **does not** meet the Provisional Acceptance Criteria / Final Acceptance Criteria for the Trackside Subsystem.

TfNSW hereby gives notice of the required rectification work which must be completed before the Trackside Subsystem may be re-submitted for Provisional Acceptance/ Final Acceptance, as identified in the attached list.

Signed for and on behalf of TfNSW by:

Name

Signature

Position (TfNSW Representative)

Date

Attachment – List of Required Rectification Work

No.	Description of Required Rectification Work
1	[Insert]



Schedule 10 Physical Works



Transport
for NSW

Trackside Package
Delivery Agreement
Digital Systems Program
Schedule 10 – Physical Works

Contract Number:

IPD-19-7822A

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1 Definitions

Capitalised terms used in this Schedule and not otherwise defined in this Schedule (whether in the body of this Schedule or in Attachment A (Glossary)) shall have the meaning as defined in Schedule 1 (Definitions and Interpretation) to the Agreement.

2 Site Conditions

2.1 Site Conditions

- (a) The provisions of this clause 2.1 operate:
 - (i) without limiting or otherwise affecting clause 60 (Information and Reliance) of the Agreement;
 - (ii) without limiting or otherwise affecting the Contractor's ability to claim an extension of time pursuant to clause 15.3 (Extension of time) of the Agreement or compensation pursuant to clause 15.6 (Compensation Events) of the Agreement, including in respect of Assumptions and TfNSW Dependencies; and
 - (iii) without limiting or otherwise affecting the operation of clause 57 (Force Majeure) of the Agreement.
- (b) Save to the extent expressly set out otherwise in a Statement of Work, The Contractor represents and warrants to TfNSW that prior to each SOW Execution Date, the Contractor:
 - (i) was given the opportunity to undertake, and to request others to undertake, tests, enquiries and investigations relating to the Site Conditions; and
 - (ii) has had a sufficient opportunity to obtain, and obtained, all the necessary legal, geotechnical and other technical advice in relation to the Site Conditions.
- (c) Neither TfNSW, any TfNSW Indemnified Person, any Interface Contractor, any Stakeholder nor any person acting on behalf of them warrants, guarantees, assumes any duty of care or other responsibility for or makes any representation about the:
 - (i) Site Conditions likely to be encountered during the execution of the Contractor's Activities, or otherwise in respect of:
 - (A) the existing conditions at the Delivery Locations, or their surroundings; or
 - (B) any structure or other thing on, under, above or adjacent to the Delivery Locations;
 - (ii) existence, location, condition or availability of any Infrastructure Service on, under, above, adjacent to or related to the Delivery Locations; or
 - (iii) feasibility or fitness for purpose of the Concept Design including, in respect of the constructability of the Concept Design, having regard to the physical conditions and characteristics of the Delivery Locations.
- (d) Subject to sections 2.2 (Valuable Finds), 2.3 (Contamination) and 2.4 (Latent Conditions) (if they apply), the Contractor accepts:
 - (i) the Delivery Locations; and

- (ii) any structures or other things on, under or adjacent to the Delivery Locations, and any Site Conditions,

in their existing condition and subject to all surface or sub-surface conditions and defects, and:

- (iii) agrees it is responsible for, and assumes the risk of all additional work, increased costs and any damages, expense, loss, liability, delay or disruption (including any delay in achieving any Milestone) it suffers or incurs arising out of or in any way in connection with; and
- (iv) must investigate, design and construct the Works in accordance with the Agreement, and will not be relieved of its obligations under the Agreement irrespective of,

any of the following:

- (v) the Site Conditions encountered in performing the Contractor's Activities;
- (vi) whatever may be the condition or characteristics (including all sub-surface conditions) of:
 - (A) the Delivery Locations, the Environment or their surroundings; or
 - (B) any structure or other thing on, above or adjacent to, or under the surface of, the Delivery Locations, the Environment or their surroundings; and
- (vii) any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to the Site Conditions or the conditions or the characteristics of any of the matters referred to in sub-paragraph (vi),

including:

- (viii) the existence of any Valuable Finds or any protective activities required under section 2.2 (Valuable Finds);
- (ix) the existence of any Contamination or any decontamination or remediation required under section 2.3 (Contamination);
- (x) the existence of any Latent Conditions under section 2.4 (Latent Conditions);
- (xi) the suitability or otherwise of any material or condition upon, under, over or in any way associated with the Delivery Locations or for use in the Contractor's Activities;
- (xii) water, atmospheric, surface or sub-surface and other conditions or characteristics or aspects; and
- (xiii) all existing systems and Infrastructure Services, above or below ground level and the location of all facilities with which such systems and Infrastructure Services are connected.

2.2 Valuable Finds

- (a) For the purposes of this section, **Valuable Find** means any and all:
 - (i) valuable minerals, fossils, or coins;
 - (ii) articles or objects of value or antiquity; and

- (iii) objects or things of scientific, geological, historical, heritage, aesthetic, social, spiritual, cultural, archaeological, anthropological, or other special interest, found on or under the surface of the Delivery Locations.
- (b) As between the Contractor and TfNSW, all Valuable Finds will be and remain the property of TfNSW.
- (c) The Contractor must:
 - (i) immediately notify TfNSW if any such Valuable Find is found;
 - (ii) ensure that the Valuable Find is protected and not lost, removed, disturbed or damaged; and
 - (iii) comply with all requirements of Government Authorities, all Mandatory Requirements and any Directions of TfNSW in relation to the Valuable Find.
- (d) Despite the acknowledgements, warranties, releases and indemnities referred to in clause 60 (Information and Reliance) of the Agreement:
 - (i) the Contractor will be entitled to make a claim for compensation under clause 15.6 (Compensation Events) of the Agreement in respect of the extra costs reasonably incurred by the Contractor in complying with the requirements of Government Authorities, Mandatory Requirements or TfNSW's Directions under paragraph (c)(iii); and
 - (ii) the Contractor will be entitled to make a claim for an extension of time under clause 15.3 (Extension of Time) of the Agreement in respect of any delays the Contractor suffers in complying with the requirements of Government Authorities, Mandatory Requirements or TfNSW's Directions under paragraph (c)(iii),

but only to the extent that the Valuable Find could not have been reasonably anticipated by a competent and experienced contractor having done those things it is deemed to have done by section 2.1(b).

2.3 Contamination

- (a) The provisions of this clause 2.3 operate without limiting or otherwise affecting clause 60 (Information and Reliance) of the Agreement.
- (b) The parties acknowledge and agree that:
 - (i) in respect of a particular Statement of Work, the Contractor may have been provided with Reliance Materials which identify Contamination on, in, under or migrating from the Delivery Locations, including in areas under Rail Tracks, surface soils generally and locations which have been filled;
 - (ii) there may be Contamination (other than that identified in paragraph (b)(i)) on, in, under or migrating from the Delivery Locations, including in areas under Rail Tracks, surface soils generally and locations which have been filled;
 - (iii) TfNSW does not make any warranty, guarantee, assume any duty of care or other responsibility for or make any representation about the nature or extent of any Contamination;
 - (iv) part of the Contractor's Activities include taking the appropriate steps referred to in this section 2.3:

- (A) in respect of any Contamination identified in the Reliance Materials;
 - (B) in respect of any Contamination the Contractor discovers on the Delivery Locations; and
 - (C) regardless of whether the Contractor provides the notice and report referred to in paragraph (e), and regardless of whether that Contamination was referred to in (or was reasonably able to be inferred from) the Reliance Materials.
- (c) The Contractor must provide for the management of any Contamination that may be present on, in, under or migrating from the Delivery Location in the Environment and Sustainability Management Plan and the Safety Management Plan and take all measures required to protect workers and others in accordance with the Mandatory Requirements, the WHS Guidelines and the PR.
- (d) Without limiting paragraph (b), the Contractor may undertake any other investigations it considers reasonable or necessary to delineate the nature and extent of any Contamination on, in, under or migrating from the Delivery Locations prior to commencing any part of the Contractor's Activities on the Delivery Locations in order to identify the steps necessary to deal with any Contamination as part of the Contractor's Activities.
- (e) Without limiting the Contractor's obligation to comply with Approvals under clause 43 (Mandatory Requirements and Approvals) of the Agreement, the Contractor must, in respect of all Contamination (regardless of whether that Contamination was described in (or was reasonably able to be inferred from) the Reliance Materials):
 - (i) submit to TfNSW with the following for Review:
 - (A) a notice within five (5) Business Days after becoming aware of the existence of any Contamination on, in, under or migrating from the Delivery Location that sets out in sufficient detail the nature and scope of the Contamination; and
 - (B) within ten (10) Business Days after any request from TfNSW:
 - 1. a report that details the steps that the Contractor proposes to take to investigate, remediate, incorporate, dispose of, manage, monitor, contain, destroy, render inert or otherwise deal with the Contamination so that the Delivery Location is remediated to a standard suitable for the proposed use of the Delivery Location and report to all relevant Government Authorities if required to do so; and
 - 2. such further written information as TfNSW may require including any investigation report prepared pursuant to paragraph (d); and
 - (ii) must, only after TfNSW has Confirmed the Contractor's report(s) and additional information under paragraph (e)(i), implement the relevant remediation action in accordance with any relevant Mandatory Requirements and any direction of a relevant Government Authority where applicable (**Confirmed Remediation Action**).
- (f) Without limiting any obligation of the Contractor to comply with all Approvals, the Contractor agrees that in preparing any report under paragraph (e)(i)(B) it will adopt the following order of priority for deciding what remediation action is to be taken in respect of all Contamination on, in, under or migrating from the Delivery Location:

- (i) incorporation of the Contamination into the Physical Works where this is technically feasible and permitted by the Mandatory Requirements; and
- (ii) if it is not technically feasible or permitted by the Mandatory Requirements to incorporate the Contamination into the Works in accordance with paragraph (f)(i):
 - (A) notification to TfNSW with reasonable supporting information; then
 - (B) disposal of the Contamination off-site to a licensed waste disposal facility in accordance with section 4.9 (Waste Disposal) and, where required, replacing it with fill,

in each case in accordance with any relevant Mandatory Requirements and any written direction from a relevant Government Authority.

- (g) The Contractor indemnifies and must keep the TfNSW Indemnified Persons indemnified against any Loss suffered or incurred by, or Claim made against, the TfNSW Indemnified Persons arising out of, or in any way in connection with, any failure by the Contractor to comply with any obligation under this section 2.3.
- (h) Subject to paragraph (i) and (j), the Contractor will not be entitled to receive payment or make any Claim, and TfNSW will not be liable upon any Claim:
 - (i) for complying with this section 2.3;
 - (ii) in respect of carrying out investigations of the Delivery Locations to determine the presence and extent of any Contamination present on, in under or migrating from the Delivery Locations;
 - (iii) in respect of any costs incurred in connection with the incorporation of any Contamination in any of the Works;
 - (iv) in respect of the cost of disposing of Contamination off-site and, where required, replacing it with fill, other than as detailed in paragraph (i)(iv) below;
 - (v) for an extension of time in respect of any delay or disruption arising out of, or in any way in connection with the discovery of Contamination or its remediation (regardless of whether that Contamination was referred to in (or was reasonable able to be inferred from) the Reliance Materials;
 - (vi) for any costs incurred arising out of or in any way in connection with any delay or disruption to the Contractor's Activities resulting from the presence of any Contamination on, in, under or migrating from the Delivery Locations including arising out of or in any way in connection with complying with its obligations under this clause 2.3 (regardless of whether that Contamination was referred to in (or was reasonable able to be inferred from) the Reliance Materials);
 - (vii) for remediation on the Delivery Locations; or
 - (viii) for segregation, handling, testing, inspection and validation of Contamination.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED]
 [REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

2.4 Latent Conditions

- (a) For the purposes of this section, **Latent Condition** means:
- (i) adverse geotechnical conditions on the Delivery Location which differ materially from the geotechnical conditions:
 - (A) described in or reasonably to be inferred from the Reliance Materials; and
 - (B) which a competent and experienced contractor could reasonably have been expected to anticipate as at the date of the Agreement if it had done those things it is deemed to have done by section 2.1(b);
 - (ii) any Infrastructure Service on the Delivery Location, the existence of which:
 - (A) is not identified in the Reliance Materials or not reasonably able to be inferred from the Reliance Materials;
 - (B) a competent and experienced contractor could reasonably have been expected to anticipate as at the date of the Agreement if it had done those things it is deemed to have done by section 2.1(b); and
 - (C) is discovered only after the Contractor has undertaken potholing of the Infrastructure Services identified in the Reliance Materials to confirm their exact location,and which is operational and has not been made redundant by the owner of the Infrastructure Service.
- (b) If during the execution of the Contractor's Activities, the Contractor becomes aware of a Latent Condition the Contractor must:
- (i) promptly; and

- (ii) where possible before the physical conditions are disturbed,
give written notice thereof to TfNSW.
- (c) The Contractor must provide in that notice to TfNSW a statement specifying:
 - (i) the conditions encountered and in what respects the Contractor considers they constitute a Latent Condition;
 - (ii) the additional work and additional resources which the Contractor estimates to be necessary to deal with the Latent Condition;
 - (iii) the time the Contractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving a Milestone (if any) as a result of dealing with the Latent Condition;
 - (iv) the Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition, including sufficient information to support the estimate; and
 - (v) other details reasonably required by TfNSW.
- (d) If a Latent Condition is encountered that has a direct effect on the Contractor carrying out the Contractor's Activities and:
 - (i) directly results in the Contractor incurring additional costs or expenses in the performance of the Contractor's Activities; or
 - (ii) directly results in the Contractor being delayed in meeting a Milestone by the relevant Milestone Date,

which a competent and experienced contractor could not have avoided or mitigated, and could not reasonably have anticipated at the date of the Agreement, then (subject to paragraph (e)) the Contractor will be entitled to claim an extension of time under clause 15.3 (Extension of Time) of the Agreement and/or compensation under clause 15.6 (Compensation) of the Agreement (as applicable).
- (e) In determining the value of the compensation payable or the extension of time granted pursuant to paragraph (d), regard will not be had to any Contractor's Activities, additional costs or delay suffered or incurred prior to the date on which the Contractor was required to give the notice under paragraph (b) above.

3 Management and Control of Rail Transport Entity Sites

- (a) For the period during which the Contractor is 'principal contractor' (as defined in clause 46.4 (Principal Contractor) of the Agreement) and/or otherwise has control or exercises management responsibilities in respect of the whole or any part of a Rail Transport Entity Site, the Contractor:
 - (i) without limiting any right of TfNSW under the Agreement, will be responsible for the management and control of the Rail Transport Entity Site or the relevant part;
 - (ii) must control access to, and the security of, the Rail Transport Entity Site or that part, except where TfNSW advises otherwise;
 - (iii) must ensure public safety on, and adjacent to, the Rail Transport Entity Site or that part;

- (iv) must provide for the continuous safe passage of the public, road and railway system users on existing roads, footpaths, access ways, cycleways and rail tracks affected by the Contractor's Activities in accordance with the Agreement;
- (v) must, subject to clauses 6.4 (Collaboration), 8.8 (TfNSW's Right to Access), 34 (Records and Audit) and 46 (Safety) of the Agreement, the TfNSW Policies, and any relevant Mandatory Requirements, limit access to the Rail Transport Entity Site or the relevant part to its employees, Subcontractors and their employees and Subcontractors, and those with a legitimate interest in being on the Rail Transport Entity Site as part of the Contractor's Activities;
- (vi) must not impede access or services to private property without the consent of TfNSW or the relevant Rail Transport Entity; and
- (vii) must ensure that existing buildings (including residences, whether occupied or unoccupied) on the Rail Transport Entity Site or the relevant part are preserved and protected from damage (including from theft and vandalism) until (where relevant) they are due for demolition by the Contractor if that forms part of the Contractor's Activities.

4 Physical Works

4.1 Construction

- (a) At monthly intervals during the performance of the construction work forming part of the Contractor's Activities and again at Provisional Acceptance of the Trackside Subsystem, the Contractor must submit to TfNSW:
 - (i) the Contractor's Certificate of Construction Compliance; and
 - (ii) Designers' Certificates of Construction Compliance,identifying the construction work covered, together with:
 - (i) a register of management plans, method statements, and inspection and test plans;
 - (ii) a register of records of all compliance and other associated test records showing achievement of the acceptance criteria identified in the above inspection and test plans;
 - (iii) a register of deficiency notices; and
 - (iv) a register of concessions granted for non-conforming work.

4.2 Condition Surveys

- (a) Subject to paragraph (c), the Contractor must identify and prepare a condition survey (**Condition Survey**) of all property that could be affected or damaged by the Contractor's Activities and as required by the Planning Approval.
- (b) The Condition Survey of any public roads identified under paragraph (a) must be prepared in accordance with Austroad's *Guide to Pavement Technology Part 5: Pavement Evaluation and Treatment Design 2019*.
- (c) The Condition Survey referred to in paragraph (a):
 - (i) must be performed by suitably skilled, qualified and experienced Contractor Personnel or Subcontractors approved by TfNSW;

- (ii) must be repeated immediately prior to the Provisional Acceptance of the Trackside Subsystem by the same Contractor Personnel or Subcontractors referred to in paragraph (c)(i), or such others as TfNSW may approve;
 - (iii) may only be performed if TfNSW is:
 - (A) given no less than fourteen (14) days' notice that a Condition Survey will be performed; and
 - (B) permitted to attend the performance of the Condition Survey; and
 - (iv) is subject to any conditions of access and use in clause 8 (Sites and Physical Works) of the Agreement, section 3 of this document and in the Process Requirements.
- (d) The Contractor must prepare the Condition Survey referred to in paragraph (a) a minimum of two (2) weeks prior to commencing any work on the Delivery Location, or on any other land which is necessary for performing the Contractor's Activities or undertaking the Contractor's Activities, where that work could damage property on or off the Delivery Location.

4.3 Investigations and Survey

- (a) The Contractor must undertake all geotechnical and site investigations, property and land surveys, topographic and complete rail systems survey, groundwater investigations and building/infrastructure/utility condition surveys required for the Contractor's Activities and for the design, construction, testing, commissioning and handover of the Works and the Assets, where they have not been provided to the Contractor by TfNSW.
- (b) Surveys to be conducted pursuant to this Schedule, including pursuant to this section and sections 4.4 and 4.5, must clearly identify any non-compliance with all relevant Standards and the clearances between:
 - (i) all structures and property boundaries; and
 - (ii) critical rail infrastructure and other structures.
- (c) The Contractor must undertake track monitoring in accordance with ASA Standards specification SPC207 Track Monitoring Requirements for Undertrack Excavation. The Contractor must submit a track monitoring plan to TfNSW for Review under clause 7 (Development, submission and Review of Document Deliverables) of the Agreement, at least six (6) weeks prior to the commencement of any Contractor's Activities with the potential to impact the Rail Track.
- (d) Unless specified otherwise in the relevant SOW, the Contractor will be the primary controller for Sydney Trains' detailed site survey (**DSS**) drawings when the Contractor is updating or otherwise working on such DSS drawings, and during such period the Contractor must:
 - (i) manage and administer any secondary control as required by the obligations of a primary controller;
 - (ii) engage the services of a registered surveyor from the Sydney Trains' surveyor panel who has undertaken Sydney Trains' DSS training to undertake all survey activities; and
 - (iii) within ten (10) days of completion of any Works or any element of the Works:

- (A) update the Sydney Trains' services search data in accordance with Sydney Trains' requirements to show installed / amended / removed services; and
 - (B) prepare new or updated final as-built DSS showing the final position and levels of all buried or hidden services in accordance with ASA Standard T MU MD 00006 ST Engineering Drawings and Computer-aided Design (CAD) requirements.
- (e) The Contractor must validate the DSS master before commencing its design activities.
- (f) The Contractor must carry out site investigations, surveys and activities as necessary to enable the Contractor to complete the Works. In order to facilitate these activities, the Contractor must provide the following personnel:
 - (i) Signal Electricians or Signalling Authorised Persons (as defined in Sydney Trains' document 'MN S 41412 Process for Signalling and Control Systems Personnel – Authorisations and Licensing') as required to access location cases, interlockings and signalling cable routes; and
 - (ii) Protection Officers as required prior to any access into the Rail Corridor,

noting that TfNSW will provide the following personnel:

 - (iii) operations technology representatives as required to access communications equipment rooms and cable routes; and
 - (iv) authorised electrical representatives as required to access any low voltage (LV) or high voltage (HV) equipment and any LV or HV cable route.
- (g) The Contractor's Activities for site investigations in the areas where the Contractor's Activities are to be undertaken include:
 - (i) ensuring the safety and integrity of all buried and underground utilities, Infrastructure Services, structures and assets;
 - (ii) locating underground and buried Infrastructure Services, utilities structures and assets to ensure the Contractor does not damage the utility, Infrastructure Service, structure or asset or disrupt any service or supply;
 - (iii) submitting a detailed record of all discovered buried Infrastructure Services, utilities structures and assets to TfNSW with details of the utility, Infrastructure Service, structure or asset including dimensions, material, co-ordinates and level; and
 - (iv) recording the existing conditions of Infrastructure Services, utilities structures and assets affected by the Contractor's Activities in a pre-construction condition (dilapidation) survey report, including:
 - (A) track, LV and HV assets, signalling, communications and any associated rail assets (including structures, tunnels, etc.);
 - (B) notification of all identified non-conformances;
 - (C) access roads and land used by the Contractor for constructing the Works; and
 - (D) any existing material or assets that will be re-used in the Works.

- (h) Prior to Provisional Acceptance of the Trackside Subsystem, the Contractor must submit a post-construction condition (dilapidation) survey report to TfNSW for review. The survey report must demonstrate that the Contractor has returned any existing assets and land to TfNSW or the relevant Third Party asset owner in the same (or better) condition than at the Commencement Date.

4.4 Setting Out

- (a) The Contractor must:
 - (i) set out the Contractor's Activities in accordance with the requirements of the Agreement, based on information and survey marks (including any survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work) identified by the Contractor that are suitable for their purposes;
 - (ii) carry out any survey (including providing all instruments and things) that may be necessary for this purpose; and
 - (iii) for this purpose keep all survey marks in their true positions.
- (b) If the Contractor discovers an error in the position, level, dimensions or alignment of any part of the Contractor's Activities, the Contractor must immediately notify TfNSW and, unless TfNSW otherwise Directs, the Contractor must at its cost rectify the error.
- (c) No survey control or cadastral marks including permanent survey marks, boundary marks, reference marks and bench marks as defined by the *Surveying and Spatial Information Act 2002 (NSW)* and the *Surveying and Spatial Information Regulation 2017 (NSW)* are to be damaged, disturbed or destroyed without prior authorisation from the NSW Surveyor General.
- (d) If the Contractor damages, disturbs or destroys any survey marks or cadastral marks including permanent marks, boundary marks, reference marks and bench marks, the Contractor must submit to TfNSW the final Survey Control and Cadastral Marks Register, with evidence demonstrating:
 - (i) all destroyed survey control and cadastral marks have been replaced in accordance with the NSW Surveyor General's Direction Nos. 11 and 12; and
 - (ii) all cadastral plans, locality sketches and diagrams relating to the Survey Control Network and the cadastre have been submitted to the NSW Surveyor General as required by NSW Surveyor Generals Direction Nos. 11 and 12.

4.5 Survey

- (a) The Contractor must, as a condition precedent to Provisional Acceptance of the Trackside Subsystem, and as otherwise required by TfNSW, submit to TfNSW:
 - (i) for Review under clause 7 (Development, submission and Review of Document Deliverables) of the Agreement, a Survey Plan for the Contractor's Activities or any part thereof that:
 - (A) has regard to the setback requirements in the Building Code;
 - (B) has regard to any stratum lots whether above or below ground;
 - (C) has regard to the survey control requirements of any relevant Rail Transport Entity;

- (D) shows the location of all Monuments, and their relation to horizontal and vertical boundaries;
- (E) shows all internal title boundaries;
- (F) shows all easements; and
- (G) shows the location of the Works and all Infrastructure Services; and
- (ii) a Survey Certificate which complies with all Mandatory Requirements addressed to TfNSW and signed by a land surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW) stating that:
 - (A) the whole of the Works or any part thereof has been constructed within the boundaries of the Delivery Locations;
 - (B) the elements of the Works or any part thereof are in the positions and within the tolerances required by the Mandatory Requirements and the Agreement; and
 - (C) the survey information included in the Configuration Materials complies with the requirements of the Agreement.

4.6 Infrastructure Services

- (a) The Contractor must:
 - (i) obtain and pay for any Infrastructure Service it needs to perform its obligations under the Agreement;
 - (ii) relocate, remove, modify, support, protect, reinstate and provide all Infrastructure Services necessary for the Contractor to comply with its obligations under the Agreement;
 - (iii) provide and maintain all signage, line marking, flagmen, barriers and other road traffic devices needed by the Contractor to comply with its obligations under the Agreement, including any such devices reasonably required by TfNSW;
 - (iv) despite any other provision in the Agreement to the contrary, ensure that no Infrastructure Services are:
 - (A) damaged or destroyed; or
 - (B) disconnected, disrupted, interfered with or interrupted during normal operating hours,without the prior approval of the owner of the Infrastructure Services by reason of the performance of the Contractor's Activities;
 - (v) cooperate and coordinate with the owners of all Infrastructure Services, and, if the owners of the Infrastructure Service seek to impose additional requirements on the Contractor and compliance with those requirements would require a Variation under clause 5.3 (Variations) of the Agreement:
 - (A) the Contractor must, prior to complying with those requirements and in any event within ten (10) Business Days of becoming aware of such requirements, give TfNSW a notice stating that compliance with the requirements requires a Variation:

- (B) if the Contractor issues a notice under paragraph (A), such notice will be treated as a notice given pursuant to clause 6.3(b) of the Agreement and the process set out in clause 6.3(b) of the Agreement will apply (provided that TfNSW cannot notify the Contractor not to comply with those requirements); and
- (vi) indemnify, and must keep the TfNSW Indemnified Persons indemnified against any Loss suffered or incurred by, or Claim made against, the TfNSW Indemnified Persons arising out of, or in any way in connection with, any:
 - (A) unauthorised disconnection of or interruption to; or
 - (B) interference with or disruption to,any Infrastructure Service arising out of or in any way in connection with the Contractor's Activities.
- (b) The Contractor agrees it is responsible for, and assumes the risk of, all additional work, increased costs and any damages, expense, Loss, liability, delay or disruption (including any delay in achieving each Milestone by the relevant Milestone Date) it suffers or incurs arising out of, or in any way in connection with, the existence, location, condition and availability of all Infrastructure Services required for the execution of the Contractor's Activities.

4.7 Crown Building Work

- (a) For the purposes of this clause 4.7, **Crown Building Work** has the meaning given to that term in section 109R of the *Environmental Planning and Assessment Act 1979 (NSW)*.
- (b) The Contractor must, in relation to any part of the Works that is a Crown Building Work, certify (on behalf of TfNSW) as required by section 109R of the *Environmental Planning and Assessment Act 1979 (NSW)*.
- (c) Any certification under paragraph (b) will not lessen or otherwise affect:
 - (i) the Contractor's other liabilities or responsibilities under the Agreement or otherwise according to Law; or
 - (ii) TfNSW's rights against the Contractor, whether under the Agreement or otherwise according to Law.

4.8 Long Service Leave Levy

Before commencing any construction work under the Agreement, the Contractor must:

- (a) pay to the Long Service Corporation, or that body's agent, all amounts payable for the long service levy in respect of the Contractor's Activities under the *Building and Construction Industry Long Service Payments Act 1986 (NSW)*; and
- (b) produce to TfNSW the documents evidencing payment of the amounts referred to in paragraph (a).

4.9 Waste Disposal

- (a) Subject to clause 8.11 (Contractor's Equipment and Materials Removal) of the Agreement, the Contractor must, as agreed with TfNSW in consultation with the relevant Rail Transport Entities, dispose of all materials removed during the course of performing the Contractor's Activities at each Rail Transport Entity Site (including

waste and Contamination) daily, unless TfNSW indicates that some of these materials are to be retained by TfNSW or the relevant Rail Transport Entity.

- (b) If it is not practical to remove materials from each Rail Transport Entity Site each day, then the materials not so removed must be stored within an area prescribed by TfNSW on the Rail Transport Entity Site, on a daily basis.
- (c) In carrying out the Contractor's Activities, the Contractor must (where the Contractor is undertaking Works):
 - (i) keep the Delivery Locations clean and tidy and free of refuse;
 - (ii) regularly remove rubbish, litter, graffiti and surplus material attributable to the Contractor's Activities from the Delivery Locations; and
 - (iii) as a condition precedent to Provisional Acceptance of the Trackside Subsystem, remove all rubbish and surplus materials and Contractor's Equipment attributable to the Contractor's Activities from the Delivery Locations.
- (d) The Contractor must remove from the Delivery Locations and dispose of any waste to a licensed waste facility in accordance with all relevant Mandatory Requirements.
- (e) The Contractor must:
 - (i) ensure that the entity that carries out the storage, treatment, transport and disposal of the waste and Contamination from the Delivery Locations holds all relevant Approvals that are necessary or desirable; and
 - (ii) procure and provide evidence of such Approvals to TfNSW upon request.
- (f) The Contractor must ensure that its employees and agents, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any waste and Contamination and that they comply with all applicable Laws.
- (g) The Contractor indemnifies and must keep the TfNSW Indemnified Persons indemnified against any Loss suffered or incurred by, or Claim made against, the TfNSW Indemnified Persons arising out of, or in any way in connection with, any failure by the Contractor to comply with any obligation under this clause 4.9.

4.10 Emergency Out-of-Hours Working

- (a) If emergency out-of-hours working is necessary in the interest of safety or to protect life or property, the Contractor must immediately notify TfNSW (which notification may be oral) of the circumstances giving rise to any emergency work undertaken outside of the approved working hours. The Contractor must promptly confirm any such oral advice in writing and otherwise comply with the requirements of the PR.

4.11 Public Events

- (a) Where major public events are expected to generate additional rail, road or pedestrian traffic or road closures in any areas directly or indirectly affected by the Contractor's Activities, the Works or any temporary works, the Contractor must co-operate with TfNSW and the relevant Government Authorities to facilitate rail and road traffic and pedestrian flows.

4.12 Temporary Site Facilities

- (a) Without limiting clause 8.7(e) of the Agreement, the Delivery Locations and any other areas affected by the Contractor's Activities must be maintained in a clean and tidy manner throughout the Contractor's Activities.
- (b) Site sheds must be fit for purpose and maintained in good and clean condition. Site sheds must be established at locations and positions that minimise the impact on adjoining properties. All facilities utilised for the purpose of the Contractor's Activities must be sited, constructed and maintained to meet the requirements of TfNSW and the relevant Government Authorities.

5 Track Possessions

- (a) The Contractor acknowledges and agrees that all Contractor's Activities that require access to the Rail Track must be performed during Track Possessions.
- (b) In addition to the requirements in this section 5, the Contractor must fully comply with the requirements detailed in section 2.20 (Working on track) of the Process Requirements.
- (c) Each SOW will identify the available Track Possessions relevant to the Contractor's Activities to be performed under that SOW. TfNSW will liaise with any relevant Rail Transport Entity to procure for the benefit of the Contractor the Track Possessions set out in the relevant SOW at TfNSW's cost.
- (d) The Contractor acknowledges that it will not have exclusive access to any track the subject of a Track Possession and must:
 - (i) co-ordinate its activities with whoever else is sharing the relevant Track Possession; and
 - (ii) allow any relevant Rail Transport Entity or Interface Contractor to pass through any track the subject of the relevant Track Possession.
- (e) If the Contractor requires any Track Possessions or power isolation in addition to those identified in the relevant SOW to complete the Contractor's Activities (**Additional Track Possession**), they must be arranged by the Contractor, at the Contractor's own cost, directly with the relevant Rail Transport Entity, except where the Additional Track Possession is required as a result of the Contractor not being able to utilise a Track Possession identified in the relevant SOW due to the occurrence of an EOT Event (in which case, TfNSW will liaise with the relevant Rail Transport Entity to procure for the benefit of the Contractor the Additional Track Possession at TfNSW's cost, and such costs will not be included in the calculation of any compensation payable to the Contractor where the EOT Event is also a Compensation Event).
- (f) Prior to approaching any Rail Transport Entity to seek an Additional Track Possession, the Contractor must advise TfNSW of the Contractor's intention to seek an Additional Track Possession from that Rail Transport Entity.
- (g) If an Additional Track Possession is granted by a Rail Transport Entity, the Contractor must:
 - (i) advise TfNSW of the details of each Additional Track Possession;
 - (ii) make the necessary arrangements for the Additional Track Possession with the relevant Rail Transport Entity; and
 - (iii) except where the Additional Track Possession is required as a result of an EOT Event or a Compensation Event, within twenty (20) Business Days after the relevant Additional Track Possession reimburse TfNSW for any costs it incurs in respect of the Additional Track Possession including the procuring of any Rail Transport Entity resources.
- (h) The Contractor must effectively and efficiently utilise each Track Possession.
- (i) The Contractor acknowledges and agrees that:
 - (i) TfNSW or any relevant Rail Transport Entity may alter or cancel any access to the Rail Track, any Track Possession or any power isolation at any time; and

- (ii) its only remedy for cancellation or alteration of access to the Rail Track, Track Possession or power isolation is in accordance with clause 15 (Delay, Extension of Time and Compensation) to the Agreement and/or paragraph (i) below if all of the following apply:
 - (A) the cancellation or alteration is in respect of a Track Possession listed in the relevant SOW or of an Additional Track Possession or power isolation that has been granted and confirmed by the Rail Transport Entity;
 - (B) the cancellation or alteration is:
 - 1. less than twelve (12) weeks prior to the time at which the Track Possession or power isolation was planned to commence; or
 - 2. with more than twelve (12) weeks' notice, but without the provision of an alternative Track Possession or power isolation at a time the Contractor is reasonably able to utilise in substitution for the cancelled or altered Track Possession or power isolation;
 - (C) the Contractor fully complied with:
 - 1. all processes and requirements in respect applying for, utilising, planning, managing and booking the Track Possession or power isolation; and
 - 2. otherwise fully complied with this section 5 and the Process Requirements in relation to the Track Possession or power isolation;
 - (D) no act or omission of the Contractor or its Contractor Personnel caused or contributed to the Track Possession or power isolation being cancelled or altered; and
 - (E) the Contractor was ready and able to fully utilise the Track Possession or power isolation at the time originally scheduled,
- (a Possession Relief Event).**
- (j) Subject to paragraph (h)(ii) above, where TfNSW or any relevant Rail Transport Entity have altered or cancelled any access to the Rail Track, any Track Possession or any power isolation in circumstances where the cancellation or alteration is in respect of a Track Possession listed in the relevant SOW or of an Additional Track Possession or power isolation that is required as a result of the Contractor not being able to utilise a Track Possession identified in the relevant SOW due to the occurrence of an EOT Event, TfNSW will liaise with the relevant Rail Transport Entity to procure for the benefit of the Contractor an alternative Track Possession(s) or power isolation(s), as the case may be, at TfNSW's cost, and such costs will not be included in the calculation of any compensation payable to the Contractor where the EOT Event is also a Compensation Event.

6 Additional Management Requirements

Unless otherwise indicated in the relevant SOW or agreed otherwise with TfNSW, the following additional management requirements apply to all Works.

6.1 Traffic Safety and Traffic Management

6.1.1 The Traffic Management Plan

The Contractor must develop a traffic management plan for delivery of the Works (**Traffic Management Plan**). The Traffic Management Plan must address the following requirements:

- (a) document the risk assessment process undertaken as the first step in the preparation of the Traffic Management Plan and the outcomes from the risk assessment used to develop appropriate strategies for managing and mitigating risks;
- (b) document the procedures and practices that will be utilised to manage the risk exposure;
- (c) document how 'other companies' vehicles will be dealt with and what the call procedures are;
- (d) include traffic control diagrams with clear and unambiguous traffic controls required for each and every stage of the works and the signage and devices and their placement at each Delivery Location (excluding Contractor Sites);
- (e) be consistent with and comply with the traffic configuration of the local road network as it exists at various stages during construction and in respect of:
 - (i) the management of traffic on the Delivery Locations (excluding Contractor Sites);
 - (ii) WHS Legislation, the *Roads Act 1993* (NSW) and all other Laws;
 - (iii) Approvals, including any from RMS, NSW Police, State Emergency or any local councils;
 - (iv) the Roads and Maritime Services 'Traffic Control at Work Sites Manual';
 - (v) the need for Traffic Control Plans; and
 - (vi) 'AS 1742.3- Spoil Control Devices for Works on Roads';
- (f) provide details of Approvals, including in respect of working hours;
- (g) include traffic management procedures for the Delivery Locations (excluding Contractor Sites), including those required to manage:
 - (i) modifications to existing roads/paths and traffic patterns;
 - (ii) changes to public transport routes and services;
 - (iii) impacts on residents and/or commercial enterprises; and
 - (iv) the impact of construction traffic within the Delivery Location and outside the Delivery Location on the adjacent public road system;

- (h) include procedures to ensure the appropriate notification of relevant emergency services prior to implementing road and pedestrian traffic modifications such as street closures or changes to station access;
- (i) address the safety of customers, members of the public, construction, public traffic and contract personnel;
- (j) consider changes to traffic usage patterns (average, low and peak flows as well as special events or traffic embargoes);
- (k) include relevant detail from the Contractor's Program including relevant commencement and Milestone Dates;
- (l) describe the management of emergencies and Incidents in the context of access/egress;
- (m) describe requirements in relation to occupation of, or access through, private properties;
- (n) describe coordination of traffic management with TfNSW, Interface Contractors and other parties;
- (o) include procedures for obtaining relevant Approvals; and
- (p) show expected number of vehicle movements each hour, based on the predicted maximum monthly material generation amounts and hours of operation of worksites.

6.1.2 Scope

- (a) The scope of the Contractor's Activities for traffic safety and traffic management includes the design, implementation, maintenance and removal all temporary traffic management and guidance schemes as required to construct the Works.
- (b) The Contractor must undertake road safety audits of all temporary traffic management proposals.
- (c) The Contractor must obtain approval from RMS and any relevant Government Authority prior to implementing any traffic adjustments or interruption.
- (d) Further to the requirements of the PR, the Contractor must submit traffic control plans to RMS and any relevant Government Authority for approval. Traffic control plans must be regularly reviewed and modified in conjunction with any direction provided by RMS and any relevant Government Authority (including any emergency services authorities).

6.1.3 Road Occupancies, Detours and Closures

- (a) The Contractor must obtain a Road Occupancy Licence for all road occupancies, detours and closures of a road open to the public.
- (b) Prior to occupying any part of a road open to the public, the Contractor must provide to TfNSW a copy of the Road Occupancy Licence from the relevant Government Authority.
- (c) For the duration of the occupation by the Contractor of any part of a road open to the public, the Contractor must maintain, repair, clean and otherwise be responsible for the condition and function of that part of the road.

- (d) As a minimum, any part of a road open to the public which is occupied by the Contractor must, prior to hand back to the relevant Government Authority, be reinstated to a condition at least equivalent to that existing prior to the occupation.
- (e) The Contractor is responsible for all fees and charges payable to any Government Authority associated with any application for all road occupancies, detours and closures.
- (f) Road Occupancy Licence applications must be submitted fully in accordance within the time frames outlined by RMS and any relevant Government Authority.

6.1.4 Compliance with Traffic Instructions

- (a) The Contractor must comply with any traffic direction or instruction given by a relevant Government Authority (for example, NSW Police) in respect to any traffic control proposal or arrangement.
- (b) A Government Authority (for example, NSW Police) may at any time instruct the Contractor to re-open any traffic lane or shoulder to traffic without delay, whether or not that lane or shoulder was closed by prior agreement. The Contractor must immediately comply with such direction.

6.1.5 Traffic Controllers

- (a) The Contractor must ensure that all persons who are required to perform the duties of a traffic controller have undertaken all required RMS training, satisfy all statutory requirements in relation to performance of the duties of a traffic controller and hold the required levels of accreditation to perform the required duties. The Contractor must ensure that any Contractor's Activities required at level crossings or rail pedestrian crossings are suitably resourced by persons with the appropriate level of accreditation to perform the required duties.

6.1.6 Traffic Accidents on Worksites during Construction

- (a) In the event of a traffic accident occurring within the Delivery Location or at other locations affected by the Contractor's Activities, the Contractor must record its knowledge of the facts and must photograph the approach to the accident site including the location of all safety devices and signs as soon as possible after the accident. A report with this information must be forwarded to TfNSW within two (2) days of the occurrence of the accident.

6.1.7 Property Access and Infrastructure Services

- (a) The Contractor must ensure that suitable access is maintained at all times to any property or properties and between severed portions of properties. Appropriate detours must be arranged and provided.
- (b) The Contractor must make all arrangements with affected persons in relation to the impacts and consequences of the interruption of any Infrastructure Services.
- (c) The Contractor is responsible for all costs associated with arranging detours to affected properties including but not limited to:
 - (i) applications fees; and
 - (ii) required infrastructure to be implemented to alert local residents/ road users of the proposed new detours.

6.1.8 Oversize and/or Over Mass (OSOM) Vehicles and Loads

- (a) The Contractor is responsible for obtaining all Approvals and payment of fees from the relevant Government Authority for the use of OSOM vehicles for deliveries to the Site.
- (b) For the movements of OSOM vehicles on local roads the Contractor is responsible for obtaining all Approvals from the relevant Government Authority.
- (c) The Contractor in performing its obligations under the Agreement must comply with all relevant Mandatory Requirements, including the *Heavy Vehicle National Law* (NSW) and any additional Mandatory Requirements that are to be read in conjunction with the *Heavy Vehicle National Law* (NSW).

6.1.9 Construction Vehicle Loads

- (a) The Contractor must comply with all Mandatory Requirements, including Commonwealth, NSW and local government legislation, when operating vehicles on roads open to the public.
- (b) The Contractor will be permitted to operate vehicles with axle loads in excess of the limits specified under the relevant Mandatory Requirement within a Delivery Location, subject to the following conditions:
 - (i) the operation of vehicles with above legal axle loads must be limited to vehicles that remain within the Delivery Location; and
 - (ii) the vehicles must not be permitted to travel along or across any existing pavement or over any structure, utility, asset or Infrastructure Service unless the pavement or structure, utility, asset or Infrastructure or Service has been designed to carry the vehicle or has been otherwise protected from damage.
- (c) Operation of vehicles with excess axle loads, with the exception of purpose designed compaction equipment, must not be permitted on any partially or fully completed Railway Track or road pavement work.

6.1.10 Use of Local Roads for Contractor's Activities

- (a) The use of local roads with residences for the purposes of accessing a Delivery Location (excluding Contractor Sites) must be minimised.
- (b) Where access to local roads is required, the Contractor must provide alternative routes of access for adjacent residences/community. The Contractor submit a route access plan to TfNSW for Review under clause 7 (Development, submission and Review of Document Deliverables) of the Agreement.

6.2 Bushfire Risk Management

- (a) Prior to commencement of activities on the Delivery Locations (excluding Contractor Sites), the Contractor must:
 - (i) undertake a risk assessment for bushfire risks using the *Bushfire Environmental Assessment Code 2006* (NSW);
 - (ii) contact the NSW Rural Fire Service to advise them of the Contractor's Activities and gain their endorsement of the fire management plans in place;
 - (iii) develop controls to:
 - (A) adequately mitigate all bushfire risks identified in the risk assessment prepared under section 6.2(a)(i); and

- (B) prevent bushfires and minimise the spread of bushfires in accordance with Part 4, Division 1, Section 63 of the *Rural Fires Act 1997* (NSW);
- (iv) ensure that the controls developed in section 6.2(a)(iii) are included in the relevant management plans and submitted to TfNSW for Review under clause 7 (Development, submission and Review of Document Deliverables) of the Agreement;
- (v) ensure that the incident response procedure for the Delivery Location includes notification of bushfire incidents to:
 - (A) on-site personnel as soon as they occur in order to minimise on-site bush fire danger in accordance with Part 4, Division 1, Section 64(1(a) of the *Rural Fires Act 1997* (NSW);
 - (B) local fire authorities in accordance with Part 4, Division 1, Section 64(1(b) of the *Rural Fires Act 1997* (NSW); and
 - (C) TfNSW within seven (7) days of any bushfire incident (other than a reportable incident which must be notified to TfNSW immediately) using 9TP-PR-105 'TfNSW Environmental Incident Classification and Reporting'; and
- (vi) ensure that bushfire management is included in the Delivery Location induction training for all personnel working on-site.
- (b) Throughout the performance of the Contractor's Activities the Contractor must:
 - (i) comply with the requirements of the *Rural Fires Act 1997* (NSW);
 - (ii) ensure that all necessary fire-fighting equipment is available on-site, fully operational and on site staff are competent to operate it at all times;
 - (iii) keep records, including serial numbers and expiry dates, of all on-site fire-fighting equipment and make these records available to TfNSW on demand;
 - (iv) ensure that personnel with the required competencies to prevent and manage bushfires are available when and where required;
 - (v) maintain records of all actions taken to minimise bushfire hazards and make these records available to TfNSW on demand; and
 - (vi) maintain records of the incidence of all bushfire incidents and make these records available to TfNSW on demand in accordance with Part 4, Division 1, Section 74(2) of the *Rural Fires Act 1997* (NSW).

6.3 Emergency and Crisis Management Plan

- (a) The Contractor must develop, implement and maintain an emergency and crisis management plan as described in this section 6.3 (**Emergency and Crisis Management Plan**) in consultation with:
 - (i) TfNSW;
 - (ii) police, fire and ambulance services;
 - (iii) any Government Authorities with emergency management functions in the area that the emergency plan applies;

- (iv) organisations that may be required to assist in implementing the emergency plan (e.g. service and telecommunications providers);
 - (v) NSW Department of Planning, Industry and Environment;
 - (vi) local councils and relevant Government Authorities; and
 - (vii) owners of neighbouring properties that affect or are affected by the Contractor's Activities.
- (b) The Emergency and Crisis Management Plan must include:
- (i) identification of reasonably foreseeable emergencies and measures to mitigate the consequences of these emergencies;
 - (ii) an effective response to an emergency;
 - (iii) the allocation of roles and responsibilities in case of an emergency;
 - (iv) arrangements for medical treatment and assistance;
 - (v) procedures to ensure the effective communication between the emergency response coordinator and all persons at the workplace;
 - (vi) procedures for the appointment of an adequate number of senior level first aid officers and fire wardens;
 - (vii) a description of the medical equipment required, including first aid boxes and defibrillators;
 - (viii) the location of safety equipment;
 - (ix) the emergency evacuation arrangements;
 - (x) the location of assembly areas;
 - (xi) response procedures to bomb threats;
 - (xii) an explanation of how simulated emergency exercises will be undertaken;
 - (xiii) procedures on how a post-emergency review will be conducted;
 - (xiv) an emergency call out procedure and contact list, which includes the contact details of:
 - (A) police, fire, local hospitals and ambulance services;
 - (B) any government agencies with emergency management functions in the area that the emergency plan applies;
 - (C) organisations that may be required to assist in implementing the emergency plan;
 - (D) NSW Department of Planning, Industry and Environment;
 - (E) local councils;
 - (F) owners of neighbouring properties that affect or are affected by the Contractor's Activities; and

- (G) relevant Government Authorities; and
- (xv) the number of “Nurse Call” stations on high risk projects and the requirement to provide SMS or pager notification systems.
- (c) The Contractor’s Emergency and Crisis Management Plan which interfaces with requirements contained within TfNSW’s Significant Incident Management Procedure 1TP-PR-008.
- (d) If the Contractor’s Activities involves work in or adjacent to the Rail Corridor and the rail environment. the Emergency and Crisis Management Plan must also include:
 - (i) a rail traffic plan, which covers:
 - (A) emergency arrangements for hazards associated with local rail operations including rail freight which includes any Contamination or hazardous materials;
 - (B) communications procedures; and
 - (C) site control and coordination; and
 - (ii) an emergency contact list which includes the contact details of:
 - (A) train control and signalling locations;
 - (B) adjoining railway managers;
 - (C) TfNSW senior management and representatives;
 - (D) transport authorities (rail and road);
 - (E) owners of neighbouring properties affected by rail activities; and
 - (F) recovery procedures for restoration of railway operations.
- (e) The Contractor must submit the Emergency and Crisis Management Plan to TfNSW for Review under clause 7 (Development, submission and Review of Document Deliverables) of the Agreement.
- (f) The Contractor must comply with the requirements for emergency plans contained in the *Rail Safety National Law* (NSW) and WHS Legislation.
- (g) The Contractor must test the Emergency and Crisis Management Plan at least annually and request TfNSW to attend and be included in the test.
- (h) The Contractor must run quarterly emergency drills which shall include an annual fire drill and other fitting scenarios building to the biennial event involving Sydney Trains, Ambulance, Police, Fire, energy providers and other responders to the potential crisis situations of the particular Deployment Area.
- (i) The emergency drills shall not be limited to safety related scenarios but encompass environmental, Stakeholder, and other risks identified in the Emergency and Crisis Management Plan.
- (j) The Contractor must ensure that all employees on site are made aware of the procedures to follow in the event of an incident.

6.4 Electrical Safety

- (a) The Contractor must familiarise itself with the RailSafe website (<https://railsafe.org.au>) and the listed safety requirements.
- (b) The following electrical safety documents and other safety procedures, processes and requirements are available to the Contractor at <https://railsafe.org.au/electrical-safety-sms-documents>:
 - (i) PR D 78000 Electrical Network Safety Rules (**ENSRs**);
 - (ii) PR D 78101 General Requirements for Electrical Work; and
 - (iii) SMS-06-GD-0268 'Working Around Electrical Equipment'.
- (c) The Contractor must apply and adhere to the requirements set out in the ENSRs and other safety procedures and processes that apply when working around live electrical infrastructure.
- (d) Where the Contractor's Activities are proposed to be undertaken within the Safe Approach Distances (**SADs**) of electrical infrastructure, the Contractor must apply for isolation of the service at least sixteen (16) weeks prior to the date of the relevant activity.
- (e) Where isolation cannot be granted by Sydney Trains or any other supply authority, the Contractor must prepare alternate safe working methodologies which demonstrate how the Contractor's Activities can be carried out safely and how the adjacent electrical assets can be protected so far as is reasonably practicable. The Contractor must submit any such alternative safe working methodologies to TfNSW for Review under clause 7 (Development, submission and Review of Document Deliverables) of the Agreement prior to seeking Approval from TfNSW (as contemplated in paragraph (f)), Sydney Trains or any other supply authority.
- (f) TfNSW Level 5 Managers have been delegated authority to review and approve works with the potential to infringe on the SADs of HV aerial lines. Only Sydney Trains' Level 5 Managers have the authority to review and approve works with potential to infringe on the SADs of underground or enclosed assets/ equipment as listed in paragraph (h).
- (g) Excavation and earthworks near or in the vicinity of Sydney Trains' cables must be undertaken in accordance with section 13.6 of SMS-06-GD-0268 'Working Around Electrical Equipment'.
- (h) The Contractor must contact the maintenance engineer electrical prior to undertaking any excavation or earthworks which will be, or might inadvertently come within, three (3) metres of the following Sydney Trains electrical assets:
 - (i) buried power cables;
 - (ii) cables in ducts, galvanised steel troughing (GST), ground line troughing (GLT); or
 - (iii) cable pits.
- (i) The maintenance engineer electrical or nominated representative shall determine the appropriate risk mitigation strategy in accordance with section 5.3 of SMS-06-GD-0268 'Working Around Electrical Equipment'.

6.5 Critical Electrical Resources

- (a) Critical Electrical Resources consist of any of the following positions:
 - (i) Authorised Operator (AO) (AES08);
 - (ii) Authorised Officer Substations (AOS) (AES07);
 - (iii) Authorised Officer Mains (AOM) (AES06);
 - (iv) Authorised Traction Operators (ATO) (AES16); and
 - (v) Authorised Person Low Voltage (APLV) (AES19).
- (b) In order to book a Sydney Trains Critical Electrical Resource, the Contractor must complete a Critical Resource Request Form (**CRRF**) and submit it to both TfNSW and the nominated TfNSW project manager for resourcing.
- (c) To access the services of any Critical Electrical Resource, the Contractor must book Critical Electrical Resources sixteen (16) weeks in advance of the proposed works.
- (d) The Contractor must complete and submit a CRRF for all requests for HV switching, Substation access and 1500V switching outside of scheduled power isolations.
- (e) Critical Electrical Resource allocation is based on a works priority system in line with Sydney Trains Asset Management Division (**AMD**).

Attachment A Glossary

The following definitions shall apply to the interpretation of this Schedule only:

Additional Track Possession	has the meaning given to that term in section 5(e) of this Schedule.
Asset Handover	means the point in time at which the control of certain specified Assets is transferred to a Rail Transport Entity and/or Asset Owner for their ongoing operation and maintenance.
Asset Owner	means the organisation who will ultimately own the Assets subject to the Asset Handover. In some cases, this may also be the Rail Transport Entity.
Building Code	means the Building Code 2013, issued under subsection 27(1) of the <i>Fair Work (Building Industry) Act 2012</i> (Cth).
Configuration Materials	means the Document Deliverables to be provided pursuant to the PR which are required in support of Asset Handover, describing the operation and maintenance requirements the Assets delivered under the Agreement.
Condition Survey	has the meaning given to that term in section 4.2(a) of this Schedule.
Contractor's Certificate of Construction Compliance	means a certificate from the Contractor in the form provided for in Part A of Attachment B (Certificate of construction compliance) certifying that the procurement and construction of the work packages complies with the requirements of the Agreement.
Designers' Certificates of Construction Compliance	means the certificates from the most senior member of the Designer's Team (and where there is more than one design discipline involved in the relevant package or element, then the most senior member in each relevant discipline) involved in the design of the relevant package or element in the form provided for in Part B of Attachment B (Certificate of construction compliance) certifying that the procurement and construction of the work packages complies with the requirements of the Agreement.
Designer's Team	means the team of persons (including the Designers) engaged in the design of the Assets and the Works.
Infrastructure Service	includes any service, facility or item of public or private infrastructure (including railway systems, pedestrian and vehicular corridors, water, electricity, gas, ethane, fuel, telephone, existing drainage, sewerage, industrial waste disposal and electronic communications service).
Latent Condition	has the meaning given to that term in section 2.4(a) of this Schedule.
Monument	has the meaning given to that term in the <i>Surveying and Spatial Information Regulation 2006</i> (NSW).
Site Conditions	means any physical conditions above, upon, under or over the surface, or in the vicinity, of a Delivery Location and includes: <ul style="list-style-type: none"> (a) surface water, ground water, ground water hydrology and the effects of any de-watering;

	<ul style="list-style-type: none"> (b) physical and structural conditions, above, upon and below the Delivery Location, including old footings, underground structures, buildings, improvements, partially completed structures or in-ground works; (c) topography of the Delivery Location, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Delivery Location; (d) climatic and weather conditions including rain, surface water runoff and drainage, floods, water seepage, windblown dust and sand, seasons and physical conditions that are a consequence of climatic and weather conditions; (e) all existing systems and Infrastructure Services, above or below ground level and all facilities with which such systems and Infrastructure Services are connected; (f) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of TfNSW or others; (g) any Contamination, or other spoil or waste; and (h) underground strata forming part of the Delivery Location.
Survey Certificate	has the meaning given to that term in the <i>Surveying and Spatial Information Regulation 2006</i> (NSW).
Survey Plan	has the meaning given to that term in the <i>Surveying and Spatial Information Act 2002</i> (NSW).
Valuable Find	has the meaning given to that term in section 2.2(a) of this Schedule.

Attachment B Certificates of construction compliance

Part A - Contractor's Certificate of Construction Compliance

CONTRACTOR'S CERTIFICATE OF CONSTRUCTION COMPLIANCE	
CONTRACTOR:	
<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> PORION: <u>WORK PACKAGE (limit of 1 per certificate)</u> </div> <div style="width: 35%;"> DESCRIPTION: </div> </div>	
<p>I certify that the procurement and construction of the work package or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Agreement between TfNSW and _____, and comply with the requirements of the Agreement and the Planning Approval, subject to the register of outstanding minor construction non-conformance and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Agreement reflect the true status of the work package.</p>	
<div style="display: flex; justify-content: space-between;"> NAME: _____ (Contractor's Representative) SIGNATURE: _____ DATE: / / </div>	

Part B - Designer's Certificate of Construction Compliance

DESIGNER'S CERTIFICATE OF CONSTRUCTION COMPLIANCE	
DESIGNER:	
<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> PORION: <u>WORK PACKAGE (limit of 1 per certificate)</u> </div> <div style="width: 35%;"> DESCRIPTION: </div> </div>	
<p>I certify that the procurement and construction of [(delete one)] the work package / that part of the work package relevant to the design discipline of [*]] or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Agreement between TfNSW and _____, and comply with the requirements of the Agreement and the Planning Approval and deal adequately with safety (subject to the register of outstanding minor design non-conformances and unresolved issues attached).</p> <p>I further certify that the attached compliance records as required by the Agreement reflect the true status of the work package.</p>	
<div style="display: flex; justify-content: space-between;"> NAME: _____ (Design Team member) SIGNATURE: _____ DATE: / / </div>	





Schedule 11 Pricing Terms



Schedule 12 Security of Payment

- (a) The Contractor must ensure that a copy of any written communication it delivers to TfNSW of whatever nature in relation to the SOP Act, including a payment claim under the SOP Act, is provided to the TfNSW Representative at the same time.
- (b) In responding to the Contractor under the SOP Act, the TfNSW Representative acts as the agent of TfNSW and TfNSW authorises the TfNSW Representative to issue payment schedules on its behalf (without affecting TfNSW's right to issue a payment schedule itself).
- (c) If, within the time allowed by the SOP Act for the service of a payment schedule by TfNSW, TfNSW does not:
 - (i) serve the payment schedule itself; or

notify the Contractor that the TfNSW Representative does not have authority from TfNSW to issue the payment schedule on its behalf,

then a payment schedule issued by the TfNSW Representative under this Agreement which relates to the period relevant to the payment schedule will be taken to be the payment schedule for the purpose of the SOP Act (whether or not it is expressly stated to be a payment schedule).
- (d) The Contractor agrees with TfNSW that each Payment Claim Date is the date on which the Contractor is entitled to make a payment claim, for the purposes of section 13(1B) of the SOP Act.
- (e) For the purposes of section 17(3)(b) 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 this Agreement.
- (f) If an adjudication occurs under the SOP Act, and TfNSW has paid an adjudicated amount to the Contractor:
 - the amount will be taken into account by TfNSW in issuing a payment schedule in accordance with clause 29.2 (Payment schedule) of the Agreement;
 - if it is subsequently determined pursuant to the Agreement that the Contractor was not entitled under the Agreement to payment of some or all of the adjudicated amount that was paid by TfNSW ("**overpayment**"), the overpayment will be a debt due and payable by the Contractor to TfNSW which the Contractor must pay to TfNSW 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; and
 - if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the Contractor to TfNSW 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.
- (g) Nothing in this Agreement will affect, restrict or limit the Contractor's right to:

refer for adjudication any dispute falling within section 17 of the SOP Act; or

suspend the Contractor's Activities under section 15, 16 or 24 of the SOP Act.

- (h) Without limiting clause 29.4 (Payment of Employees and Subcontractors) or 29.5 (Set-Off) of the Agreement, TfNSW may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on TfNSW pursuant to Division 2A of Part 3 of the SOP Act.
- (i) If TfNSW 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 TfNSW pursuant to Division 2A of Part 3 of the SOP Act, then:

TfNSW may plead and rely upon Division 2A of Part 3 of the SOP Act as a defence to any claim for the money by the Contractor from TfNSW; and

the period during which TfNSW retains money due to the Contractor pursuant to an obligation under Division 2A of Part 3 of the SOP Act will not be taken into account for the purpose of determining:

- (A) any period for which money owed by TfNSW to the Contractor has been unpaid; and
 - (B) the date by which payment of money owed by TfNSW to the Contractor must be made.
- (j) The Contractor agrees not to commence proceedings to recover any amount withheld by TfNSW pursuant to a payment withholding request served on TfNSW in accordance with Division 2A of Part 3 of the SOP Act.
 - (k) Any amount paid by TfNSW pursuant to section 26C of the SOP Act will be a debt due from the Contractor to TfNSW.
 - (l) If TfNSW withholds money pursuant to a payment withholding request served on TfNSW pursuant to Division 2A of Part 3 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

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

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

Attachment A Form of Statutory Declaration and Subcontractor's Statement

FORM OF STATUTORY DECLARATION

Statutory Declaration	Oaths Act (NSW) Ninth Schedule
I,	Insert full name of Declarant
Of	Insert address
do solemnly and sincerely declare that:	
1. I am the representative of:	
.....(ABN.....)	Insert name of Contractor, and ABN if applicable
("the Contractor")	
in the Office Bearer capacity of:	
.....	Insert position title of Declarant
2. The Contractor has a contract with: (ABN.....)	Insert name of Principal and ABN
to carry out [Contract No.]	Insert name of Contract and Contract No.
("the Contract")	
3. I personally know the facts which I have set out in this declaration.	
4. All employees who have at any time been engaged by the Contractor for work done under the Contract:	
a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and	
b) have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,	
with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:	
Employee:	Insert names and addresses of the unpaid employees, the amounts unpaid, and whether in respect of wages, allowances, holiday pay, long service leave payments and superannuation entitlement etc.
Amount unpaid or not accrued:	
.....	
.....	
5. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).	
6. In all cases where a subcontractor or supplier to the Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the Contractor to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.	

7. *The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.*
8. *The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):*
 - a) *that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors, and*
 - b) *that all their employees and subcontractors, as at the date of the making of such a declaration:*
 - i) *have been paid all remuneration and benefits due and payable to them by; or*
 - ii) *had accrued to their account all benefits to which they are entitled from;**the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract, and*
 - c) *of details of any amounts due and payable or benefits due to be received or accrued described in 8(b) above which have not been paid, received or accrued,*

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

Subcontractor:

Due amount unpaid:

.....

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

Employee, subcontractor or supplier:

Amount unpaid or not accrued:

.....

.....
10. *In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.*
11. *Attached to and forming part of this declaration, as Annexure B, is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987, Payroll Tax Act 2007 and Industrial Relations Act 1996) which is a written statement:*
 - a) *under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;*
 - b) *under Schedule 2 Part 5 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and*
 - c) *under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.*
12. *I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.*

Insert names and addresses of the Contractor's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the Contractor in respect of this claim

Insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.

13. *All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:*
 - a) *given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 ("Acts"); and*
 - b) *given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.*
14. *I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.*

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.

Declared at: on

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

(signature of Declarant)

in the presence of an authorised witness, who states:

I,
(Name of authorised witness)

(* Please cross out any text that does not apply)

1. * *I saw the face of the person.*

OR

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

2. * *I have known the person for at least 12 months.*

OR

- * I have not known the person for at least 12 months,
but I have confirmed the person's identity using an
identification document and the document I relied on was: _____
(describe identification document relied on)

(signature of authorised witness)

(date)

(name of authorised witness)

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

*[or other person legally authorised to administer an oath under the Oaths Act 1900 (NSW) or where the declaration is sworn outside the State of New South Wales, any person having authority to administer an oath in that place.
Authorised witness must print or stamp his or her full name, qualification and address before whom the declaration is made.
JPs must include their registration number.]*

Note: From 30 April 2012 new requirements to confirm the identity of the declarant became mandatory in NSW. Witnesses must certify that they have seen the face of the declarant and either that they have known the declarant for more than 12 months, or confirmed their identity by sighting an approved identification document. For more detail see Affidavits and Statutory Declarations – How to administer an oath, affirmation or declaration in NSW (100086819).

Annexure A

Supporting statement by head contractor regarding payment to subcontractors

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

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

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

ABN: *[ABN]*

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

ABN: *[ABN]*

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

OR

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

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

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

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

Signature: Date:

Full name: Position/Title:

Attachment

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/ identifier	Date of works (period)	Date of payment claim (head contractor claim)

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

Annexure B

SUBCONTRACTOR'S STATEMENT

Note to the parties. For the purpose of this Subcontractor's Statement: "the subcontractor" is the Contractor; and "the principal contractor" is Transport for NSW

REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION

(Note 1 - see back of form)

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

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, schedule 2 part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor:ABN:
(Business name)

of:
(Address of subcontractor)

has entered into a contract with:ABN:
(Business name of principal contractor) (Note 2)

Contract number/identifier: (Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive, (Note 4)

subject of the payment claim dated:/...../..... (Note 5)

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

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

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

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

Notes

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

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

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

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

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

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

Statement Retention

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

Offences in respect of a false Statement

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

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

In terms of s175B of the *Workers Compensation Act* and clause 18 of schedule 2 of the *Payroll Tax Act 2007* a



person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au_Office of State Revenue website www.osr.nsw.gov.au_or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au_Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.



Schedule 13 Not Used



Schedule 14 Collaboration Principles

Part A - Digital Systems Team Charter

Digital Systems Team Charter

TEAM STATEMENT WHO WE ARE

We are a diverse, authentic team driven by a clear purpose. We are committed to learning and growing together.

VISION

Seamless digital transformation of Sydney's rail network

MISSION

Modernising Sydney's rail systems with world class ETCS-L2 cab signalling, automatic train operation and traffic management

VALUES & BEHAVIOURS



GROWTH

We are committed to a culture of learning and growth. We actively contribute and generate opportunities to share information and best practice, creating an ecosystem of knowledge across the cluster and industry.



COLLABORATION

We support and work together towards common goals. We foster connections across the cluster, industry, and other rail networks. We leverage international expertise to deliver world-class results.



INTEGRITY

We are trusted professionals who do what we say, keep our promises and are honest. We are transparent and fair. We take personal responsibility for our work and actions.



CREATIVITY

We welcome diverse views and innovate to solve problems with the courage to speak up and challenge. We actively seek out new, better ways of working.



WELL-BEING

We embrace diversity and create a safe, respectful working environment and celebrate our differences. We believe that a flexible approach leads to good work-life balance.

PROGRAM BENEFITS

Better customer information



Lower energy consumption



Reduced journey times



Higher capacity for current and future demand



More reliable services



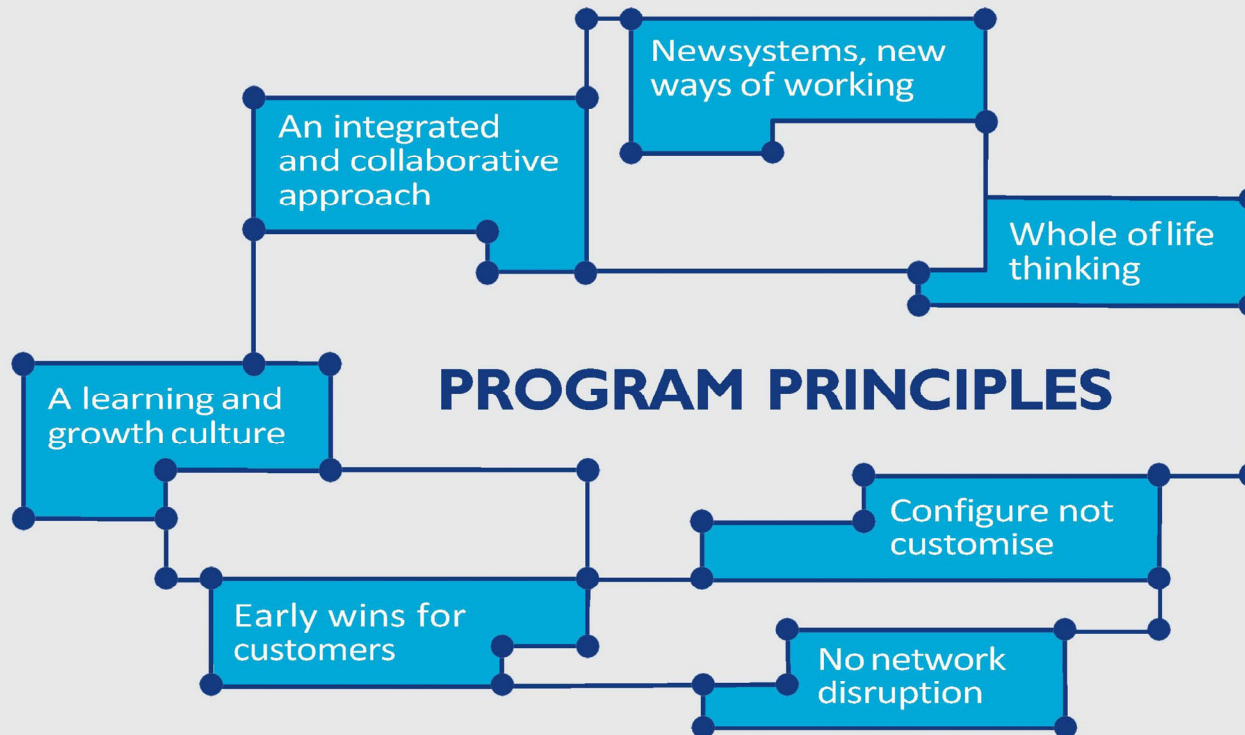
Lower capex and opex costs



Safer and more efficient operation and maintenance



PROGRAM PRINCIPLES







Part B – Draft Collaboration Principles

Collaboration Principles

1. Purpose

- 1.1. Due to the complexity of the Program, collaboration between differing parties working on the Program is required to ensure the Program is successful.
- 1.2. Lessons learned from similar projects from around the world demonstrate that by actively encouraging collaboration between different parties, managing the complexity, risks and issues is possible.
- 1.3. Collaboration is *the process of two or more people or organisations working together to complete a task or achieve a goal*¹.

2. Collaboration Principles

The Collaboration Principles, and their respective meaning and expectation for the Program are set-out in Table 1. The intent of this Collaboration Principles schedule is for it to be jointly developed in consultation with Collaboration Participants as part of the collaboration framework established for management of the Program and may be updated from time to time.

Table 1:

	Principle	What does this mean?	Expectation
1.	Program first (best for Program)	<ul style="list-style-type: none">Shifting the perspective from self-interest (individual party's interest) to joint interestsUnderstand that all parties win or lose together (reputation risk of all parties needs to be managed)	<ul style="list-style-type: none">Commitment of all parties to the success of the Program (signing of Collaboration Charter)Each party must not only take ownership of its own individual work and inputs but also the outcomes of the whole ProgramThe parties will work together to overcome great challenges and make the Program a success for all participantsThe parties will celebrate the Program successes
2.	Be open (information sharing)	<ul style="list-style-type: none">Communicating openly, freely and honestly at all levels in the Program and freely sharing information appropriate to enable positive Program outcomes, whilst respecting each other's confidential information and intellectual property	<ul style="list-style-type: none">Communicate regularly, honestly, openly, and skilfully – including when conflicts ariseMaintain open risk and opportunity registers (without prejudice)

¹ Insert reference Holding definition (agree definition)

Digital Systems Program - Collaboration Principles

	Principle	What does this mean?	Expectation
		<ul style="list-style-type: none"> Proactive communication and information sharing is key to Program success Good communications enable good relationships and efficient operations 	<ul style="list-style-type: none"> Proactively share information in the spirit of collaboration, efficiency, that may assist other parties in successful delivery and support of the achievement of common goals
3.	Respect and understanding for all people on the Program	<ul style="list-style-type: none"> In order to achieve collaboration all parties must individually and collectively respect and be understanding of the perspectives of each party 	<ul style="list-style-type: none"> Listen to and acknowledge the different views and perspectives and give fair consideration to those views and perspectives in the context of success of the whole Accept that there may be a need for trade-offs in order to ensure the success of the Program and the subsequent success of all parties involved Endeavour to create safe spaces for open dialogue where parties can trust that their vulnerabilities will not be exploited and their ideas will be considered, valued and respected Have brave and honest discussions that will facilitate innovation in approach and delivery of the Program
4.	Raising issues early without blame and shame		<ul style="list-style-type: none"> Each party will own its mistakes and seek to remedy them quickly Accept that things don't always go to plan and that all parties will need to proactively support each other in the resolution of issues or the remedy of errors Adopt a 'win-win' mindset and ensure those involved in administering agreements between parties have the skills required for 'win-win' outcomes
5.	Work through uncertainty by building on each other's ideas		<ul style="list-style-type: none"> Participate in collaborative discussions and ensure that the right people within each party's respective organisations are involved and informed in a timely manner

3. Collaboration Charter

- 3.1. A structured approach to establishing collaboration is required so all parties understand what is and expectations are of collaboration on the Program.
- 3.2. A jointly developed commitment to collaboration between TfNSW and Collaboration Participants will be encapsulated in an agreed collaboration charter to be developed during the Delivery Phase of the Program.
- 3.3. The agreed collaboration charter will include two levels:

Level 1 – Strategic overview

This includes the agreed vision of Program outcomes, strategic goals with measurements, integrated milestones, and identification of collaboration governance.

Level 2 – Processes and behaviours to support the collaborative commitment

This includes a collaborative issue resolution process, interface management and collaborative behaviours.

4. Collaborative Ways of Working

- 4.1. The agreed collaboration charter will be supported by agreed collaborative ways of working on the Program developed during the Delivery Phase. These will include, a commitment by each Collaborative Participant to:
 - its leadership belief in and promotion of collaboration;
 - a co-located office space;
 - sharing of risk and issue registers;
 - use of TeamBinder for document management;
 - use of collaborative tools to present project management information and evidence of issues; and
 - training of team to support the agreed collaborative behaviours.



Schedule 15 Interface Requirements

1 Interface co-operation and collaboration

1.1 General

- (a) Without limiting or being limited by the remainder of this Schedule 15 (Interface Requirements), the Contractor must:
 - (i) permit Interface Contractors to carry out their work;
 - (ii) fully co-operate with Interface Contractors;
 - (iii) carefully coordinate the Contractor's Activities with the work carried out or to be carried out by Interface Contractors; and
 - (iv) carry out the Contractor's Activities so as to minimise any interfering with, disrupting or delaying the work of Interface Contractors.
- (b) Without limiting section 2 (Interfacing Systems), the Contractor:
 - (i) acknowledges the importance of active co-operation and collaboration with Interface Contractors to facilitate the overall delivery of the System and Program; and
 - (ii) agrees to provide such co-operation and assistance to Interface Contractors and do everything reasonably possible to ensure, where relevant, interconnection and compatibility between the Trackside Subsystem and Interfacing Systems, and between the Works and Interfacing Works.
- (c) The Contractor must comply with TfNSW's reasonable requests to co-operate and collaborate with Interface Contractors, including in connection with the effective and efficient delivery of the System and Program.
- (d) In addition, the Contractor must:
 - (i) provide all reasonable co-operation and collaboration required by TfNSW to enable the design, development, implementation, testing and commissioning of the System, the Trackside Subsystem, Interfacing Systems and associated services to be carried out in a co-ordinated, effective and timely manner, including in respect of:
 - (A) management and resolution of incidents, issues and problems;
 - (B) assessment of variation requests;
 - (C) technical change management;
 - (D) Stakeholder engagement and consultation;
 - (E) testing and commissioning; and
 - (F) operational readiness;

- (ii) cooperate and coordinate with the owners of all existing services, as part of the Contractor's Activities;
- (iii) co-operate, support, assist and share information and Materials with Interface Contractors in a timely manner to help enable each Interface Contractor to comply with its obligations to TfNSW and, where relevant, perform its part of the Program in accordance with the Integrated Program;
- (iv) not unduly interfere with, obstruct, impede, damage or delay the works, performance or operations of Interface Contractors or any Interfacing Works;
- (v) work with each Interface Contractor, to mitigate so far as is reasonably practicable those risks, including risks to the Program, that are within the Contractor's control, including any risk to health and safety;
- (vi) avoid any unnecessary duplication of effort;
- (vii) identify and raise at the appropriate governance forum potential issues and risks before they have a chance to affect other Interface Contractors or TfNSW so as to avoid undue cost, risk and disruption to Interface Contractors, Interfacing Works, Interfacing Systems or the Program;
- (viii) assist with any testing and/or any quality assurance activities to be undertaken by any Rail Transport Entity or any Interface Contractor;
- (ix) provide prompt access to any of their resources, systems, Software and other Materials required by the Interface Contractors to enable them to provide their Interfacing Works and to deal with security and/or compliance issues, assessments and actions;
- (x) permit Interface Contractors to execute the Interface Work on the applicable parts of the Delivery Locations in Control of the Contractor or on any adjacent property to the Delivery Locations:
 - (A) at the same time as the Contractor is performing the Contractor's Activities; and
 - (B) at the times agreed with the Interface Contractor, or failing agreement at the times determined by TfNSW,and for this purpose ensure they have safe, clean and clear access to those parts of the Delivery Locations, or property adjacent to the Delivery Locations, required by them for the purpose of carrying out their work;
- (xi) co-operate with Other Contractors, to:
 - (A) facilitate the execution of work by Other Contractors; and
 - (B) ensure the effective coordination of the design, implementation, testing and commissioning of the Works and the Trackside Subsystem, with the design, implementation, testing and commission of the Interface Work and the Interfacing System (including the Design Documentation and ICDs);
- (xii) be responsible for coordinating the Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters

with those affecting, and influenced by, Interface Contractors' personnel and work, including providing to TfNSW (in accordance with paragraph (xiii)) SWMSs for those parts of the Works which are adjacent to or interface with any Interface Work, at least fifteen (15) Business Days prior to commencing the work described in the relevant SWMS;

- (xiii) provide for the purposes of paragraph (xii) the number and form of copies of the SWMSs as Directed by TfNSW from time to time;
 - (xiv) without limiting section 2 (Interfacing Systems), work directly with Other Contractors to complete the design of the Works and provide all necessary information to the Other Contractor in respect of the Works and the Trackside Subsystem to permit the Other Contractor to complete the design of the Interface Work and Interfacing System so that they are acceptable to TfNSW and otherwise comply with this Agreement, including the Contract Specifications; and
 - (xv) attend interface coordination meetings chaired by TfNSW or its nominee with Interface Contractors and others each fourteen (14) days, or at other times to be advised by TfNSW, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces.
- (e) TfNSW acknowledges that nothing in this section 1 requires the Contractor to provide access to any source code for Software, Materials or Contractor Tools.

1.2 Contractor Inputs and information sharing

- (a) Without limiting any other term of this Agreement, but subject to paragraph (g), the Contractor agrees to provide information and Materials relevant to its Works, the Trackside Subsystem and the Contractor's Activities to TfNSW, the System Integrator and any Interface Contractor as necessary to facilitate the effective and efficient design, development, implementation, operation and maintenance of the System, the Program, the Trackside Packages, the Trackside Subsystem and any Interfacing System, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Interface Work or Interfacing Systems with the Works, Trackside Subsystem or the Contractor's Activities (the **Contractor Inputs**). This information and Material may include details of all operating environments, APIs, tools, methodology information, system constraints, information concerning interfacing, interoperation and operating parameters, information concerning defects and incidents, information regarding scheduling and planning.
- (b) Where information or Materials are required from an Interface Contractor, the Contractor agrees to give at least ten (10) days (except in special circumstances) and at all times reasonable notice requesting the information or Materials and specifying the date by which such information or Material is required. However, the Contractor must ensure that any request under this paragraph provides the Interface Contractor with the longest possible time for the provision of the information. A copy of each request must also be provided to TfNSW.
- (c) Where any Contractor Inputs are required to be provided by the Contractor, such Contract Inputs, must be:
 - (i) provided in a timely manner and, where the date requested is reasonable, by the requested date; and

- (ii) of a high quality and standard.
- (d) The Contractor must:
 - (i) ensure and warrant that its Contractor Inputs are accurate; and
 - (ii) cooperate, meet with, liaise, and share information as reasonably required so that the Contractor and each Interface Contractor each comply with the provisions of the relevant Approvals.
- (e) All communications and correspondence between the Contractor and any Other Contractor or Interface Contractor must be via TfNSW's chosen collaboration and document management tool as notified to the Contractor from time to time. The Contractor must ensure that any material oral conversations must also be recorded and confirmed in writing using that collaboration and document management tool. The Contractor acknowledges that TfNSW will have visibility of and access to all such communications and correspondence.
- (f) The Contractor must ensure that a copy of all Contractor Inputs provided or received by that Contractor are sent to TfNSW's chosen collaboration and document management, with a copy to TfNSW.
- (g) The Contractor may exclude pricing information, and information from which pricing can be determined from the Contractor Inputs that it makes available to Interface Contractors.

1.3 Co-ordination of works

- (a) The Contractor agrees to identify and notify TfNSW and the relevant governance forums of any dependencies and risks associated with the delivery of the Program in accordance with the Integrated Program, including as circumstances change.
- (b) The Contractor agrees to proactively and carefully plan and co-ordinate and interface its activities with those of Other Contractors in a manner which supports the delivery of the Program, including by:
 - (i) providing sufficient allowance for the performance of activities by Other Contractors;
 - (ii) (re)allocating resources and rescheduling activities and otherwise seeking to mitigate the effect of any program restructure or delay, regardless of the cause or causes of such delay or program restructure;
 - (iii) reviewing all programs provided by Other Contractors undertaking Interface Works and confirming whether or not they adequately allow for the Contractor's Activities and the interfaces of the Interface Work with the Contractor's Activities;
 - (iv) monitoring the progress of the Interface Work (to the extent practicable);
 - (v) notifying TfNSW of any interface or sequence of activities that may affect the performance of the Contractor's Activities or the Works; and
 - (vi) providing TfNSW and Other Contractors with sufficient information about the current and expected Contractor's Activities to assist them to coordinate Interface Works with the Contractor's Activities.

- (c) Further, the Contractor acknowledges that:
- (i) the timing of the Other Contractors' activities will be as discovered by the Contractor;
 - (ii) any delay in the performance of the Contractor's Activities or in the Contractor providing information to, or co-operating and co-ordinating with any Other Contractor, may adversely impact upon, delay or disrupt any one or more Other Contractors or the Program in a way which may lead to TfNSW and/or its Associates suffering or incurring additional costs, losses and damages; and
 - (iii) it will plan and perform its Contractor's Activities in a manner which recognises those potential impacts and minimises any potential delay or disruption.

1.4 Fix first

- (a) The Contractor must cooperate with TfNSW, the System Integrator and Interface Contractors, and not refuse to be involved, in any resolution, rectification or investigation of an incident, issue or problem, even where it considers it is not responsible for that incident, issue or problem, provided that where the Contractor is not responsible for that incident, issue or problem the Contractor will be entitled to claim its reasonable and demonstrable costs of performing such additional works required under this section 1.4 subject to having notified TfNSW as soon as reasonably practicable of the nature and anticipated costs of the works. Further, the Contractor commits to not permitting legal or contract impacts or discussions to delay resolution, rectification or investigation actions.
- (b) The Contractor must use its best endeavours to resolve any problems, and work closely and iteratively, with Interface Contractors, including providing design options, iterations, and work methodologies, to achieve the best solution to such problems, related to:
 - (i) the provision of information;
 - (ii) the obtaining of information;
 - (iii) the adequacy of information provided to, or received from, Interface Contractors;
 - (iv) the compatibility and integration of the Works and Trackside Subsystem with the Interface Work and Interfacing Systems;
 - (v) coordination in accordance with these Interface Requirements and the Collaboration Principles; and
 - (vi) technical issues with the information provided to, or received from, Interface Contractors.
- (c) Without limiting Schedule 18 (Issue Resolution Procedure), the Contractor must, in the event that, including despite using its best endeavours, and working closely and iteratively with the Interface Contractors, the Contractor and any Interface Contractor fail to resolve a problem between them:

- (i) give an Initial Early Warning Notice in accordance with Schedule 18 (Issue Resolution Procedure) to TfNSW with a copy to the Interface Contractor describing the problem; and
 - (ii) attend any coordination meetings as requested, and to be chaired, by TfNSW or its nominee, and in good faith work with those present to attempt to resolve the problem.
- (d) The Contractor must promptly advise TfNSW of all matters arising out of the liaison with Interface Contractors that may involve a change to design or construction work under this Agreement or otherwise have an adverse effect upon the Contractor's Activities or the Program.

1.5 Interface Disputes

- (a) The Contractor must promptly give TfNSW an Initial Early Warning Notice of any interface issue or dispute with any Interface Contractor, and the process set out in Schedule 18 (Issue Resolution Procedure) applies.
- (b) Without limiting paragraph (a), following receipt of the Contractor's Early Warning Notice under paragraph (a), TfNSW may:
 - (i) convene a meeting between the Contractor, the relevant Interface Contractor and any other relevant person (as reasonably determined by TfNSW); and
 - (ii) work in good faith with the Contractor and the Interface Contractor to resolve the issue or dispute.

1.6 No Claims arising out of acts or omissions of Interface Contractors

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

2 Interfacing Systems

- (a) The Contractor acknowledges that the PR and/or applicable SOW includes processes and requirements with respect to technical interfaces and integrations between the Trackside Subsystem and Interfacing Systems (each a “technical interface” for the purposes of these Interface Requirements). Some of these processes and requirements apply to either the Lead Supplier or the Participating Supplier in respect of each technical interface.

- (b) The Contractor must comply with these requirements where the Contractor is the Lead Supplier and/or Participating Supplier for each such technical interface.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

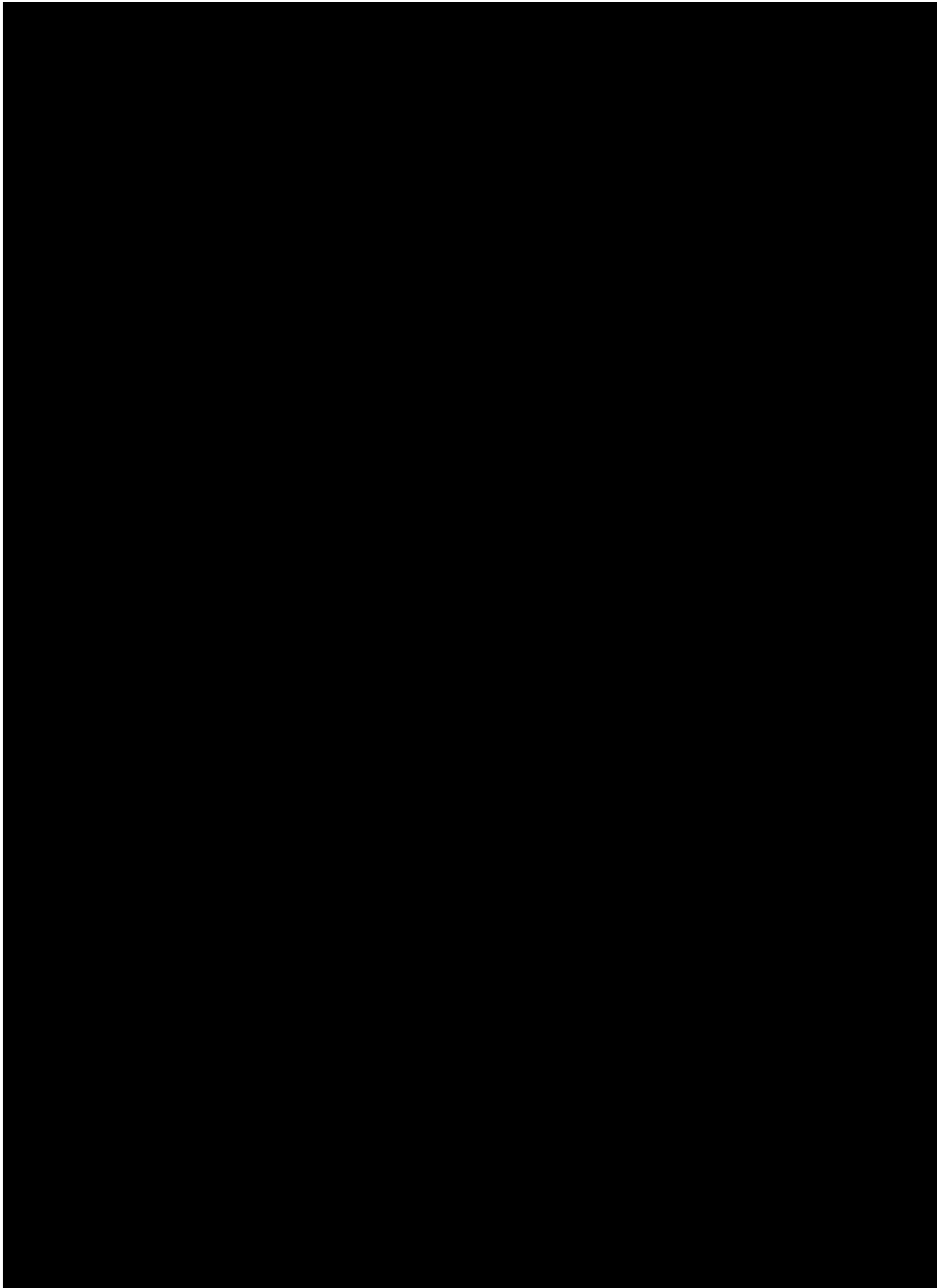
■ [REDACTED]

■ [REDACTED]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]



Attachment A Interface Contractor Matrix







Schedule 16 Reports



Transport
for NSW

Trackside Package
Delivery Agreement
Digital Systems Program
Schedule 16 - Reports

Contract Number:

IPD-19-7822A

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1. Reporting Requirements

1.1. General

- (a) Without limiting any reporting requirements set out in a Statement of Work (**SOW**) or elsewhere in this Agreement, the Contractor must:
 - (i) in addition to the other Reports identified elsewhere in this Agreement, prepare and submit to TfNSW for Review the Reports listed in Table 1 below, in the form required or approved by TfNSW from time to time, in accordance with:
 - (A) the frequency stipulated in that table, unless otherwise agreed by TfNSW; and
 - (B) the requirements set out in this Schedule and the Agreement; and
 - (ii) without limiting paragraph (a)(i), provide to TfNSW, in a form reasonably requested by TfNSW, such other reports as are reasonably requested by TfNSW from time to time (together with, where requested by TfNSW, detailed supporting information (including access to source data)).
- (b) The Contractor must also provide to TfNSW any information requested by TfNSW if such information is deemed necessary by TfNSW (acting reasonably) to perform its review of a submitted Report.
- (c) Each Report must be relevant and appropriate to the purpose and stage of work for which they are developed.
- (d) The Contractor shall obtain TfNSW's approval of the proposed Report format.

Table 1 – Reports and Frequency

Report	Frequency
Delivery Phase Progress Report	
Delivery Phase Progress Report (DPPR)	Monthly No later than five (5) Business Days after the end of every month during the Term
Commercial Monthly Report	
Commercial Monthly Report	Monthly First Business Day of each month during the Term
Weekly Report	
Weekly Report	Second Business Day of each week during the Term
Timesheets (only applicable for Contractor's Activities delivered on a Unit Rate or Target Budget Offer basis where Labour Rates as defined in Schedule 11 (Pricing Terms) are utilised)	
Timesheet for each Contractor Personnel	Second Business Day of each week during the Term
Contractor Mobilisation Form	As required following commencement of new Contractor Personnel

1.2. Delivery Phase Progress Report

- (a) The DPPR shall, as a minimum, address and detail the status and progress of the Delivery Phase Activities in the previous month compared with the progress projected under the Contractor's Program for that month, and the progress required in order to achieve Acceptance in accordance with the timeframes set out in this Agreement.
- (b) The DPPR shall commence with an executive summary and must include details of any Initial Early Warning Notices or Detailed Early Warning Notices that the Contractor wishes to provide notice of.
- (c) The DPPR shall address Delivery Phase Activities, including:
 - (i) the status and progress of the design;
 - (ii) the status and progress of the Works and Assets, including:
 - (A) all Assets (including tools and Spares);
 - (B) all Technical Packages;
 - (C) all mock-ups; and
 - (D) all Approvals;
 - (iii) photographic evidence of progress where relevant and possible;
 - (iv) significant changes in circumstances affecting the Contractor's Activities and the Contractor's Program, including Variations;
 - (v) the status of major procurement orders;
 - (vi) the status of manufacture;
 - (vii) the status of each proposed Key Subcontract; and
 - (viii) where applicable, the status of any activities against all the requirements of Approvals, including Planning Approvals.
- (d) The DPPR shall address progress, including:
 - (i) the status and progress towards completion, including actual / forecasted achievement of:
 - (A) Milestone Dates;
 - (B) dates of Provisional Acceptance;
 - (C) the date of Final Acceptance; and
 - (D) date of delivery of all Assets (such as tools) not covered by the Acceptance Criteria set out in the Agreement;
 - (ii) forecast dates for milestone payments;
 - (iii) cash flow progression (in the form of an S-curve) based on earned value and forecast costs to the end of the Delivery Phase;
 - (iv) forecast and historical trend (lead and lag) variance indicators including Earned Value KPIs as agreed by TfNSW, including details regarding the mitigation of any progress issues as defined by TfNSW;
 - (v) status of operational readiness activities;
 - (vi) a summary of major planned activities over the next month and quarter;

- (vii) a list and timing of Hold Points and Witness Points planned for the forthcoming three (3) month period;
 - (viii) delays, including the cause of delay, and actions planned and/or underway to recover the Contractor's Program to meet the Integrated Program and TfNSW overall program for the project; and
 - (ix) significant changes in circumstances affecting the Contractor's Program, including justifying any changes to the critical path and Variations.
- (e) The DPPR shall address risk, including:
 - (i) a description of each significant risk to the Objectives;
 - (ii) the cause and potential consequences of each significant risk; and
 - (iii) the actions planned and underway to treat each significant risk.
- (f) The DPPR shall address work health and safety, including:
 - (i) leading safety indicators and proactive actions;
 - (ii) lagging safety indicators for all Delivery Locations, including:
 - (A) details of injuries and near misses;
 - (B) lost time injuries; and
 - (C) medically treated injuries; and
 - (iii) a consolidated SWMS register showing active and completed SWMS.
- (g) The DPPR shall address Contractor Personnel and Contractor's Equipment, including:
 - (i) for each Delivery Location:
 - (A) minimum, maximum, and average number of Contractor's Personnel on-site;
 - (B) average number of Apprentices and Trainees; and
 - (C) total hours worked per Delivery Location;
 - (ii) a comparison of the above data with the planned resources;
 - (iii) significant changes in circumstances affecting Contractor's Personnel; and
 - (iv) the actual number and categories of Contractor's Equipment.
- (h) The DPPR shall address compliance, including:
 - (i) any non-compliances or non-conformances of the Works and Contractor's Activities, and the steps taken by the Contractor to address those non-compliances or non-conformances;
 - (ii) details of all corrective and preventative actions taken by the Contractor, the status of those actions and audits of such actions;
 - (iii) the status and progress of:
 - (A) Reviews;
 - (B) audits; and
 - (C) authorisation and Accreditation;
 - (iv) verification metrics;

- (v) quality metrics addressing key non-conformances identifying actions planned and underway to treat the non-conformance; and
 - (vi) significant changes in circumstances affecting compliance, including with regards to Key Subcontractors.
- (i) The DPPR shall detail any inputs required from TfNSW in the next monthly reporting period.
- (j) The DPPR shall include:
 - (i) an updated Contractor's Program;
 - (ii) an updated project risk register, identifying changes;
 - (iii) an updated project hazard log, identifying changes;
 - (iv) an updated DNG Database, identifying changes; and
 - (v) an updated organisation chart, identifying changes.
- (k) The DPPR shall address any other information TfNSW reasonably requires.

1.3. Commercial Monthly Report

- (a) The exact format and layout of the Commercial Monthly Report will be agreed between the parties upon commencement of the Contractor's Activities under a Statement of Work, and at any other times required or agreed by TfNSW, but must include at a minimum the information set out in paragraph (b).
- (b) The Contractor must include in the Commercial Monthly Report the following information for the previous month:
 - (i) a summary of the status of progress at the end of the previous month, as compared to the current Contractor's Program and the timeframes set out elsewhere in this Agreement;
 - (ii) an extract of the Contractor's Program;
 - (iii) for Contractor's Activities delivered on a Unit Rate or Target Budget Offer basis using Labour Rates (as defined in Schedule 11 (Pricing Terms)), details of hours expended, and cost incurred in the relevant month per Contractor Personnel with a breakdown of activities undertaken (if applicable);
 - (iv) any Reimbursable Expense items being claimed (if applicable), including details of authorisation and amounts claimed substantiated with receipts;
 - (v) a cumulative of the total amounts incurred in connection with the Contractor's Activities provided during the relevant month;
 - (vi) details of the amounts claimed under a payment claim to date and the amount of the payment claim(s) in the relevant month;
 - (vii) cost reporting to monitor on a monthly basis the actual cost, forecast cost to complete and forecast final cost against the Fees (as amended) for the individual Statement of Work, and separate lists for the cost of approved Variations, claims and outstanding claims for Variations;
 - (viii) percentage of the Works complete and Assets delivered under each SOW and a forecast for completion of those Works / delivery of those Assets under the relevant SOW;
 - (ix) details of Fees invoiced against any Target Budget Offer or estimated fees based on the Labour Rates;
 - (x) details of unconditional undertakings on foot and their status;

- (xi) details of Liquidated Damages and status;
- (xii) cooperation, coordination, industrial relations and interface matters with Other Contractors;
- (xiii) a written summary covering the completed Contractor's Activities and upcoming activities, in a form suitable for inclusion on TfNSW's website;
- (xiv) activities of a mediator or similar process under the Dispute Resolution Procedures where established under the Agreement;
- (xv) a narrative including:
 - (A) the activities completed in the relevant month and a look ahead of activities;
 - (B) key risks;
 - (C) detailed explanation of any slippages against the Contractor's Program;
 - (D) list of Assets; and
 - (E) any relevant information that would assist TfNSW in managing the program of activities and the Fees; and
- (xvi) any other information TfNSW reasonably requires.

1.4. Weekly Report

- (a) The exact format and layout of the Weekly Report will be agreed between the parties upon commencement of the Contractor's Activities under a Statement of Work, and at any other times required or agreed by TfNSW, but must include at a minimum the information set out in paragraph (b).
- (b) The Contractor must record the following information in the Weekly Report:
 - (i) a summary of activities completed during the previous week;
 - (ii) a rolling four (4) week look-ahead schedule of proposed activities;
 - (iii) slippage from the Contractor's Program (if any) to be clearly explained and documented;
 - (iv) proposed actions to catch up with any slippage from the Contractor's Program (if any);
 - (v) list of Assets showing:
 - (A) Document Deliverables in development by the Contractor;
 - (B) Document Deliverables that will be submitted to TfNSW for Review in the current week;
 - (C) the status of Document Deliverables that have been submitted to TfNSW for Review (in review, reviewed with comments, reviewed with no comments); and
 - (D) a summary of stakeholder consultation performed and issues arising; and
 - (vi) list of activities showing:
 - (A) activities in development by the Contractor; and
 - (B) activities that are planned and to be completed.

1.5. Timesheets

- (a) For Contractor's Activities delivered on a Unit Rate or Target Budget Offer basis using Labour Rates (as defined in Schedule 11 (Pricing Terms)), the Contractor must submit a weekly timesheet, broken down daily, for each Contractor Personnel involved in providing such Contractor's Activities, clearly showing:
 - (i) accurate recording of the time spent in the performance of the Contractor's Activities; and
 - (ii) a daily record of tasks performed.
- (b) The timesheet submitted will need to be authorised by the Contractor's Representative and demonstrate the activities that have been undertaken in delivering the Contractor's Activities.



Schedule 17 Governance and Management



Transport
for NSW

Trackside Package
Delivery Agreement
Digital Systems Program
**Schedule 17 – Governance and
Management**

Contract Number: IPD-19-7822A

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1. Introduction

- (a) This Schedule specifies the roles, structures, forums and Contractor's Activities relating to the overall management and governance of this Agreement, including:
 - (i) the applicable governance roles and structures;
 - (ii) a description of each governance forum; and
 - (iii) associated governance and management reporting obligations.

2. Governance

2.1. Governance Roles

- (a) The Contractor must appoint and ensure that it has in place the following governance roles:
 - (i) **Contractor Executive Sponsor:** a nominated senior executive sponsor (such as a divisional CEO or appropriate delegate/equivalently senior executive e.g. the person responsible for leadership of the APAC business) who will be required from time to time to meet with nominated TfNSW executive(s) to discuss the strategic direction of the relationship between the parties;
 - (ii) **Senior Contractor Representative:** a nominated executive who will be required from time to time to meet with the nominated TfNSW Program Executive Director(s) to discuss the status of the relationship between the parties and the progress of the Program;
 - (iii) **Contractor's Representative:** a nominated senior individual located in NSW (unless agreed otherwise by TfNSW) and allocated to TfNSW as the principal point of contact between the Parties in relation to this Agreement in accordance with clause 32 (Governance). The Contractor's Representative will have overall responsibility for the Contractor's performance of its obligations under this Agreement and all Statements of Work;
 - (iv) **Project Director** (or equivalent role): a nominated individual located in NSW who has responsibility within the Contractor for delivery of the Contractor's Activities under this Agreement and all Statements of Work; and
 - (v) **Commercial/Contract Manager:** a nominated individual or team located in NSW who has responsibility within the Contractor for all commercial and contractual issues arising under or in connection with this Agreement and all Statements of Work. This will necessitate an intimate knowledge of the provisions of this Agreement.

3. Governance Structure

- (a) Governance for the Program operates across a number of layers:
 - (i) **Program-wide governance:** for management and governance relating to the Program as a whole, and assurance related to safety and the System and Subsystems, including:
 - (A) TfNSW corporate governance;
 - (B) TfNSW Infrastructure and Services Division (I&S) governance; and

- (C) Program-wide supplier governance; and
- (ii) **Agreement governance:** for management and governance of each supply agreement (and the provision of goods and services under it) forming part of the Program (including this Agreement and each Other Contractor Agreement).
- (b) This Schedule is not intended to address the detail of “Program-wide governance”. However, Table 1 below and Schedule 16 (Reports) outline the Contractor’s primary role and minimum input required in relation to each of the multi-party forums that are part of the Program-wide governance framework.
- (c) Figure 1 below depicts the Agreement governance structure.

Figure 1 Agreement Governance Structure

DSP Governance	Systems Integrator	Multi party forums	Native Trackside	Core function ad Frequency
TNSW I&P Governance: Rail Delivery Steering Committee				Document preparation As needed
TNSW I&P Program Gov. Project Control Group Project Review Board	Executive forum		Executive forum	Document preparation and present at forums As needed
DSP senior leadership: SLT weekly meeting SLT strategy meeting SLT program meeting	Contract representatives meeting	Systems Integration Committee	Program executive Forum Contract Representatives meetings	Ensure adequately authorised representation, contribute information and participate in the meetings Monthly
DSP discipline leadership: Management, Commercial, Engineering, BT, SI, Delivery	Progress and contract management meeting		Delivery management meeting Commercial management meeting	Ensure adequately authorised representation, issue agreed reports prior to meeting, contribute agenda items and participate in meetings Fortnightly
Working Groups	Working Groups	Working Groups	Working Groups	Lead or participate where appropriate Fortnightly or as needed

- (d) Table 1 below details, in respect of each of the Agreement governance forums:
- attendees;
 - the responsibilities of that forum;
 - the roles of each of the parties;
 - the frequency of meetings and the logistics associated with such meetings; and
 - the key interfaces between that governance forum and other governance forums.

The Contractor will comply with its obligations as set out in Table 1 as though those obligations were set out fully in this clause.

- (e) The minimum input for each forum that the Contractor is required to deliver is as described in Table 1 below and in Schedule 16 (Reports).

Table 1 Agreement Governance Forums

#	Forum	Attendees	Responsibilities	Roles	Frequency & Logistics	Interfaces with other Forums
1.	Executive Forum	TfNSW TfNSW Executive Director(s) or appropriate delegate Contractor Contractor Executive Sponsor	<ul style="list-style-type: none"> Health check on progress of the relationship and Program; Act as the escalation point for matters arising at lower governance levels; Act as the escalation point for Issues escalated in accordance with Schedule 18 (Issue Resolution Procedure); Act as the final governance escalation point for Disputes raised in accordance with Schedule 19 (Dispute Resolution Procedure); and Other matters, as required. 	TfNSW Leads, manages, runs, and participates. Contractor Contributes to, and participates in, the forum.	Annual, or as requested by TfNSW. Meetings held at a location nominated by TfNSW.	<ul style="list-style-type: none"> Escalation of matters from the Program Executive Forum
2.	Program Executive Forum	TfNSW TfNSW DS Program Executive Director(s) Contractor Senior Contractor Representative	<ul style="list-style-type: none"> Strategic direction and leadership for the program, including: <ul style="list-style-type: none"> ensuring outcomes align with TfNSW's objectives and business case; monitoring strategic risks and mitigation strategies; monitoring interdependencies with work undertaken in relation to the project and with other TfNSW initiatives; monitor and review progress of project budgets; reviewing submissions (papers) and endorsing recommendations; providing options and clear recommendation(s) on strategic issues to TfNSW's internal governance groups, as required; providing support and strategic guidance to the project team; and 	TfNSW Leads, manages, runs, and participates. Contractor Contributes to, and participates in, the forum.	6-monthly, or as requested by TfNSW. Meetings held at a location nominated by TfNSW.	<ul style="list-style-type: none"> Escalation of matters from the Contract Representatives Meeting Escalation of matters to the Executive Forum

#	Forum	Attendees	Responsibilities	Roles	Frequency & Logistics	Interfaces with other Forums
			<ul style="list-style-type: none"> o taking advice from subject matter experts. ▪ Health check on progress of the relationship and Program; ▪ Act as the escalation point for matters arising at lower governance levels; ▪ Act as the escalation point for Issues escalated in accordance with Schedule 18 (Issue Resolution Procedure); and ▪ Other matters, as required. 			
3.	Contract Representatives Meetings	TfNSW TfNSW Representative(s) Contractor Contractor's Representative(s)	<ul style="list-style-type: none"> ▪ Health check on progress of the Contractor's Activities and relationship; ▪ Reviewing and monitoring program and project stream progress in terms of scope, schedule (actual versus planned), budget, risks, issues, resources and quality, to ensure the project remains within agreed tolerances; ▪ Manage the TfNSW Dependencies; ▪ Discuss and approve Variations (including as to scope, time, and price); ▪ Act as the escalation point for matters arising at lower governance levels; and ▪ Act as the escalation point for Issues escalated in accordance with Schedule 18 (Issue Resolution Procedure). 	TfNSW Contributes to, and participates in, the forum. Contractor Issues Contractor's Program, Delivery Phase Progress Report and Commercial Monthly Report. Leads, manages, runs, and participates.	Monthly. Meetings held at a location nominated by TfNSW.	<ul style="list-style-type: none"> ▪ Escalation of matters from the Delivery and Commercial Management Meetings ▪ Escalation of matters to the Program Executive Forum and to the System Integration Committee ▪ Interface with the System Integration Committee

#	Forum	Attendees	Responsibilities	Roles	Frequency & Logistics	Interfaces with other Forums
4.	Delivery Management Meeting	TfNSW TfNSW Director Delivery Contractor Contractor Project Director	<ul style="list-style-type: none"> Review progress against planned activities and the deliverable list; Discuss key challenges and plan risk mitigations; Review status of Submitted Documents; Review updated Contractor's Program and Milestones; Provide mobilisation/resourcing update including review of resource plan; Review and discuss Work Health & Safety (WHS) reporting and address any emerging WHS-related risk; Discuss Variations (including as to scope and time) and Changes in Standards; Act as the escalation point for matters arising at lower governance levels; and Act as the escalation point for Issues escalated in accordance with Schedule 18 (Issue Resolution Procedure). 	TfNSW Manages and runs the forum. Approves or rejects changes. Contractor Issues Contractor's Program, Delivery Phase Progress Report and Resource Plan prior to meeting. Contributes to, and participates in, the forum.	Monthly, or as required by TfNSW. Meetings held at a location nominated by TfNSW.	<ul style="list-style-type: none"> Escalation of matters from the Working Groups Escalation of matters to the Contract Representatives Meeting
5.	Commercial Management Meeting	TfNSW Commercial / Contract Manager Business Representatives (as required) Contractor	<ul style="list-style-type: none"> Contract management oversight of the project; Review spend against agreed budget (earned value) and spend forecasts; Provide advance notification of payment claims; Discuss payment claims and assessments; Discuss Action Plans; Manage pricing reviews and new pricing for additional 	TfNSW Manages and runs the forum. Contractor Issues Contractor's Program and	Monthly, or as required by TfNSW. Meetings held at a location nominated by TfNSW.	Same as above.

#	Forum	Attendees	Responsibilities	Roles	Frequency & Logistics	Interfaces with other Forums
		Commercial / Contract Manager	services; <ul style="list-style-type: none"> Discuss Variations (including as to scope, time, and price) and Change in Standards; Manage Statement of Work and Agreement variations; Provide advice to other forums and governance roles as required; Act as the escalation point for matters arising at lower governance levels; and Act as the escalation point for Issues escalated in accordance with Schedule 18 (Issue Resolution Procedure). 	Commercial Monthly Report. Contributes to, and participates in, the forum.		
6.	System Integration Committee	TfNSW Program Director, Director SI, Director TSA, Director Delivery Sydney Trains Chief Transformation Officer System Integrator	<ul style="list-style-type: none"> Facilitate decisions on requirements: <ul style="list-style-type: none"> Review options and recommend approval of changes to the SRS (changes to be progressed in accordance with the Variation Procedures); Clarify scope of and interpreting the Business Requirement Specifications; Identify requirements changes that have commercial, schedule, legal, risk, benefits and/or assurance implications and escalate to the SLT Strategy Forum; and Produce report outlining what the decisions on requirements were, how they were assessed and what the decision is. Manage scope changes (any changes to be progressed in 	TfNSW Manages and runs the forum. Sydney Trains (DSTO) Contributes to, and participates in, the forum. System Integrator	Fortnightly or as required by TfNSW	<ul style="list-style-type: none"> Escalation of matters from Working Groups Escalation of matters from Contract Representatives Meetings Tables strategic decisions to the SLT forum

#	Forum	Attendees	Responsibilities	Roles	Frequency & Logistics	Interfaces with other Forums
		<p>Manager Systems Integration</p> <p>Contractor Contractor Personnel as required</p> <p>Other Contractors As required</p>	<p>accordance with the Variation Procedures):</p> <ul style="list-style-type: none"> Review scope change request forms – understand the change, why it is necessary, risks, benefits, schedule, commercial and assurance impacts; Discuss and review trade-offs and implications to broader program of change; Form recommendations on scope change requests to be submitted to appropriately delegated forum for approval; Escalate to Digital Systems SLT Strategy Forum when decisions have commercial, legal and/or assurance implications, when issues are unresolved or outside delegation; Maintain records of change requests, including reviewed and agreed changes; and Communicate changes to all necessary parties. <p>▪ Working Groups:</p> <ul style="list-style-type: none"> Establish the terms of reference for a particular Working Group; Hold the Working Groups to account in fulfilling their objectives; Review options prepared by Working Groups; Acts as the arbiter for resolution of issues raised by Working Groups; and Escalates to the SLT Strategy Forum issues that are 	<p>Contributes to, and participates in, the forum.</p> <p>Contractor Contributes to, and participates in, the forum.</p>		

#	Forum	Attendees	Responsibilities	Roles	Frequency & Logistics	Interfaces with other Forums
			<p>not able to be agreed by the Committee or are outside delegated authority of the Committee.</p> <ul style="list-style-type: none"> Review of configurations gate submissions: <ul style="list-style-type: none"> Final review of assurance evidence provided by the Authorised Engineering Organisations prior to configuration change gates; Ensure sufficient evidence of assurance been collated; and Offer constructive challenge of the evidence. 			
7.	Working Groups (refer to Statement of Work for further details on each Working Group)	<p>TfNSW As required</p> <p>Contractor Discipline Lead(s)</p>	<ul style="list-style-type: none"> Oversight of specific streams/areas; Review, agree, endorse and coordinate and facilitate proposed methods, approaches and actions for each program workstream; Ensure the quality and relevance of deliverables and the continual review and update of relevant Working Group documents; Ensure the Working Group allows an integrated approach and remains consistent with relevant assurance processes and requirements while following the relevant Working Group plan; Review cross organisational strategic issues, management of interface issues, and agree a course of action; Support the program in managing stakeholder relationships across the Transport cluster and ensure stakeholder collaboration and acceptance is evident as part of the 	<p>TfNSW Manages and runs the forums.</p> <p>Contractor Compiles and presents submissions in the forum in accordance with TfNSW format</p> <p>(Refer to Statement of Work for further details).</p>	<p>(Refer to Statement of Work for the frequency of each Working Group)</p> <p>Meetings held at a location nominated by TfNSW.</p>	<ul style="list-style-type: none"> Escalation of matters from the Delivery Stand-up Meetings Escalation of matters to the Delivery Management Meeting / Commercial Management Meeting and to the System Integration Committee Interface with other multi-party

#	Forum	Attendees	Responsibilities	Roles	Frequency & Logistics	Interfaces with other Forums
			<p>working group;</p> <ul style="list-style-type: none"> Provide effective decision making, which is both ethical and responsible, in line with the Transport Code of Conduct and delegation levels and ensure decisions and deliverables are timely and aligned with program objectives; Early risks and potential issues identification and definition of mitigation activities; and Escalate matters as appropriate to higher governance levels. <p>Refer to Statement of Work for further details.</p>			forums
8.	Delivery Stand-up Meetings	<p>TfNSW Project Management</p> <p>Contractor Project Manager and relevant team members</p>	<ul style="list-style-type: none"> Focus on priorities; Identify short term actions linked to priorities; Ensure short term actions are being closed out; Identify barriers to progress, and required escalations; Create closer linkages between TfNSW and Contractor on a day-to-day basis; and Escalate matters as appropriate to higher governance levels. 	<p>TfNSW Manages and runs the meeting.</p> <p>Contractor Contributes to, and participates in, the meeting.</p>	<p>Multiple times weekly as required.</p> <p>Meetings held at a location nominated by TfNSW.</p>	Escalation of matters to the relevant Working Groups.

4. General

- (a) Within the governance structure, some of the governance forums will be bilateral and will only include representatives from TfNSW and the Contractor (initially the 'Trackside Specific' forums identified in Figure 1). Other forums may be multi-lateral (initially the 'Multi-party forums' identified in Figure 1) and participation will be required by the Contractor, Key Subcontractors, Stakeholders and Other Contractors as necessary.
- (b) For each governance forum, more detailed terms of reference will be determined by TfNSW from time to time and will be notified to the Contractor. Each party shall ensure that the terms of reference of each relevant governance forum are communicated to its relevant attendees, and that such attendees understand, and comply with, the relevant terms of reference.
- (c) From time to time, the Contractor may be required by TfNSW to attend other TfNSW forums, reviews, committees or meetings, and the Contractor must participate in these when and where requested by TfNSW.
- (d) Where TfNSW is of the view that matters arising under this Agreement involve or may impact on any Other Contractor, TfNSW may refer and raise that matter for discussion at a Program-wide governance forum (including, for example, the Systems Integration Committee). Similarly, TfNSW may refer matters raised for discussion at a Program-wide governance forum for discussion at any appropriate "Agreement governance" forum under this Agreement.
- (e) Prior to each governance forum meeting:
 - (i) the Contractor will submit to the relevant chair any agenda items which they would like to discuss during the meeting at least five (5) Business Days prior to the meeting;
 - (ii) the Contractor will communicate the names of their appointed members and changes thereof, if any, in writing to the relevant chair five (5) Business Days before the meeting; and
 - (iii) the chair shall prepare an agenda, to be delivered to the Contractor prior to the meeting.
- (f) In participating in the meetings of the governance forums, the Contractor must:
 - (i) prepare for and participate fully and actively in the meetings and associated activities;
 - (ii) where nominated as the lead or chair for the governance forum, provide and manage all required information (e.g. scheduling, bookings, agenda preparation and distribution, minutes / meeting records, document management, management of actions, etc.);
 - (iii) ensure all action items allocated to it are completed within the specified timeframes, or if no timeframe is provided then within a reasonable time;
 - (iv) ensure adequate and suitably skilled and experienced Contractor Personnel attend and participate in the meeting and all its attendees are authorised to perform their respective responsibilities and make any necessary decisions at such meetings; and
 - (v) provide such information and documentation as the relevant governance forum requires in connection with agenda items and to discharge its responsibilities.
- (g) The parties must ensure that within five (5) Business Days of the relevant meeting:
 - (i) meeting minutes are taken by the relevant chair and distributed to the members of the meeting; and

- (ii) the following representatives of each party approve the minutes in writing and provide the same to the other party, with such approval taking effect at the time the last representative signs the minutes and provides the same to the other party:
 - (A) Delivery Stand up meetings – No approval required;
 - (B) Working Groups – No approval required;
 - (C) Delivery Management Meeting – TfNSW Director Delivery and the Contractor's Project Director;
 - (D) Commercial Management Meeting – TfNSW Commercial / Contract Manager, and the Contractor's Commercial / Contract Manager;
 - (E) Contract Representatives Meeting – TfNSW Representative and the Contractor's Representative;
 - (F) Program Executive Forum – TfNSW DS Program Executive Director (or appropriate delegate) and Contractor's Senior Contractor Representative; and
 - (G) Executive Forum – TfNSW Executive Director (or appropriate delegate) and Contractor Executive Sponsor.
- (h) The governance framework set out in this Schedule will be reviewed by TfNSW on a regular basis. Where required, the governance framework may be revised, by notification from TfNSW (and without the need for a Variation).
- (i) The Contactor will also participate in and provide information to relevant governance forums under the TLS Agreement where required, including, but not limited to, participating in the following delivery forums:
 - (i) TfNSW's Supplier Relationship Meetings; and
 - (ii) Executive Leadership Team Meetings; and
 - (iii) providing relevant information and feedback into:
 - (A) Delivery Management Meetings; and
 - (B) Contract Management Meetings.

5. Governance and Management Reporting

- (a) The Contractor must comply with the reporting requirements in Schedule 16 (Reports).
- (b) The Contractor acknowledges that where a report is identified as being the responsibility of another organisation, it must provide inputs and such assistance as is required to TfNSW or the relevant organisation in the preparation of identified reporting requirements.
- (c) The Contractor must, on request from TfNSW, attend relevant meetings to report on key matters and participate in discussions related to the Program or Contractor's Activities covered by a Statement of Work.



Schedule 18 Issue Resolution Procedure

1 General Principles

- (a) The parties acknowledge and agree that the objective of the Issue Resolution Procedures as set out in section 2 (Issue Resolution Procedure) is for the parties to work together to promptly resolve Issues through negotiation.
- (b) Neither party may issue a Dispute Notice under section 1 (Disputes) of Schedule 19 (Dispute Resolution Procedures) in respect of an Issue unless the process specified in section 2 (Issue Resolution Procedure) of this Schedule has been followed.
- (c) Nothing in this Schedule:
 - (i) is intended to prevent TfNSW from extending the timeframes associated with the Issue Resolution Procedures or from requiring additional information to be provided and/or notices to be resubmitted by the Contractor in connection with any Issues raised by the Contractor; or

is intended to prevent the parties from agreeing an alternative timeframe associated with the Issue Resolution Procedures in respect of a particular Issue.
- (d) If a provision of this Schedule requires a party to give notice in accordance with this paragraph (d), then that party must give that notice:
 - to the other party; and
 - to the chair of the relevant meeting or forum at which the matter is required to be discussed or escalated, care of the TfNSW Representative.
- (e) If a provision of this Schedule requires the Contractor to give a particular notice to TfNSW in respect of an Issue, the Contractor will only do so once in respect of that Issue and will not provide multiple such notices in respect of that Issue (including where that Issue remains ongoing).

2 Issue Resolution Procedure

2.1 Issue Resolution Process

- (a) Subject to section 1 (General Principles), unless otherwise agreed in writing all Issues must be raised in accordance with, and follow the process specified in, this section 2 as illustrated in Attachment A (Issue Resolution Procedure).
- (b) Without prejudice to paragraph (c) (including as to the timeframes set out in paragraph (c)), the parties will seek to resolve any and all Issues during the ten (10) Business Days following the dates identified in paragraphs (c)(i) or (c)(ii) (as applicable), such that those Issues are dismissed without the requirement for further action to be taken. If the parties are able to so resolve any such Issues, the party that has raised the Issue will not be required to provide an Initial Early Warning Notice in respect of the Issue in accordance with paragraph (c).
- (c) Notwithstanding paragraph (b), within ten (10) Business Days of:

for Issues as described in clauses 33.1(a)(i) and 33.1(a)(iii), the earlier of:

- (A) the date when the party that has raised the Issue first became, or could reasonably have become, aware of the occurrence of the Issue; and
- (B) the date when the party that has raised the Issue could reasonably have been aware of the entitlement to raise the Issue; and

for Issues as described in clause 33.1(a)(ii), the expiry of the relevant timeframes or time periods contemplated in clause 33.1(a)(ii) for resolution of the Matter which gives rise to the Issue,

the party that has raised the Issue must provide an **Initial Early Warning Notice** in accordance with section 1(d) for discussion at the next occurring **Commercial Management Meeting** or the **Delivery Management Meeting** (as appropriate), or at a specially convened meeting of the Commercial Management Meeting or the Delivery Management Meeting (as appropriate) at a time agreed by both parties where the next occurring meeting is not scheduled to occur within five (5) Business Days of recipient party's receipt of the Initial Early Warning Notice.

- (d) If the whole or any part of an Issue raised in the **Initial Early Warning Notice** is not resolved at the **Commercial Management Meeting** or the **Delivery Management Meeting** (as appropriate), then, within ten (10) Business Days of such meeting, the party that has raised the Issue must deliver a **Detailed Early Warning Notice** in accordance with section 1(d) for further discussion of the Issue at the **Commercial Management Meeting** or the **Delivery Management Meeting** (as appropriate).
- (e) Where the Contractor is the party that has raised the Issue, within ten (10) Business Days of the date TfNSW receives a Detailed Early Warning Notice, TfNSW may request the Contractor to provide additional information and materials and the Contractor must provide the additional information and material as a re-submission of the Detailed Early Warning Notice within such time as reasonably required by TfNSW.
- (f) Subject to section 1 (General Principles) and paragraphs (g) and (h):
 - (i) within five (5) Business Days of the receiving party's receipt of the Detailed Early Warning Notice under paragraph (d) (or, where the Contractor has raised the Issue, the later to occur of TfNSW's receipt of the Detailed Early Warning Notice under paragraph (d) and TfNSW's receipt of additional information and materials under paragraph (e) (if applicable)), the parties agree to convene the **Commercial Management Meeting** or the **Delivery Management Meeting** (as appropriate) to discuss and seek to resolve the **Detailed Early Warning Notice**. The parties agree that the Commercial Management Meeting and the Delivery Management Meeting are solely empowered to resolve Issues such that those Issues are dismissed without the requirement for further action to be taken;

within two (2) Business Days of the meeting of the Commercial Management Meeting or the Delivery Management Meeting (as appropriate) referred to in paragraph (i) either party may escalate the Issue to the **Contract Representatives Meeting** by notice under section 1(d) if the whole or any part of an Issue raised in the Detailed Early Warning Notice is not resolved (as anticipated in paragraph (i)) at such meeting;

within three (3) Business Days of the receiving party's receipt of a notice under paragraph (ii), the parties agree to convene the **Contract Representatives Meeting** to discuss and seek to resolve the **Detailed Early Warning Notice**;

in respect of Issues raised by the Contractor only, if the Contract Representatives Meeting is unable to resolve the Issue, the TfNSW Representative may (at its sole discretion) elect to make a unilateral determination in respect of the Issue, in which case the Contractor may elect to either:

- (A) approve such determination (which determination will then be final and binding), in which case the Contractor must issue a Withdrawal Notice in accordance with section 2.4(a)(i), or
- (B) reject such determination, in which case paragraph (v) will apply;

if:

- (A) in respect of Issues raised by the Contractor only, the TfNSW Representative elects not to exercise its right under paragraph (iv); or
- (B) in respect of Issues raised by TfNSW only, if the meeting of the Contract Representatives Meeting referred to in paragraph (iii) is unable to resolve the whole or any part of the Issue,

then within two (2) Business Days of the meeting of the Contract Representatives Meeting referred to in paragraph (iii) either party may escalate the Issue to the **Program Executive Forum** by notice under section 1(d);

- (vi) within three (3) Business Days of the receiving party's receipt of a notice under paragraph (v), the parties agree to convene the **Program Executive Forum** to discuss and seek to resolve the Issue. If the parties are able to resolve the Issue at the meeting of the Program Executive Forum but such that the Issue requires further action to be taken in respect of it, the resolution will be raised for ratification at the next occurring **Contract Representatives Meeting**, or at a specially convened meeting of the Contract Representatives Meeting at a time agreed by both parties where the next occurring meeting is not scheduled to occur within five (5) Business Days of the Issue having been resolved at the meeting of the Program Executive Forum;
- (vii) within five (5) Business Days of the meeting of the Program Executive Forum referred to in paragraph (f)(vi) either party may escalate the Issue to the **Executive Forum** by notice under section 1(d) if the whole or any part of the Issue is not resolved at such meeting;
- (viii) within five (5) Business Days of the receiving party's receipt of a notice under paragraph (f)(vii), the parties agree to convene the **Executive Forum** to discuss and seek to resolve the Issue. If the parties are able to resolve the Issue at the meeting of the Executive Forum but such that the Issue requires further action to be taken in respect of it, the resolution will be raised for ratification at the next occurring **Contract Representatives Meeting**, or at a specially convened meeting of the Contract Representatives Meeting at a time agreed by both parties where the next occurring meeting is not

scheduled to occur within five (5) Business Days of the Issue having been resolved at the meeting of the Executive Forum; and

- (ix) if the meeting of the Executive Forum referred to in paragraph (f)(viii) is unable to resolve the whole or any part of the Issue, either party may notify the other party under section 1 (Disputes) of Schedule 19 (Dispute Resolution Procedures).
- (g) If a regular meeting of the meeting or forum as outlined in Schedule 18 (Governance and Management) is not scheduled to occur within the timeframes required in paragraph (f), then the parties must convene a special meeting or forum to meet at a time that is agreed but within the timeframes required by paragraph (f).
- (h) If, at any point in the Issue Resolution Procedures set out in this section 2.1 (Issue Resolution Process), TfNSW is of the view that an Issue the subject of an Initial Early Warning Notice or Detailed Early Warning Notice involves one or more Interface Contractors or Rail Transport Entities, then TfNSW may notify the Contractor that it proposes to include appropriate representatives of such Interface Contractors and/or Rail Transport Entities in discussions with the Contractor as part of the Issue Resolution Procedures, or refer the matter to such other multi-party forum nominated by TfNSW.

2.2 Prescribed Notices

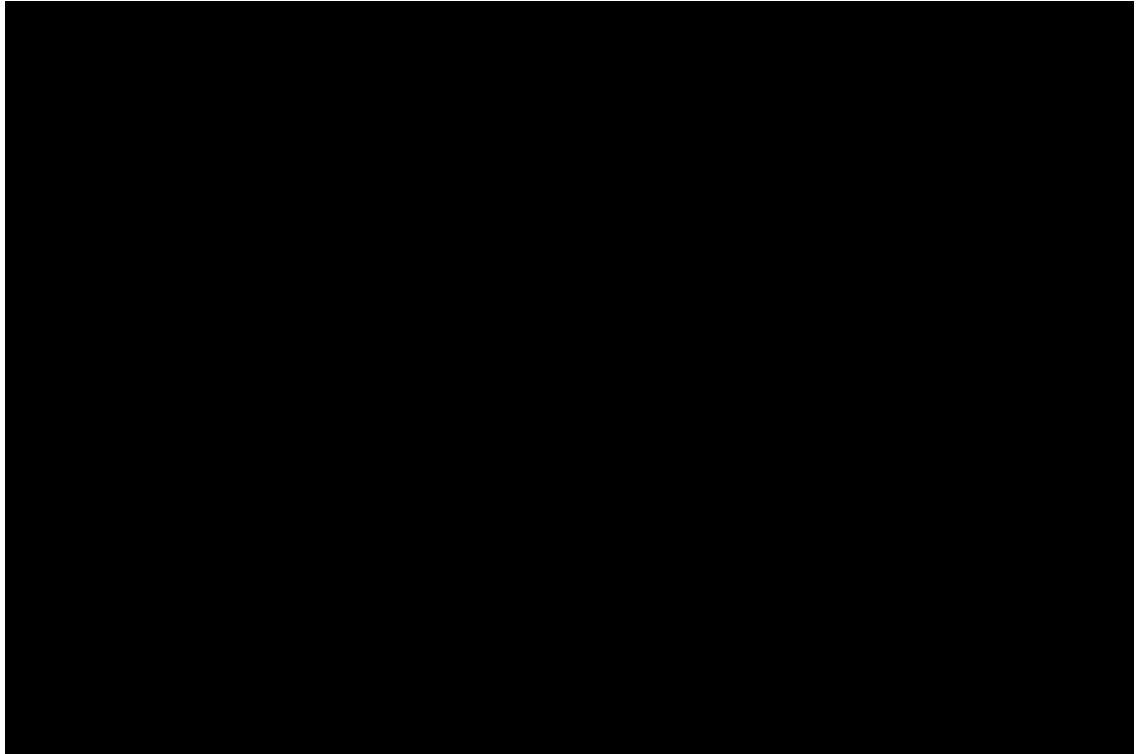
- (a) For the purposes of section 2.1(c), an Initial Early Warning Notice must:
 - be expressly identified as an Initial Early Warning Notice given under section 2.1(c);
 - identify if the matter upon which the Initial Early Warning Notice is based has already been notified to the recipient party by the party that has raised the Issue (by number);
 - set out general details of the matter upon which the Initial Early Warning Notice is based;
 - set out the activities or Contractor's Activities affected; and
- (v) identify whether the matter is likely to affect the cost, completion, progress or quality of the Contractor's Activities, the Program, the services of an Other Contractor, the delivery of the functions of a Rail Transport Entity, or the System.
- (b) For the purposes of section 2.1(d), a Detailed Early Warning Notice must:
 - be expressly identified as a Detailed Early Warning Notice given under section 2.1(d);
 - set out detailed particulars of the Issue, including the date or dates of the Matter referenced in the Detailed Early Warning Notice and identify what Issue (if any) is based on that Matter;
 - attach the key documents and other materials that are relevant to the Detailed Early Warning Notice and relied on in support of any Issue;

set out the legal basis for the Issue (if any), whether based on a term of this Agreement or otherwise, and if based on a term of this Agreement, clearly identifying the specific term;

- (v) contain any such other information required by the recipient party;
- (vi) in the case of an Issue raised by the Contractor and involving an extension of time request or a request for compensation in connection with a Compensation Event, set out:
 - (A) the estimated duration of the delay;
 - (B) the mitigation being effected;
 - (C) the activities being affected;
 - (D) the number of days for which the extension of time is claimed, together with the basis of calculating that period, including evidence that:
 - the delay involves an activity which is critical to the maintenance of progress in the performance of the Contractor's Activities and which will delay it in achieving a Milestone by the applicable Milestone Date; and
 - the conditions precedent to any extension of time in clause 15.3(b) have been satisfied;
 - (E) an updated Contractor's Program that supports the number of days' extension of time claimed;
 - (F) a detailed delay analysis referenced to the Program setting out the Contractor's Activities affected and the logic supporting the raising of the Issue;
 - (G) a detailed explanation for delay and such other information required by TfNSW; and
 - (H) if required by TfNSW, an Action Plan, including the steps that have been taken and are being taken to manage the delay and its causes;
 - (I) without limiting paragraph (vii), where clause 15.6(a) applies, full details of the amounts claimed and how it has been calculated; and
- (vii) in the case of an Issue involving a financial remedy, set out:
 - (A) information concerning the nature of the pricing, costs, loss or damages suffered or incurred;
 - (B) details of the amount claimed and how it has been calculated;
 - (C) the mitigation being effected;
 - (D) where the Issue is to be assessed by reference to a clause in the Agreement, detailed particulars and quantification of the matters required pursuant to that clause;

- (E) where the Issue is for loss or damages, details of the Losses actually incurred; and
- (F) detailed financial justification (including accounting records) for the Issue.

2.3 Bar



2.4 Agreement

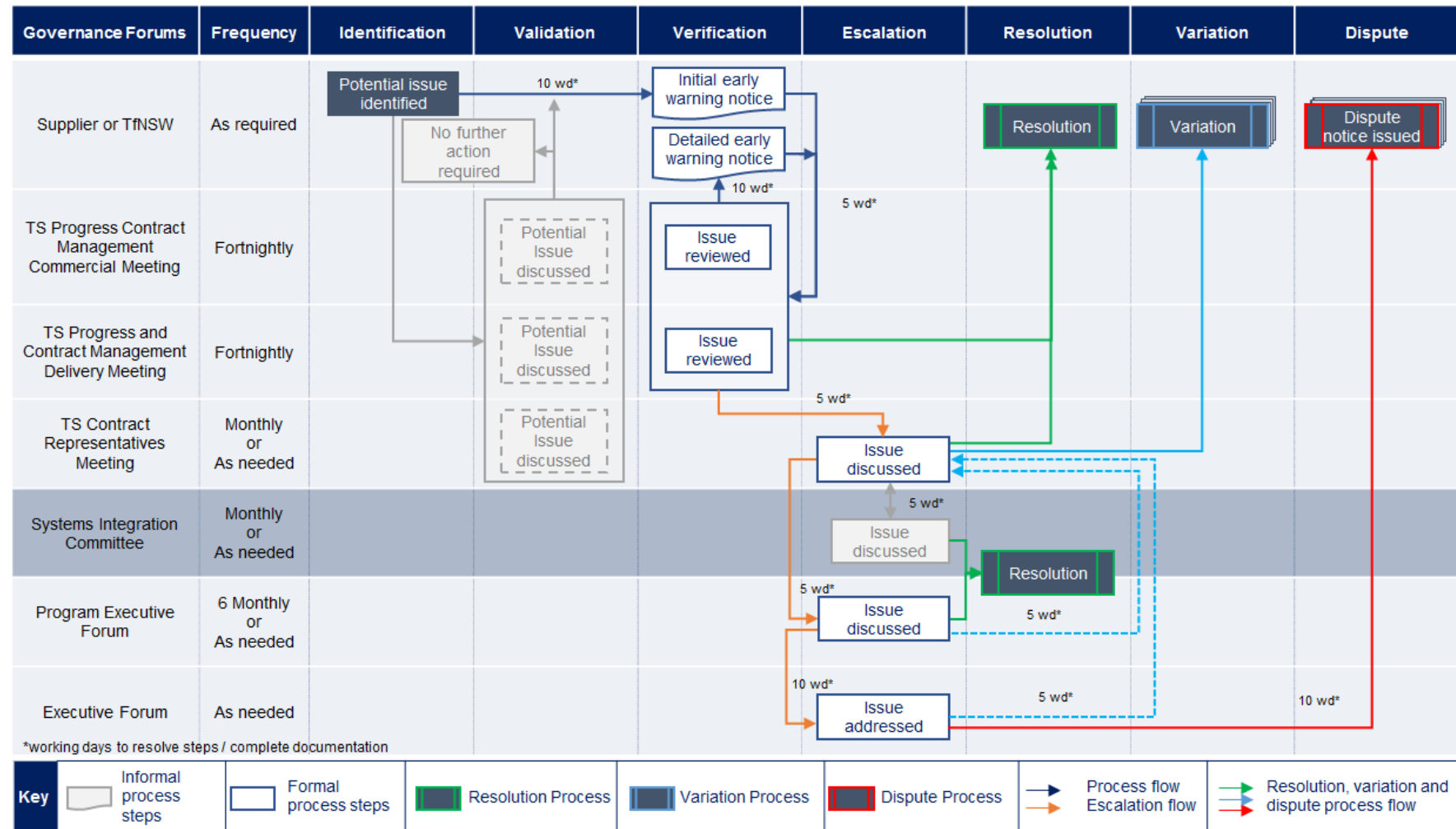
- (a) If agreement is reached by the parties in relation to all or any part of a matter raised in an Initial Early Warning Notice or a Detailed Early Warning Notice in any of the meetings or forums set out in section 2.1 (Issue Resolution Process) or otherwise, then:
 - (i) the party that has raised the Issue must promptly issue a notice to the other party withdrawing such agreed matters, setting out, in detail, the extent of the withdrawal (**Withdrawal Notice**);
 - (ii) the receiving party may confirm the Withdrawal Notice or notify the party that has raised the Issue that the Withdrawal Notice does not accurately describe the agreement that has been reached; and

if the receiving party confirms the Withdrawal Notice then such matters will be deemed to be settled to the extent of such confirmation and the receiving party will be released from any liability to the party that has raised the Issue to the extent of any such confirmation.
- (b) If the receiving party does not confirm the Withdrawal Notice within five (5) Business Days of the date of the Withdrawal Notice being received by the receiving party, then the parties must meet within five (5) Business Days in order to agree on the Withdrawal Notice, or failing such agreement the matter must continue to be



escalated between the parties in accordance with the process set out in section 2.1 (Issue Resolution Process).

Attachment A Issue Resolution Procedure



Schedule 19 Dispute Resolution Procedure

1 Disputes

1.1 Dispute Notice

- (a) Subject to section 1(d) of Schedule 18 (Issue Resolution Procedure) and clause 33.1(g), either party may notify the other party of a Dispute by provision of a Dispute Notice in accordance with paragraph (b), in which case the parties must follow the Dispute Resolution Procedures set out in this Schedule 19.
- (b) The Dispute Notice must:
 - (i) be expressly identified as a Dispute Notice under paragraph (a);

specify the Issue in dispute;

provide detailed particulars of the party's reasons for being dissatisfied, including the relevant matters of fact and Law;

set out the position which the party believes is correct both in relation to liability and quantum;

provide detailed particulars of the quantum of the matters in dispute; and
 - (vi) if applicable, set out any information, bases of claim or other matters that differ from the matters provided to the other party under section 2.2(b) of Schedule 18 (Issue Resolution Procedure).
- (c) Within ten (10) Business Days of the receiving party's receipt of a Dispute Notice under paragraph (a), the parties must convene a meeting of the **Executive Forum** to meet and discuss whether the parties can agree on a resolution to the Dispute or, if the parties are unable to agree on a resolution, whether the parties can agree to refer:
 - (i) the Dispute to mediation or for expert determination; and /or
 - (ii) a preliminary issue in respect of liability or quantum to a mediator or expert,provided that neither party may institute mediation or expert determination without the prior written agreement of the other party in the form included in Attachment B (ADR Agreement) or on such other terms as agreed in writing.
- (d) If the parties have not otherwise resolved the Dispute within twenty (20) Business Days of the Executive Forum first meeting in accordance with paragraph (c), either party may refer the Dispute to arbitration under section 1.3 (Arbitration) by notice to the other party, and the Dispute must be resolved by way of arbitration and not by way of court proceeding.
- (e) Where TfNSW acting reasonably considers that a Dispute involves one or more Interface Contractors or Rail Transport Entities, then TfNSW may, by agreement with such Interface Contractors and Rail Transport Entities, join them to a multilateral mediation or expert determination, and the Contractor must accept their joinder to the multilateral mediation or expert determination.

1.2 Expert Determination

- (a) Where the parties agree to refer the Dispute to expert determination under section 1.1(c) (**Expert Referral Date**), the Dispute must, where permitted by law, be submitted to an expert for final and binding determination in accordance with the process set out in Attachment A (Expert Determination Process).
- (b) Subject to paragraph (c), the expert determination will be conducted in accordance with and subject to The Resolution Institute (Australia) Expert Determination Rules (or, if the Resolution Institute ceases to exist, the Rules for Expert Determination of the Law Society of New South Wales). The rules governing the process for the expert determination may only be varied by written agreement of the parties and the expert.
- (c) Rule 2 of The Resolution Institute (Australia) Expert Determination Rules (or Rule 2 of the Rules for Expert Determination of the Law Society of New South Wales if applicable) regarding appointment of the expert will not apply. The expert must be appointed in accordance with the Expert Determination Rules described in Attachment A (Expert Determination Process).
- (d) The determination of the Dispute must be completed within a timeframe reasonably nominated by TfNSW of the date of the expert's acceptance of the appointment (or such other period as agreed in writing between TfNSW, the Contractor and the expert).
- (e) Each party must bear its own costs in respect of any expert determination and pay half of the expert's costs, irrespective of the expert determination.

1.3 Arbitration

- (a) The parties agree that where a Dispute is referred to arbitration under section 1.1(d):
 - (i) any such arbitration will be conducted according to the Australian Centre for International Commercial Arbitration Rules (ACICA Rules) and administered by the Australian Centre for International Commercial Arbitration;

the seat of the arbitration will be Sydney, Australia;

the tribunal is to consist of one arbitrator appointed according to the ACICA Rules;

the language of the arbitration is English;

subject to clause 63.3 (Indirect and consequential damages) and the limitation on liability in clause 63.1 (Limitations on liability), the arbitrator will have the power to grant all legal, equitable and statutory remedies, except punitive damages; and
 - (vi) section 24 of the *International Arbitration Act 1974* (Cth) will apply to an international arbitration.
- (b) By agreeing to conduct the arbitration in accordance with the ACICA Rules, the parties are not contracting out of the Model Law for the purpose of section 21 of the *International Arbitration Act 1974* (Cth).

- (c) Either party may give a notice to the other requiring the arbitration to be conducted in accordance with the ACICA Rules dealing with expedited arbitration.
- (d) The parties agree that the arbitrator may, on the application of either party, allow an Interface Contractor or Rail Transport Entity who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. The arbitrator may make a single final award, or separate awards, in respect of all parties joined in the arbitration.
- (e) The parties agree to the following further general principles relating to the procedure of the arbitration:

that the parties have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;

that any arbitration will not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal; and

that in conducting the arbitration, the arbitrator must take into account the matters set out at in paragraphs (i) and (ii), particularly in deciding issues such as:

- (A) the number of written submissions that will be permitted;
- (B) where appropriate, the length of written submissions;
- (C) the extent of document discovery permitted, if any;
- (D) the consolidation of proceedings, when requested;
- (E) the joinder of parties, when requested;
- (F) the length of any hearing, if any; and
- (G) the number of experts, if any, each party is permitted to appoint.

- (f) Any award of the arbitrator will be final and binding upon the parties.

1.4 Linked Claims

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Gilbert + Tobin

Attachment A Expert Determination Process

1 Expert Determination Process

1.1 Expert Determination Appointment Rules

Any expert determination under section 1.2 (Expert Determination) of Schedule 19 (Dispute Resolution Procedure) is to be conducted by:

- (a) an independent industry expert agreed in writing by the Contractor and TfNSW. For this purpose, each party will nominate two (2) preferred independent industry experts within ten (10) Business Days of the Expert Referral Date; or
- (b) an independent industry expert appointed by the Resolution Institute (or, if the Resolution Institute ceases to exist or ceases to nominate experts to resolve an expert determination process, the President of the Law Society of New South Wales) where:

the parties are unable to agree upon an independent industry expert within thirty (30) Business Days after the Expert Referral Date; or

an agreed independent industry expert:

- (A) is unavailable;
- (B) declines to act; or
- (C) does not respond within three (3) Business Days to a request from the parties for advice as to whether he or she is able to conduct the determination.

1.5 Expert Determination Appointment Agreement

The parties must enter into an agreement with the appointed expert on the terms prescribed in the Expert Determination Appointment Agreement or such other terms as the parties and the expert agree.

EXPERT DETERMINATION APPOINTMENT AGREEMENTTo: **[Expert]**

By the Trackside Delivery Agreement dated (**Agreement**) between TfNSW and Siemens Mobility Pty Ltd (**Contractor**) the parties agreed to submit certain Disputes to an expert for determination through an expert determination process under the Agreement.

A Dispute has arisen between the parties. A summary of the Dispute is attached. The parties agree to appoint you to act as the expert to determine the Dispute in accordance with the procedure described under the Agreement.

The expert determination will be conducted in accordance with and subject to The Resolution Institute (Australia) Expert Determination Rules (or, if the Resolution Institute ceases to exist, the Rules for Expert Determination of the Law Society of New South Wales) (excluding Rule 2 regarding appointment of the expert). The rules governing the process for the expert determination may only be varied by written agreement between you, TfNSW and the Contractor.

The parties agree to pay you an amount calculated as follows: **[insert]**.

The determination of the Dispute must be completed within sixty (60) Business Days (or such other period as may be agreed in writing between you, TfNSW and the Contractor) of the date of your acceptance of this appointment.

Dated:

For TfNSW

For the Contractor

For the expert

Attachment B ADR Agreement

By the Trackside Delivery Agreement dated (**Agreement**) between TfNSW and Siemens Mobility Pty Ltd (**Contractor**) the parties agreed to discuss:

- (a) whether referral for mediation or to expert determination may be an appropriate forum for resolving a Dispute the subject of a Dispute Notice; and
- (b) whether to refer a preliminary issue in respect of liability or quantum which is the subject of a Dispute Notice to a mediator or expert.

A Dispute has arisen between the parties. A copy of the Dispute Notice is attached. The parties have discussed the Dispute and agreed to appoint:

- (c) an expert to determine the Dispute in accordance with section 1.1(c)(i) of Schedule 19 (Dispute Resolution Procedure); or
- (d) an expert to determine a preliminary issue in respect of liability or quantum (**Preliminary Issue**) in accordance with the procedure described under section 1.1(c)(ii) of Schedule 19 (Dispute Resolution Procedure); or
- (e) a mediator to endeavour to settle the Dispute by mediation conducted in Sydney, Australia in accordance with section 1.1(c)(i) of Schedule 19 (Dispute Resolution Procedure) and subject to The Resolution Institute (Australia) Mediation Rules (or, if the Resolution Institute ceases to exist, the ACICA Mediation Rules); or
- (f) a mediator to endeavour to settle a preliminary issue in respect of liability or quantum (**Preliminary Issue**) by mediation conducted in Sydney, Australia in accordance with section 1.1(c)(ii) of Schedule 19 (Dispute Resolution Procedure) and subject to The Resolution Institute (Australia) Mediation Rules (or, if the Resolution Institute ceases to exist, the ACICA Mediation Rules).

[NOTE: select one of the alternatives from (c) to (f) and insert details of the Preliminary Issue, if applicable]

- (g) The parties agree the Preliminary Issue to be referred to the mediator/expert **[delete as applicable]** will be **[details to be inserted]**. Pending resolution of the expert determination/completion of the mediation concerning the Preliminary Issue **[delete as applicable]** the Dispute shall be otherwise stayed.
- (h) Nothing in this ADR Agreement will prejudice the right of a party to seek urgent injunctive relief from a court.
- (i) All capitalised terms used in this ADR Agreement have the meaning under the Agreement, unless the context otherwise requires.

Dated:



Schedule 20 Disengagement



Transport
for NSW

Trackside Package
Delivery Agreement
Digital Systems Program
Schedule 20 – Disengagement

Contract Number:

IPD-19-7822A

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1. Introduction

1.1. Introduction

- (a) This Schedule, together with clause 59 (Disengagement) of the Agreement, sets out the Contractor's obligations in relation to Disengagement.

1.2. Scope

- (a) The Contractor must provide the Disengagement Services set out in this Schedule, which include:
 - (i) general Disengagement assistance, as specified in section 2 (General Disengagement Assistance) of this Schedule, which must be provided by the Contractor throughout the Term and as requested by TfNSW in accordance with this Schedule (**General Disengagement Assistance**);
 - (ii) provision of the Disengagement Plan for approval by TfNSW in accordance with section 3 (Preparation and Approval of Disengagement Plan) of this Schedule; and
 - (iii) specific Disengagement assistance, as specified in section 4 (Specific Disengagement Assistance) of this Schedule, which must be provided by the Contractor during the Disengagement Period in respect of any Removed Services.
 - (b) For the purpose of this Schedule, the term '**Removed Services**' refers to those Contractor's Activities which are removed from the scope of the Agreement as a result of one or more of the following events:
 - (i) expiry of the Agreement (in whole or in part, including any SOW);
 - (ii) termination of the Agreement (in whole or in part, including any SOW) for any reason; and
 - (iii) termination of any of the Contractor's Activities (or any part of any of the Contractor's Activities) for any reason.
 - (c) The Contractor must provide the Specific Disengagement Assistance in section 4 from the Disengagement Commencement Date (i.e. the date specified in a notice by TfNSW (which may be a date prior to the expiry or termination of this Agreement or the relevant Contractor's Activities)) and for so long as is necessary to enable to achievement of the objectives of this Schedule (including those set out in section 1.3 (Objectives)), up to a maximum period of three (3) years from the Disengagement Commencement Date (or as otherwise directed by TfNSW) (**Disengagement Period**).
- ### 1.3. Objectives
- (a) The objectives of the Disengagement Services are, amongst other things:
 - (i) to enable TfNSW to assess options for substitution of the Removed Services and the planning for and conduct of tender, re-negotiation or other selection processes (including in-source evaluation);

- (ii) to enable TfNSW to plan for the transition of the Removed Services from the Contractor to TfNSW or a Replacement Contractor;
- (iii) to enable TfNSW to transition the Removed Services from the Contractor to TfNSW or a Replacement Contractor;
- (iv) to enable TfNSW or a Replacement Contractor to perform the Removed Services in substitution for the Contractor from handover of the Removed Services; and
- (v) to eliminate or minimise any disruption or deterioration of the Contractor's Activities, the System or the Network during and as a result of Disengagement.

1.4. TfNSW Nominees

- (a) The Contractor acknowledges that, from time to time in connection with the Disengagement and the performance of its obligations under this Schedule and the Disengagement Plan, TfNSW may require the Contractor to engage with persons nominated by TfNSW, including any Replacement Contractor as though it was engaging with TfNSW under this Agreement. In such circumstances, the Contractor must engage with such persons in accordance with TfNSW's request.

2. General Disengagement Assistance

2.1. Assistance with Assessments, Tenders and other Processes

- (a) Notwithstanding clause 59.2 (Provision of Disengagement Services) of the Agreement, at any time requested by TfNSW during the Term (whether or not the Removed Services have actually been removed from the scope of the Agreement) the Contractor must provide reasonable assistance to TfNSW in relation to assessing options for substitution of any or all of the Contractor's Activities and the planning for and conduct of tender, re-negotiation or other selection processes (including in-source evaluation), including the provision of all documentation required by TfNSW in accordance with section 2.2 (Provision of Information and Documentation) below and reasonable assistance in providing knowledge and information relevant to the Contractor's Activities, to support TfNSW in developing the following:
 - (i) performance histories related to the Contractor's Activities and the Trackside Subsystem;
 - (ii) inventories of Assets and Third Party contracts related to the Contractor's Activities and the Trackside Subsystem;
 - (iii) inventories of data and documentation related to the Contractor's Activities;
 - (iv) technical and environment descriptions related to the Contractor's Activities and the Trackside Subsystem;
 - (v) technical and / or operational training materials; and
 - (vi) scope of service descriptions.

2.2. Provision of Information and Documentation

- (a) Notwithstanding clause 59.2 (Provision of Disengagement Services) of the Agreement, the Contractor must also provide, within thirty (30) days of receipt of a notice from TfNSW (which may be issued at any time, and whether or not the Removed Services have actually been removed from the scope of the Agreement), all information and documentation required by TfNSW in respect of any planning or assessment by TfNSW relating to any aspect of Disengagement of the Contractor's Activities and the planning for and conduct of tender, re-negotiation or other selection processes (including in-source evaluation). This may include any of the documentation listed in Appendix A (Disengagement Documentation and Data) to this Schedule.
- (b) The Contractor must ensure that all documentation provided to TfNSW under this section 2.2 (Provision of Information and Documentation):
 - (i) is in the format specified by TfNSW (acting reasonably) in its notice (and, where no format is specified, in soft copy format where applicable) and that the documentation is otherwise readable and useable by TfNSW using existing functionality that is available to TfNSW; and
 - (ii) is in a form that will not restrict TfNSW's ability to use the information as part of any assessment or other selection process, including by disclosing the information and documentation publicly or to select Third Parties, provided that

such documentation may only be disclosed by TfNSW to Third Parties that are subject to reasonable confidentiality obligations relating to their use of such documentation and that the use of such documentation is limited in accordance with the scope of the licence in clause 37.3 (Contractor-Licensed IP).

- (c) Without limiting the foregoing, the Contractor must also provide (together with ongoing rights to use) all design & testing and other Tools and associated documentation required to enable TfNSW (or its nominee(s)) to test and commission changes to the Trackside Subsystem with the support of the Contractor.
- (d) Any Contractor Confidential Information provided to TfNSW pursuant to this section 2.2 is subject to clause 40 (Confidentiality) of the Agreement, and the use and disclosure as contemplated by sections 2.2 and 2.3 is permitted use and disclosure under clause 40 (Confidentiality) of the Agreement.

2.3. Use, Copying and Modification of Documentation

- (a) The Contractor must permit:
 - (i) the use, disclosure, copying and modification by TfNSW of all documentation, information and data provided by the Contractor under this Schedule for the purposes of any assessment or selection process; and
 - (ii) the use, disclosure, copying and modification of such documentation, information and data by Third Parties such as potential Replacement Contractors participating in the process subject to those Third Parties being subject to reasonable confidentiality obligations relating to their use of such documentation, information and data and that their use is limited in accordance with the scope of the licence in clause 37.3 (Contractor-Licensed IP).

2.4. No Interference

- (a) The Contractor must not interfere in any tender or other such processes conducted by TfNSW, and must comply with all reasonable Directions of TfNSW concerning participation in such process.

3. Preparation and Approval of Disengagement Plan

3.1. Preparation of Disengagement Plan

- (a) No later than 180 days after the Commencement Date, the Contractor must provide to TfNSW for approval a Disengagement Plan that meets the requirements of the Agreement (including this Schedule). The Disengagement Plan provided by the Contractor must provide a description of all tasks and activities necessary or desirable to conduct Disengagement as efficiently and effectively as possible (including a list of those things the parties did at the start of this Agreement to effect the implementation of the Trackside Subsystem and the Contractor's Activities). At a minimum, the Disengagement Plan must, unless otherwise agreed in writing by TfNSW, address the following:
 - (i) approach and strategy for the Disengagement, including in relation to ensuring continuity of the Contractor's Activities and the Trackside Subsystem;
 - (ii) methodology and processes for Disengagement, including:
 - A. the process describing how the Contractor will comply with the project closing requirements of AS/NZS ISO/IEC 15288; and
 - B. if applicable, the processes for managing the Disengagement process describing how the Contractor will comply with the requirements of the TLS Agreement and, in particular, the Disengagement process set out in clause 51 (Disengagement) of the TLS Agreement;
 - (iii) tasks, activities, Milestones, Contractor's Activities and Assets;
 - (iv) allocation of roles and responsibilities between the Contractor and TfNSW or its selected Replacement Contractor;
 - (v) a timeline and schedule to execute all of the activities set out in the Disengagement Plan and complete Disengagement by the expiry of the relevant Disengagement Period, including a Disengagement project schedule in MS Project format;
 - (vi) details of the Contractor Personnel who are proposed to perform the Disengagement Services (including number of FTEs & skills and experience of such Contractor Personnel);
 - (vii) processes for managing all legal arrangements pertinent to the Assets which will require transfer, assignment or novation from the Contractor to TfNSW or its authorised nominees (including its selected Replacement Contractor), including:
 - A. contracts;
 - B. interfaces;
 - C. agreements;
 - D. warranties and guarantees;

- E. Intellectual Property Rights in Assigned IP, Contractor-Licensed IP to which TfNSW has been granted a licence extending beyond the Term in accordance with this Agreement, and pursuant to section 4.6 of this Schedule; and
 - F. supply and procurement arrangements;
- (viii) if requested, processes describing what will be required to ensure all Assets are at the target condition by the end of the Disengagement Period;
 - (ix) processes describing how the Contractor will manage the transition of the Assets from the Contractor to TfNSW and/or any authorised nominee (including its selected Replacement Contractor), including:
 - A. notifying the location and condition of each Asset;
 - B. provision of learning and assessment;
 - C. provision of Spares and consumables; and
 - D. provision of Tools;
 - (x) approach to assignment or novation of any subcontracts and any other Third Party contracts to ensure effective transition;
 - (xi) the transfer of any licences;
 - (xii) access to premises and systems;
 - (xiii) cut-over strategies;
 - (xiv) testing strategy, acceptance procedure and criteria;
 - (xv) training strategy (including training of the staff of TfNSW / the Replacement Contractor, as applicable) and plans for facilitating knowledge transfer;
 - (xvi) security requirements, including the transfer of security entitlements, passes, contractor identification, procurement entitlements, or any other related matters;
 - (xvii) the processes describing how the Contractor will manage all configuration change, safety, environment, and quality actions to be closed out by the Contractor before handover;
 - (xviii) process for return to TfNSW of, or destruction of (at TfNSW's election), Materials, data and TfNSW's Confidential Information;
 - (xix) communication plan;
 - (xx) interdependencies;
 - (xxi) risk management;
 - (xxii) a preliminary meeting between TfNSW, the Contractor and any Replacement Contractor to discuss the execution of the Disengagement Plan and identify the status of any issues facing the Contractor's Activities;

(xxiii) the handover of :

- A. all operational data required for the efficient disengagement and/or transition of the system;
- B. all documents related to the Contractor's Activities that are Assigned IP or Contractor-Licensed IP to which TfNSW has been granted a licence extending beyond the Term in accordance with this Agreement;
- C. a summary of issues identified by the Contractor during the performance of the Contractor's Activities, the key decisions related to those issues and the history of those decisions;
- D. correspondence with any Rail Transport Entity or Government Authority; and
- E. all other records which are Assigned IP or Contractor-Licensed IP to which TfNSW has been granted a licence extending beyond the Term in accordance with this Agreement,

in a form readily useable by TfNSW or any Replacement Contractor;

(xxiv) a post-implementation review meeting (at TfNSW's discretion) between TfNSW, the Contractor and, if required by TfNSW, any Replacement Contractor; and

(xxv) any other transition arrangements reasonably requested by TfNSW or otherwise necessary to enable TfNSW or the Replacement Contractor to seamlessly perform the Contractor's Activities immediately after their termination or expiry, with minimal risk, disruption, hindrance or discontinuity.

- (b) To the extent that the Disengagement Plan does not deal with any of the matters referred to above, such matters will be deemed to be incorporated into the Disengagement Plan, and the Contractor must comply with the requirements contemplated above and do so in a timely manner.

3.2. Updating the Disengagement Plan

- (a) The Contractor must, at its own cost, update the Disengagement Plan at least every twelve (12) months during the Term (including as may be necessary to reflect any changes in the Contractor's Activities), and must submit the updated Disengagement Plan for Review. The Disengagement Plan for the purposes of this Agreement will be the most current version of the Disengagement Plan which has been approved in writing by TfNSW (which version will be deemed to replace the previous version of the Disengagement Plan).

3.3. Detailed Disengagement Plan

- (a) In addition to any obligations under clause 59 (Disengagement) of the Agreement, if requested by TfNSW, the Contractor must, within thirty (30) days of request by TfNSW or such longer period as approved by TfNSW (acting reasonably), prepare a detailed Disengagement Plan for Disengagement of specific Removed Services (**Detailed Disengagement Plan**). The Detailed Disengagement Plan is subject to approval by TfNSW and must, among other things:

- (i) to the extent relevant, be based on the updated Disengagement Plan approved by TfNSW in accordance with sections 3.1 (Preparation of Disengagement Plan) and 3.2 (Updating the Disengagement Plan) above;
- (ii) be prepared in consultation with TfNSW and take account of TfNSW specific requirements and any obligations for the Disengagement;
- (iii) provide names and details of the Contractor Personnel that will provide the Disengagement Services, including the following details in respect of each Contractor Personnel proposed by the Contractor: name, role, proposed utilisation level, expected duration of allocation to the Disengagement and the Labour Rate for each such resource calculated in accordance with Schedule 11 (Pricing Terms);
- (iv) where the Contractor proposes a resource that also provides the Contractor's Activities (other than Disengagement Services), specify how that resource's time will be shared between delivery of the Contractor's Activities and performance of the Disengagement Services;
- (v) provide details of the migration assistance to be provided for the specific Disengagement including, as applicable, segregation and migration of environments, equipment, infrastructure, systems, tools, communication links, Software and data required in relation to the Disengagement or relating to specific business programs or specific TfNSW or business partners;
- (vi) as applicable, identify and provide details of the integration of environments, equipment, systems, tools, communication links, Software and data required in relation to the Disengagement, including integration between:
 - A. the Removed Services to be provided by TfNSW / a Replacement Contractor and the Contractor's Activities (if any) to be retained by the Contractor; and
 - B. TfNSW and any of TfNSW's business partners and external users; and
- (vii) if requested by TfNSW, provide a staged or phased Detailed Disengagement Plan.

3.4. TfNSW's Approval of the Disengagement Plans

- (a) Approval of the Disengagement Plan by TfNSW will not in any way limit the Contractor's obligations under the Agreement, including its obligations to provide the Disengagement Services in accordance with this Schedule.

4. Specific Disengagement Assistance

4.1. During the Disengagement Period

- (a) The Contractor must provide the Disengagement Services set out in this section 4 (Specific Disengagement Assistance) until:
 - (i) the acceptance criteria set out in the Disengagement Plan have been met, as reasonably determined by TfNSW; or

- (ii) the expiry of the Disengagement Period,
- as nominated by TfNSW.
- (b) Within ten (10) Business Days from the Disengagement Commencement Date, each party must appoint, and notify the other party of, a suitably qualified representative to act as its single point of contact for the Disengagement Services (each a **Disengagement Assistance Manager**).
- (c) The Contractor must conduct the Disengagement Services to meet the objectives specified in section 1.3 (Objectives) of this Schedule, including by:
 - (i) continuing to provide the Contractor's Activities for such period as may be requested by TfNSW in writing on a month to month basis (meaning TfNSW may terminate the requested Contractor's Activities by giving a month's notice), for which TfNSW will continue to pay the relevant Fees;
 - (ii) providing all information and assistance to, and answer questions from, TfNSW and the Replacement Contractor reasonably necessary to conduct the Disengagement as efficiently and effectively as possible;
 - (iii) using its best endeavours to mitigate TfNSW's costs resulting from the Disengagement, including TfNSW's costs in relation to Other Contractors;
 - (iv) continuing to provide the Contractor's Activities to the standards required under the Agreement;
 - (v) not making any material change to the level of service or number or Contractor Personnel assigned to perform Contractor's Activities under this Agreement;
 - (vi) ensuring the Contractor's Activities and day-to-day operations are not detrimentally affected subject to any agreed disruptions or outages as specified in the Disengagement Plan;
 - (vii) co-operating and working in conjunction with all parties involved in the transition of the Removed Services, including TfNSW, the Replacement Contractor and other Third Party suppliers to TfNSW involved in the Disengagement; and
 - (viii) complying with all instructions, protocols, procedures and Directions provided by TfNSW in relation to the conduct of the Disengagement of the Removed Services.

4.2. Knowledge Transfer

- (a) The Contractor must transfer knowledge regarding the Removed Services and the Trackside Subsystem to TfNSW by:
 - (i) providing TfNSW with all documentation, information and data reasonably required to enable TfNSW or a Replacement Contractor to assume responsibility for continued performance of the Removed Services in an orderly manner and so as to minimise disruption to the Trackside Subsystem and to TfNSW's business and operations, including provision, where applicable, of any of the documents, information and data listed in Appendix A (Disengagement Documents and Data) or updated versions if previously provided in accordance with section 2 (General Disengagement Assistance), and explaining any aspect of such documentation, information and data where requested to do so by TfNSW;

- (ii) explaining the impact of the Removed Services on TfNSW's business and the delivery of its critical business functions, including how those Contractor's Activities are delivered and managed in order to enable the achievement of TfNSW's critical business requirements (for example, what operational and management practices are applied to ensure the Removed Services are able to meet the standards for those described in the Agreement);
- (iii) explaining the procedures, operations, object libraries, reference files, operating scripts, management processes and other standards to TfNSW Personnel or the personnel of the Replacement Contractor (if different);
- (iv) explaining the use of materials, tools, procedures, equipment and Software in the delivery of the Contractor's Activities to TfNSW Personnel or the personnel of the Replacement Contractor (if different);
- (v) explaining the interfaces and interdependencies for all Removed Services and infrastructure used to deliver the Removed Services;
- (vi) explaining and reviewing all test, data and production Software libraries with TfNSW Personnel or the personnel of the Replacement Contractor (if different);
- (vii) introducing TfNSW Personnel or the personnel of the Replacement Contractor (if different) to Third Parties relevant to the delivery of the Removed Services (including, for example, Software suppliers and Third Party maintenance providers) and providing contact names and details for all such Third Parties;
- (viii) allowing TfNSW Personnel or the personnel of the Replacement Contractor (if different) to shadow Contractor Personnel in the provision of the Removed Services, including graduated handover of responsibilities to TfNSW Personnel or the personnel of the Replacement Contractor (if different);
- (ix) providing shadow Contractor Personnel for the Removed Services following migration to TfNSW or the Replacement Contractor; and
- (x) providing training and training documentation to facilitate the knowledge transfer to TfNSW Personnel or the personnel of the Replacement Contractor (if different).

4.3. Access

- (a) The Contractor must provide TfNSW with reasonable access to the Contractor's premises, Equipment and systems required for the purpose of effecting Disengagement of the Removed Services. This may include allowing TfNSW to load Software or tools onto equipment or systems under the Contractor's control and supervision for the purpose of preparing for and undertaking operational transition, subject to reasonable prior notice and compliance by TfNSW with reasonable security requirements.

4.4. Use, Copying and Modification of Documentation

- (a) The Contractor must permit:
 - (i) the use, copying and modification by TfNSW of all documentation, information and data to be provided under this Schedule for the purpose of providing the Specific Disengagement Assistance referred to in this section 4 (Specific Disengagement Assistance) or ensuring service continuity during and after the Disengagement Period, and

- (ii) the use, copying and modification of such information and documentation by Third Parties nominated by TfNSW such as the Replacement Contractor or Other Contractors preparing for and undertaking transition of the Removed Services to new service delivery arrangements, provided that such documentation may only be disclosed by TfNSW to Third Parties that are subject to reasonable confidentiality obligations relating to their use of such documentation.
- (b) Any Confidential Information provided to TfNSW pursuant to this section 4 (Specific Disengagement Assistance) is subject to clause 40 (Confidentiality) of the Agreement, and the use and disclosure as contemplated by section 4 (Specific Disengagement Assistance) is permitted use and disclosure under clause 40 (Confidentiality) of the Agreement.

4.5. Operational Transition

- (a) Without limiting clause 59 (Disengagement), as part of the Disengagement Services the Contractor must perform all activities required to effect a smooth Disengagement of operational responsibilities for the Removed Services and without impact on any Contractor's Activities that are not removed. This includes, to the extent applicable to the Removed Services and as requested by TfNSW, the following:
 - (i) providing all documentation, information and data requested in accordance with section 4.2(a) of this Schedule, including updated versions of documentation provided under section 2.2 (Provision of Information and Documentation) (updated for currency);
 - (ii) delivering Software (but excluding source code except as provided by (i) below) and SOE images for Software that is Contractor-Licensed IP and any Software purchased, leased or licensed by TfNSW under section 4.6, used to provide the Removed Services;
 - (iii) delivering object libraries, reference files, scripts and subject to section 4.6, software tools used to provide the Removed Services (but excluding source code except as provided by (i) below) relating to Software that is Contractor-Licensed IP and any Software purchased, leased or licensed by TfNSW under section 4.6;
 - (iv) delivering systems support profiles and monitoring and system logs;
 - (v) with respect to work in progress, stabilising such work in progress for continuity during Disengagement, and providing any required training requested in accordance with section 4.2 (Knowledge Transfer) of this Schedule to achieve Disengagement without loss of momentum or adverse impact on project timetables. For each work in progress, the Contractor will propose for TfNSW's review and approval, a Milestone and associated Acceptance Criteria that denotes the point at which the work in progress is considered 'suitable' for complete transfer of responsibility;
 - (vi) providing TfNSW with any incident or problem logs TfNSW does not already have;
 - (vii) freezing all or any discretionary Software changes, other than emergency Modifications necessary to address processing incidents and problems;
 - (viii) providing assistance in notifying Third Party suppliers of the procedure to be followed during Disengagement;

- (ix) novating or assigning Third Party contracts for Contractor's Equipment, Software or Contractor's Activities to TfNSW in accordance with the requirements of the Disengagement Plan;
- (x) transferring Assets to TfNSW in accordance with the requirements of this Schedule;
- (xi) providing reasonable assistance to TfNSW in establishing or transferring naming conventions;
- (xii) delivering to TfNSW all source code required to be provided to TfNSW under this Agreement (if not previously provided to TfNSW) in a form reasonably requested by TfNSW as well as delivering the source code, object code, technical specifications and Materials, and user documentation for the Software to TfNSW in respect of which:
 - A. is Assigned IP or is Contractor-Licensed IP to which TfNSW has been granted a licence pursuant to this Agreement to modify or adapt extending beyond the Term; and
 - B. any other material which a relevantly qualified programmer would require to modify or adapt that Software;
- (xiii) delivering the content listings of all relevant data files and copies of control file information to TfNSW;
- (xiv) providing reasonable assistance to TfNSW in loading the data files;
- (xv) providing reasonable assistance to TfNSW with the movement of data from then existing systems or databases to the new environment;
- (xvi) providing an image copy of each operating system environment in dump/restore mode to TfNSW;
- (xvii) in conjunction with TfNSW, participating in all migration planning activities;
- (xviii) providing reasonable assistance to TfNSW in the execution of testing, including conducting parallel operations and testing;
- (xix) conducting rehearsals of each migration prior to cut-over as scheduled by TfNSW;
- (xx) working in conjunction with TfNSW to conduct cut-over and migration of the Removed Services at times specified by TfNSW;
- (xxi) providing post cut-over and service stabilisation assistance following Disengagement of the Removed Services;
- (xxii) if requested by TfNSW, transferring the organisational structure developed during the Term to support the delivery of the Disengagement Services and Contractor's Activities. Specifically, the Contractor must:
 - A. document, update and provide functional organisation charts, operating level agreements with Third Party suppliers, phone trees, contact lists, and standard operating procedures; and

- B. transfer physical and logical security processes and tools, including cataloguing and tendering all badges and keys, documenting ownership and access levels for all passwords, and instructing TfNSW or its nominee in the use and operation of security controls;
- (xxiii) training and informing TfNSW or its nominee (including any Replacement Contractor) of the then-current policies and procedures with regard to backup and business continuity; and
- (xxiv) providing continuity of Contractor's Activities and operations throughout the Disengagement.

4.6. Offer to Transfer Contractor's Equipment, Software and Service Agreements

- (a) For the purposes of this section 4.6, the term **Software** excludes Software that is Contractor-Licensed IP.
- (b) TfNSW retains the right to purchase or lease any item of Contractor's Equipment or to license any tools or item of Software from the Contractor during a Disengagement (of all or part of the Contractor's Activities).



- (d) In relation to any Material that TfNSW wishes to continue to use, the Contractor must do all things as Directed by TfNSW that are necessary to effect that continued use, including:
 - (i) obtaining all necessary Third Party consents if possible; and
 - (ii) preparing and executing all required bills of sale, assignment and novation deeds.

4.7. Contractor's Equipment and Other Material

- (a) For Contractor's Equipment used to provide the Removed Services, at TfNSW request, the Contractor must sell or assign to TfNSW that Contractor's Equipment or lease that Contractor's Equipment, for the amounts calculated in accordance with Schedule 11 (Pricing Terms).

4.8. Third Party Contracts

- (a) The Contractor must, in relation to all goods and services used to deliver the Removed Services (including Software support and Contractor's Equipment maintenance contracts):
 - (i) use its best endeavours to include terms in any of the Contractor's contracts with Third Parties to enable the novation of such contracts to TfNSW at no cost; and
 - (ii) promptly notify TfNSW prior to entry into any such contract if the Contractor is unable to obtain the inclusion of such terms into the contract.

- (b) If novation rights were achieved under section 4.8(a)(i), at TfNSW's request, the Contractor must promptly perform all actions necessary to effect such novation of contracts.
- (c) If novation rights were not achieved under section 4.8(a)(i), at TfNSW's request, the Contractor must attempt again to use best endeavours to novate any of the Contractor's contracts to TfNSW at no cost.

4.9. Removal of Assets

- (a) The Contractor must give notice to TfNSW before removing any Contractor's Equipment or Software used in providing the Removed Services, documents or other Materials from TfNSW, Contractor or Third Party premises.
- (b) The Contractor must perform all activities requested by TfNSW in relation to:
 - (i) segregation and removal of Contractor's Equipment, Software, Materials, documents and other physical assets from TfNSW, Contractor or Third Party premises; and
 - (ii) the delivery to and installation of these items at the new premises at which they are to be installed.

4.10. Engaging Contractor Personnel

- (a) TfNSW or its nominee will be permitted to make offers of employment to hire, without interference from the Contractor, any Contractor Personnel involved in performing the Removed Services for the majority of their working time during the twelve (12)-month period before the start of the Disengagement Period.
- (b) TfNSW will notify Contractor of the Contractor Personnel to which it will extend offers of employment under this section 4.10 (Engaging Contractor Personnel) and consult with the Contractor on the process for doing so. However, this does not constrain TfNSW from retaining the services of Contractor Personnel who respond to any form of position vacant advertisement.
- (c) After notification by TfNSW or its nominee under this section 4.10 (Engaging Contractor Personnel), the Contractor must:
 - (i) waive any rights the Contractor may have under contracts with those Contractor Personnel restricting their ability to be recruited or hired by TfNSW or its nominee;
 - (ii) give TfNSW or its nominee reasonable access to such Contractor Personnel for interviews and recruitment;
 - (iii) consult with TfNSW before making any material changes to individual employee or contractor job designations or positions or reassigning those Contractor Personnel to other Contractor work or customers during the Disengagement Period; and
 - (iv) provide reasonable assistance to TfNSW, where appropriate, to obtain any authorisation from individual employees and contractors required for TfNSW to undertake the activities set out in this section 4.10.

4.11. Licences Granted by TfNSW

- (a) Unless expressly set out otherwise in the Disengagement Plan, and subject to the clauses of the Agreement that deal with such matters (including clause 37 (Intellectual Property)), all licences, leases and authorisations granted by TfNSW to the Contractor in relation to the Removed Services are terminated with effect from the expiry of the Disengagement Period, unless otherwise Directed by TfNSW.

Appendix A – Disengagement Documentation and Data

1. Volume and charge details for the period requested by TfNSW, including trending information.
2. Resourcing details including staff numbers, roles, functions, FTE utilisations by role, work volumes and hours by role, staffing locations,
3. Facilities details including costs, space requirements, environmental requirements, maintenance requirements and infrastructure/service requirements.
4. Historical performance of each equipment component, system and application.
5. Change management documentation and reports including change and release schedules, statistics, sample historical change profiles.
6. A copy of any CMDB, configuration and/or asset data base.
7. A full inventory of all equipment required to perform the Removed Services (whether exclusively or shared) including up-to-date and accurate asset numbers, serial numbers, make/model and specifications, maintenance histories, installation dates, end of life details, acquisition/lease details, warranty details, operating system Software and hardware details, locations, functionality and role, environment, installed applications, databases and middleware, Third Party maintenance agreements.
8. Net book values for equipment, as at the date specified by TfNSW.
9. Full lease details for all equipment that is under lease, whether such leases are in the name of TfNSW or Contractor, including details of lease pre-payments, remaining lease payments, residual lease values and early pay-out charges.
10. A full inventory, including up-to-date and accurate product descriptions, version numbers, currency, vendor details, licence and maintenance details, descriptions of function (including for proprietary Software) and the devices on which the Software is installed, for all Software and Hardware being provided under this Agreement and pursuant to this Schedule 20, including:
 - a) signalling and associated equipment;
 - b) system Software;
 - c) management tools;
 - d) middleware;
 - e) database Software;
 - f) office automation; and
 - g) applications.
11. Full details of all licence and maintenance fees applicable to the delivered inventory of Software and Hardware, including up-front, pre-paid and on-going fees and fees for growth, licence changes and additional modules.
12. A full inventory of all Third Party contracts applicable to the delivered inventory of Software and Hardware, including Software contracts, equipment contracts, lease contracts, maintenance contracts, and Third Party service provider contracts and copies of all such contracts.
13. To the extent known, the cost to TfNSW of continuing to use all equipment, Software and Third Party contracts for the performance of the Removed Services.
14. Technical specifications, schematics, diagrams and workbooks including service and configuration details, designs, copies of scripts and workflow information, connectivity and integration details.

15. Technology plans, refresh plans, asset upgrade plans.
16. Architecture standards and documentation.
17. Operational procedures and scripts for each device and component used to perform the Removed Services including start up and shut down procedures, back-up and recovery procedures, archiving and data retention procedures, installation, migration and release procedures, patch management procedures, production acceptance procedures, testing procedures, security procedures including access control, database administration procedures, scheduling procedures.
18. Documentation for all Contractor's Activities or Removed Services, where required in relation to relevant Software to be provided under this Schedule.
19. Details of databases and their management.
20. Content listings of all relevant requested data files and copies of control file information.
21. Security documentation including security audit reports, details of physical and logical security processes and tools, security standards, policies and procedures.
22. Business process documentation including workbooks.
23. An up-to-date and accurate list of all contract materials and the register of TfNSW, Contractor and Third Party intellectual property related to the Removed Services.
24. Details of work in progress including projects, work orders and additional Contractor's Activities work.
25. Disaster recovery plan and disaster recovery test results and reports.
26. Any other relevant information required by TfNSW to enable TfNSW to undertake the Removed Services.



Schedule 21 Business Continuity and Disaster Recovery

1 Business Continuity Plan

The Contractor:

- (a) must have, maintain and comply with a Business Continuity Plan which sets out the disaster recovery and business continuity processes to be implemented by the Contractor in the event of a Disaster, including:
 - (i) the processes the Contractor will implement to protect its work and any part of the Trackside Subsystem within its control; and

the steps that the Contractor will take to recommence provision of the Contractor's Activities;
- (b) must ensure that the Business Continuity Plan is sufficient to encompass any site or location from which the Contractor, any Representative of the Contractor or a Subcontractor operates, or other site or location from which any of the Contractor's Activities are or will be performed (or tasks and activities relevant to the Contractor's Activities undertaken), provided that in respect of TfNSW's locations, the Business Continuity Plan will only be relevant to the extent it deals with the provision of resources working at such TfNSW locations and the procedures for replacing any such resources who are unable to perform the Contractor's Activities provided to TfNSW under this Agreement;
- (c) where requested by TfNSW, test or modify (if required) the Business Continuity Plan and any alternate facilities to:
 - ensure it is effective in managing risks relevant to service continuity and in responding to relevant events;
 - demonstrate to TfNSW that the Contractor has the ability to recover from a Disaster and to recommence provision of the Contractor's Activities in accordance with the Contractor's obligations under this Agreement; and
 - ensure it is properly integrated with TfNSW's own business continuity and disaster recovery processes notified to the Contractor as a TfNSW Policy, provided that any such requested testing or Modifications do not place a significant burden on the Contractor;
- (d) provide TfNSW with a copy of the Business Continuity Plan (including any updates) upon request;
- (e) without limiting paragraph (a), if a Disaster occurs, must implement the relevant recovery, back-up and response activities set out in the Business Continuity Plan at the times and in accordance with the corresponding procedures set out in the Business Continuity Plan;
- (f) acknowledges and agrees that TfNSW will not be required to pay any Fees for any Contractor's Activities that are not provided as a result of a Disaster;
- (g) acknowledges and agrees that TfNSW may immediately terminate this Agreement where the Business Continuity and Disaster Recovery Plan is either not implemented as required under this Agreement within forty-eight (48) hours of

TfNSW notifying the Contractor of the failure, or is implemented and the applicable Disaster continues to materially prevent, hinder or delay performance of the Contractor's Activities for more than five (5) Business Days, provided that such termination shall be deemed to be a termination without fault of the Contractor except where:

the Business Continuity and Disaster Recovery Plan did not comply with Industry Best Practice, and where TfNSW had not agreed in writing that such non-compliance was acceptable and such non-compliance resulted in the applicable Disaster continuing to materially prevent, hinder or delay performance of the Contractor's Activities; or

the Contractor failed to comply with the Contractor's obligations under the Business Continuity and Disaster Recovery Plan, and such failure resulted in the applicable Disaster continuing to materially prevent, hinder or delay performance of the Contractor's Activities;

- (h) must test the Business Continuity and Disaster Recovery Plan and, if requested by TfNSW, either (at the Contractor's election):

allow TfNSW's observation and assessment of the testing of the Business Continuity and Disaster Recovery Plan; or

provide TfNSW with an independent assessment and assurance in writing that the Contractor has successfully tested the Business Continuity and Disaster Recovery Plan; and

- (i) must:

- (i) provide to TfNSW the Contractor's criteria and procedures for declaring:

- (A) a threat to the Contractor's ability to provide the Contractor's Activities uninterrupted to TfNSW; and
- (B) an actual disruption to the Contractor's continuous provision of the Contractor's Activities, to the extent that such criteria and procedures are not specified within the Business Continuity and Disaster Recovery Plan in a level of detail which TfNSW considers, acting reasonably, to be necessary, and provided that nothing in the foregoing limits TfNSW's ability to declare a Disaster;

immediately notify TfNSW of any threat or any disruption to Contractor's ability to provide the Contractor's Activities to the extent arising out of or in connection with a Disaster; and

for the duration of any disruption to the Contractor's Activities to the extent arising out of or in connection with a Disaster, provide to TfNSW a formal status report each day until the Contractor's Activities are restored.

2 Business Continuity Plan updates

- (a) The Contractor must keep the Business Continuity and Disaster Recovery Plan and associated plans and processes up to date so that they remain consistent with the then current Contractor's Activities and provide for any changes in the provision

of the Contractor's Activities or the facilities supporting the provision of the Contractor's Activities.

- (b) The Contractor must conduct an operational test of the Business Continuity and Disaster Recovery Plan at least once every twenty-four (24) months and must provide TfNSW with the result of that testing.
- (c) The Contractor must make any reasonable changes to the Business Continuity and Disaster Recovery Plan requested by TfNSW from time to time, where those changes relate to the provision of the Contractor's Activities.
- (d) The Contractor must consult with TfNSW on the updating of its plans and processes to amend the Business Continuity and Disaster Recovery Plan in order to address any major service, audit or security requirements of TfNSW or any Governmental Authority.



Schedule 22 Form of Subcontractor Deed

Schedule 22 Form of Subcontractor Deed

Deed dated the day of 20

Between (“TfNSW”)

And (“the Contractor”)

And [insert name, and ACN/ABN if applicable] (“the Subcontractor”)

Recitals

- (a) TfNSW and the Contractor have agreed on the terms and conditions of the Trackside Delivery Agreement.
- (b) The Contractor has engaged or will engage the Subcontractor under the Subcontract to perform part of the Program.
- (c) TfNSW and the Subcontractor have agreed that the Subcontractor will, in addition to its obligations to the Contractor under the Subcontract, owe obligations directly to TfNSW as set out in this Deed.

The parties agree

1 Agreed Terms and Interpretation

1.1 Definitions

The following definitions apply in this Deed:

Affected Activities has the meaning given in clause 2.1(b)(i)(D).

Subcontract means the document entitled **[Subcontract]** dated **[*]** and entered into between the Contractor and the Subcontractor.

Trackside Delivery Agreement means the agreement entitled “Trackside Delivery Agreement” dated **[*]** and entered into between TfNSW and the Contractor.

1.2 Definitions in Trackside Delivery Agreement

Subject to clause 1.1, capitalised terms used in this Deed that are defined in the Trackside Delivery Agreement have the same meaning in this Deed.

1.3 Rules for interpreting this Deed

The rules of interpretation set out in section 2 of Schedule 1 (Definitions and Interpretation) of the Trackside Delivery Agreement apply to the interpretation of this Deed as if they were incorporated into this Deed.

1.4 Business Days

If the day on or by which a person must do something under this Deed is not a Business Day, the person must do it on or by the next Business Day.

1.5 Contra proferentum

In the interpretation of this Deed, no rule of construction applies to the disadvantage of one party on the basis that the party put forward or drafted this document or any provision in it.

1.6 The Contractor

The Contractor is a party to this Deed for the purposes only of acknowledging that the Subcontractor will not be in breach of the Subcontract by complying with its obligations under this Deed.

1.7 Exclusion of *Civil Liability Act 2002 (NSW)*

- (a) To the extent permitted by Law, the operation of 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 and liabilities of any party arising under or in relation to this Deed howsoever such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting the above, the rights, obligations and liabilities of any party under this Deed with respect to proportionate liability are as specified in this Deed 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 and the Subcontractor must not seek to apply Part 4 of the *Civil Liability Act 2002 (NSW)* in relation to any claim by TfNSW against the Contractor or Subcontractor (whether in contract, tort or otherwise) in relation to this Deed; and
 - (ii) if any of the provisions of Part 4 of the *Civil Liability Act 2002 (NSW)* are applied to any claim by TfNSW against the Contractor or Subcontractor (whether in contract, tort or otherwise) in relation to this Deed, the Contractor or Subcontractor will indemnify and must keep indemnified TfNSW against any loss, damage, cost or expense which TfNSW is not able to recover from the Contractor or Subcontractor because of the operation of Part 4 of the *Civil Liability Act 2002 (NSW)*.

2 Subcontractor's Undertakings

2.1 Undertakings

- (a) The Subcontractor acknowledges, represents, warrants and undertakes for the benefit of TfNSW as follows:

- (i) it will fully comply with all of its obligations under the Subcontract and this Deed;
- (ii) it is reputable and has, or has access to, sufficient experience, expertise and ability to perform its obligations to the standards required by the Subcontract;
- (iii) it has exercised and will continue to exercise, in accordance with Industry Best Practice, the level of skill, care and diligence in performing its duties under the Subcontract which may reasonably be expected of a contractor experienced in the performance of the same or similar activities to those provided under the Subcontract and those expected as part of the Program, provided that, other than as expressly set out in this Deed, the Subcontractor will have no greater obligations to TfNSW by virtue of this Deed than it would have had if TfNSW had been named as the Contractor under the Subcontract;
- (iv) the activities performed or required to be performed by the Subcontractor will be performed and completed:
 - (A) in accordance with the Subcontract and this Deed;
 - (B) in accordance with all applicable Mandatory Requirements;
 - (C) with due care and skill, and in a proper and professional manner;
 - (D) using (including installing) materials, equipment and goods, that will be to the quality and standard specified in the Subcontract, but if no standard is specified, new and of merchantable quality and which are and will meet the requirements of the Subcontract; and
 - (E) so that the works carried out or performed by the Subcontractor, when completed, will meet the requirements of the Subcontract;
- (v) it has exercised and will continue to exercise reasonable skill, care and diligence in connection with the selection and supervision of its employees, agents, subcontractors and contractors;
- (vi) if at any time called upon to do so by TfNSW, it must:
 - (A) extend to TfNSW any guarantee of the performance of the Subcontract or any warranty provided to the Contractor;
 - (B) provide TfNSW, or any person authorised by TfNSW, with such information related to the products and/or services provided under the Subcontract as TfNSW may reasonably require; and
 - (C) allow TfNSW, or any person authorised by TfNSW, on reasonable notice, to inspect the performance of the Subcontract as TfNSW may reasonably require;
- (vii) it will not hold itself out as being, or otherwise purport to be, the agent of TfNSW in connection with the execution of the Subcontract;
- (viii) it must maintain, either by itself or through the Contractor, a level and cover of insurance that meets the requirements of the Subcontract, and as approved by TfNSW as a condition of its granting consent in respect of the Subcontract pursuant to clause 27.5(d) of the Trackside Delivery Agreement;

- (ix) the copy documents annexed to this Deed at Annexure A confirm the substance of all the relevant risks, indemnity and liability insurances required to be taken out by the Subcontractor, that such insurances are valid and the premiums for the current periods of insurance have been duly paid, that the Subcontractor is not aware (after having made due and careful enquiry) of any circumstances likely to give rise to any claim under such insurances that would reduce any insurance below the level required by the Subcontract, and that the Subcontractor will maintain such insurances for so long as is required under the Subcontract and this Deed;
 - (x) in relation to any insurance policies, the details of which have been provided to the Subcontractor, it will not do anything that may invalidate any such insurance policy or any indemnity to which TfNSW or TfNSW Indemnified Persons may be entitled;
 - (xi) it will promptly inform TfNSW of any material default by the Contractor under the Subcontract; and
 - (xii) it acknowledges the importance to TfNSW and the Program of the Collaboration Principles and, where requested by TfNSW, agrees to be a Collaboration Participant and adopt the Collaboration Principles.
- (b) The Subcontractor acknowledges that in specific circumstances prescribed in the Trackside Delivery Agreement, TfNSW has the right under the Trackside Delivery Agreement to:
- (i) require the Contractor to:
 - (A) enable TfNSW or its nominated Personnel to work alongside and supervise the Contractor Personnel (including the Subcontractor) to understand and collaborate on how to resolve certain relevant circumstances, problems, risks or issues;
 - (B) promptly provide TfNSW or its nominated Personnel with such information (in addition to any information required to be provided under the other provisions of this Agreement), and access to the Delivery Locations used in the provision of the Contractor's Activities as TfNSW may reasonably request to enable it fully to understand the nature and causes of certain circumstances, problems, risks or issues, other information relevant to the Contractor's Activities, and the steps (if any) being taken or considered by the Contractor (and Subcontractor) to remedy such circumstances, problems, risks or issues;
 - (C) procure that such members of the Contractor's (and Subcontractor's) senior management engaged or familiar with the delivery of the Contractor's Activities:
 - attend in person, at TfNSW's chosen location, meetings with representatives of TfNSW as soon as reasonably practicable and on no more than five (5) Business Days' notice; and
 - be directly responsible for management and oversight of resolution of certain circumstances, problems, risks or issues, remotely providing comprehensive daily updates (or updates at such other longer frequency as TfNSW may require) on such resolution to TfNSW; and

- (D) in the case of an unremedied Defect in accordance with clauses 11.7, 23.5 or 54 of the Trackside Delivery Agreement, enable TfNSW to assist, or engage a Third Party to assist, the Contractor to perform any part of the affected Contractor's Activities (the **Affected Activities**);
 - (ii) nominate TfNSW representatives to be included in the Contractor's team tasked with the resolution of the breach and restoration of the Affected Activities, in which case:
 - (A) the Subcontractor must ensure that such TfNSW representatives are invited and permitted to be involved in all aspects of the resolution and restoration where relevant to the Subcontractor; and
 - (B) the Subcontractor must comply with any Directions given to the Contractor Personnel by such TfNSW representatives;
 - (iii) appoint a person as remediation manager to manage the Contractor's performance of the Affected Activities;
 - (iv) take control of the Affected Activities, and in so doing taking any action that TfNSW or its nominee believes is necessary to restore or rectify the Affected Activities, including having TfNSW or its nominee:
 - (A) give Directions to Contractor Personnel (including the Subcontractor);
 - (B) do all other things TfNSW considers necessary to take over control of the Affected Activities; and/or
 - (C) provide goods or perform services which are the same as or similar to the Affected Activities itself or procure such goods or services from a Third Party (or require the Contractor to do so);
 - (v) without limiting the above, assist or engage a third party to assist, the Contractor in managing the performance of the Subcontract, or perform itself or engage a third party to perform, the obligations under the Subcontract; and/or
 - (vi) take such other action as is reasonably necessary to restore the affected function or remedy the relevant issue.
- (c) If TfNSW exercises any of the rights referred to in clause 2.1(b), the Subcontractor:
- (i) acknowledges that TfNSW may exercise those rights in respect of activities to be performed by the Subcontractor under the Subcontract;
 - (ii) agrees that it will permit TfNSW to exercise those rights;
 - (iii) must fully cooperate with TfNSW (and its nominees) and provide all reasonable:
 - (A) assistance and access; and
 - (B) to the extent that such items are within the scope of the Subcontract, all current or due materials and work-in-progress at no charge to TfNSW, in connection with TfNSW's exercise of its rights, which may include provision of equipment or copies of Software including all

Materials relating to that Software and/or its design, development, Modification, operation, support or maintenance; and

- (iv) must comply with any Directions of TfNSW that relate to its exercise of those rights under or in respect of the Subcontract.

2.2 Reliance on representations and warranties

The Subcontractor acknowledges and agrees that TfNSW entered into this Deed in reliance on the undertakings and warranties made in clause 2.1 (Undertakings).

2.3 Indemnities

The Subcontractor indemnifies and must keep TfNSW and each TfNSW Indemnified Person (and each of their respective officers, employees, agents and representatives) indemnified from and against all claims and Loss arising out of, or in connection with a:

- (a) breach by the Subcontractor of any of the undertakings, representations or warranties given by it under clause 2.1 (Undertakings); or
- (b) failure by the Subcontractor to comply with any of its other obligations under this Deed.

2.4 Discontinuance of TfNSW or any TfNSW Indemnified Persons

Subject to any contrary legislative intention:

- (a) if TfNSW or any TfNSW Indemnified Persons is reconstituted, renamed or replaced, or if its powers or functions are transferred to another entity, this Deed is deemed to refer to that new entity;
- (b) if TfNSW or any TfNSW Indemnified Persons ceases to exist, this Deed is deemed to refer to that entity which serves substantially the same purpose or object as the former entity; and
- (c) notwithstanding any other provision of this Deed, TfNSW may transfer this Deed and any rights under this Deed to any new or substitute entity referred to in paragraphs (a) and (b) of this clause 2.4.

3 Liability of Subcontractor

- (a) Any:
 - (i) information provided to, and any inspection undertaken by, TfNSW or any person authorised by TfNSW under clauses 2.1(a)(vi)(B) and 2.1(a)(vi)(C); or
 - (ii) exercise of TfNSW's rights referred to in clauses 2.1(b),will not limit or discharge the obligations of the Subcontractor under the Subcontract nor will it relieve the Subcontractor from any liability which it may have in respect of any defect or default in or relating to the Program.
- (b) For the avoidance of doubt, the Subcontractor will have no greater obligations or liabilities to TfNSW under, arising out of, or in connection with, this Deed, than it would have had if TfNSW had been named as the principal under the Subcontract, to the extent that those obligations or liabilities relate to the Subcontract or this Deed.

- (c) The Subcontractor's liability:
 - (i) to TfNSW under this Deed; and
 - (ii) to the Contractor under the Subcontract,

will not (in aggregate) exceed the liability which the Subcontractor would have had under the Subcontract if the Subcontract had named, as principal, TfNSW and the Contractor jointly and severally.

4 Novation of Contractor's Rights and Obligations

4.1 Novation

- (a) Upon TfNSW giving to the Subcontractor notice stating that it is exercising its rights to novate the Subcontract, the Subcontractor must:
 - (i) do all things necessary to:
 - (A) subject to paragraph (ii) below, execute the Subcontract novation in the form of Schedule 33 (Form of Subcontractor Deed of Novation) to the Trackside Delivery Agreement;
 - (B) give effect to the Subcontract novation; and
 - (C) assist TfNSW to assume the responsibilities of a counterparty to the Subcontract; and
 - (ii) not deliberately, wilfully or recklessly exercise, or refuse to exercise, any right or power under the Subcontract that will or would be likely to frustrate TfNSW's ability to novate the Subcontract as anticipated under the Trackside Delivery Agreement or otherwise materially lessen or remove the benefit to TfNSW of novating the Subcontract, pending novation of the Subcontract (provided this paragraph (ii) does not prevent the Subcontractor from submitting any notice or claim required by the Subcontract in order to establish or preserve an entitlement).
- (b) Following the effective date of the novation of the Subcontract:
 - (i) the Subcontractor must perform for TfNSW all of the obligations of the Subcontractor to the Contractor under the Subcontract;
 - (ii) TfNSW must assume all the rights and undertake all the obligations of the Contractor under the Subcontract; and
 - (iii) the Subcontractor will have the same rights against TfNSW as it had against the Contractor, and TfNSW will have the same rights against the Subcontractor as the Contractor had against the Subcontractor, under the Subcontract.
- (c) Alternatively, TfNSW may in its discretion require a novation to its nominee on the above terms. If TfNSW requires a novation to its nominee, the Subcontractor will enter into any document necessary to formalise this arrangement.

4.2 Obligations prior to Novation

- (a) Clause 4.1 (Novation) will not operate to require TfNSW to assume any obligations of the Contractor under the Subcontract which relate to the period prior to the date of TfNSW notifying the Subcontractor under clause 4.1 (Novation).
- (b) TfNSW will not be subject to any set-off or counterclaim which arises out of circumstances which relate to the period prior to the date of a notice given under clause 4.1 (Novation).
- (c) The parties agree that nothing in this Deed will, by implication or otherwise release or prejudice or effect the rights, powers and remedies which the Subcontractor had against the Contractor under the Subcontract and arising prior to the effective date of the Subcontract novation pursuant to clause 4.1 (Novation) and the parties acknowledge that the rights of the Subcontractor to recover against the Contractor for any act, default or omission of the Contractor arising prior to the effective date of the Subcontract novation pursuant to clause 4.1 (Novation) are not fettered or reduced by the continuing obligations of TfNSW.

5 Notices

5.1 Notice requirements

- (a) A notice, consent or other communication under this Deed is only effective if it is:
 - (i) in writing, and in legible English, signed by or on behalf of the person giving it;
 - (ii) addressed to the party to whom it is to be given; and
 - (iii) either:
 - (A) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (B) sent by email to the party's email address,

in each case as set out in clause 5.3 (Address for notices), as updated from time to time by a party under paragraph (b).
- (b) Where a party notifies another party of an updated address or email address, the notified parties must use those updated contact details for the purpose of giving notices under this Deed.
- (c) A notice terminating or novating this Deed must be given by pre-paid mail (by airmail, if the addressee is overseas) or delivered to the relevant party's address.

5.2 When a notice is given

- (a) Subject to paragraph (b), a notice, consent or other communication under this Deed is, in the absence of earlier receipt, regarded as given, provided, served, issued and received:
 - (i) if it is delivered, on delivery at the address of the relevant party;
 - (ii) if sent by email, at the time it was transmitted by the sender provided that if the sender receives a message indicating that it has not been successfully

transmitted provided that where an "out of office" reply, delivery error or similar response is returned in response to that email the email will not be taken to be received and the sender will use the alternative methods of sending the notice in accordance with this clause; or

- (iii) if it is sent by mail, on the third Business Day after the day of posting, or if to or from a place outside Australia, on the fifth Business Day after the day of posting.
- (b) If a notice, consent or other communication under this Deed is given and received on a day that is not a Business Day or after 5.00pm (local time in the place of receipt) on a Business Day, it is regarded as being given and received at 9.00am on the next Business Day.

5.3 Address for notices

A person's address and email address are those set out below, or as the person notifies the sender:

Subcontractor

Address: [Insert]
Email address: [Insert]
Attention: [Insert]

Contractor

Address: 160 Herring Road, Macquarie Park, NSW 2113
Email address: marc.hamameh@siemens.com
Attention: Marc Hamameh, Project Manager

TfNSW

Address: Level 1, 219 Cleveland Street, Strawberry Hills, NSW, 2016
Email: Michael.Davis4@transport.nsw.gov.au
Attention: Michael Davis, Senior Project Manager

6 General

6.1 Amendment and assignment

- (a) This Deed can only be amended, supplemented, replaced or novated by another document signed by the parties.
- (b) TfNSW may assign any of its rights, or novate its rights and obligations, under this Deed without the consent of the Contractor or the Subcontractor. The Subcontractor and Contractor must execute any document reasonably requested by TfNSW to give effect to the assignment or novation.
- (c) The Contractor may only assign, transfer or otherwise deal with this Deed, where the Contractor has assigned, transferred or otherwise dealt with the Trackside Delivery Agreement.

- (d) The Subcontractor must not assign, transfer or otherwise deal with this Deed unless TfNSW has approved such assignment, transfer or dealing in writing.

6.2 Liability of TfNSW and TfNSW Indemnified Persons

The Subcontractor and Contractor acknowledge to TfNSW that nothing contained in this Deed is intended to, nor will it render TfNSW and TfNSW Indemnified Persons liable to the Subcontractor or Contractor in relation to any matters arising out of, or in connection with, this Deed or otherwise.

6.3 Cumulative rights and remedies

Any right, power or remedy that a person may have under this Deed is in addition to, and is not exclusive of, nor does it replace or limit, any other right, power or remedy that the person may have.

6.4 Indemnities

- (a) No indemnity in this Deed limits the effect or operation of any other indemnity in this Deed.
- (b) Unless expressly provided otherwise, each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties.
- (c) Each indemnity in this Deed survives the expiry or termination of this Deed.
- (d) An indemnified party must take all reasonable steps to minimise the loss it has suffered or is likely to suffer as a result of an event giving rise to an indemnity under this Deed. If the indemnified party does not take reasonable steps to minimise such loss then the amount payable by the indemnifying party will be reduced proportionately in each case.
- (e) The indemnifying party's liability to the indemnified party under an indemnity in this Deed will be reduced proportionally to the extent that an act or omission of the indemnified party has contributed to the claim or Loss, provided that (in respect of any indemnity in this Deed given by the Contractor) where the value of an indemnity has already been determined pursuant to the Trackside Delivery Agreement or otherwise this clause will not operate to further reduce the value of that indemnity.

6.5 Governing law

- (a) This Deed is governed by the Law in force in the state of New South Wales.
- (b) Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the State of New South Wales, including for the avoidance of doubt, the Federal Court of Australia sitting in the State of New South Wales.

6.6 Expenses

Each party will be responsible for its own costs and expenses incurred in connection with:

- (a) the negotiation, preparation, execution, stamping and registration of this Deed;
- (b) the transactions that this Deed contemplates; and
- (c) any amendment to, or any consent, approval, waiver, release or discharge of or under, this Deed.

6.7 Giving effect to this Deed

Each party must, at its own expense, promptly execute all documents and do all things that the other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Deed and any transactions contemplated by them.

6.8 Waivers and exercise of rights

- (a) No waiver of a right or remedy under this Deed is effective unless it is in writing and signed by the party granting it. Any waiver is only effective in the specific instance and for the specific purpose for which it is granted.
- (b) Except as expressly provided to the contrary in this Deed, TfNSW may conditionally or unconditionally in its absolute discretion give or withhold any consent, agreement, approval or waiver under this Deed.
- (c) A single or partial exercise of a right or remedy under this Deed does not prevent a further exercise of that or of any other right or remedy.
- (d) Failure to exercise or delay in exercising a right or remedy under this Deed does not operate as a waiver or prevent exercise of that or of any other right or remedy.
- (e) No Inspection, audit, agreement, approval, acceptance, review, attendance, payment of any payment claim, permission or comment by TfNSW:
 - (i) constitutes a waiver of any default, admission of liability or acceptance of any act or omission of the Subcontractor or that a Contractor's Activity has been properly provided; or
 - (ii) affects the Subcontractor's obligation to perform this Deed in accordance with its terms.

6.9 Operation of this Deed

- (a) This Deed constitutes the entire agreement between the parties concerning its subject matter and replaces all previous agreements and understandings, about that subject matter.
- (b) If a provision, or the application of any provision, of this Deed is wholly or partially void or unenforceable in a jurisdiction:
 - (i) it is severed to the extent that it is void or unenforceable from the remainder for the purposes of enforcement in that jurisdiction; and
 - (ii) the remainder has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.
- (c) Paragraph (b) has no effect if the severance:
 - (i) alters the basic nature of this Deed; or
 - (ii) is contrary to public policy.

6.10 No Partnership or employment relationship

Nothing in this Deed:

- (a) may be deemed to constitute a partnership, joint venture, agency or other legal relationship between TfNSW, the Contractor, and the Subcontractor other than that of customer, provider and sub-provider respectively; and
- (b) authorises either party to waive any obligation for which the other party may be responsible or to incur any liability on behalf of the other party.

6.11 No Merger

No term of this Deed merges on completion of any transaction contemplated by this Deed.

6.12 Counterparts

This Deed may be executed in any number of counterparts which, when taken together, will constitute one instrument.

6.13 Attorneys

Each attorney executing this Deed states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.



Annexure A

Execution page

EXECUTED as a deed.

Signed, sealed and delivered by

Transport for NSW (ABN 18 804 239 602)

By *[insert name of TfNSW's representative]* as authorised signatory

In the presence of: *[insert name of witness not a party to this Deed]*

Signature of TfNSW's representative

Print Name

Date

Signed, sealed and delivered by

Siemens Mobility Pty Ltd (ABN 39 625 304 556)

Signature of TfNSW's witness

Print Name

Date

in accordance with s127 of the *Corporations Act 2001* (Cth) by:

Signature Director

Print name

Date

Signature of Director/Secretary

Print name

Date

Signed, sealed and delivered by *[insert Subcontractors' name and ACN/ABN]*

in accordance with s127 of the *Corporations Act 2001* (Cth) by:

Signature Director

Print name

Date

Signature of Director/Secretary

Print name

Date





Schedule 23 Form of Confidentiality Deed Poll

Schedule 23 Form of Confidentiality Deed Poll

Contract Number: _____

Contractor: _____

(“Contractor”)

Confidentiality Deed Poll made at _____ **on:** ____/____/____

By:

Name: _____

Address: _____

(“Recipient”)

In favour of:

Transport for NSW

(“Principal”)

Background

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

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

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

All capitalised terms used in this deed poll and not otherwise defined have the meaning given to them in the Contract.

Confidential Information

1. *Confidential Information* is:

- (a) any and all information (including, without limitation, information contained in proposals, designs, tenders, reports, advices, minutes of meetings or correspondence) in any form relating to the Contract or to the Principal or a Rail Transport Entity which has come to the knowledge or possession of the Recipient by any means;

- (b) any material produced by the Contractor or the Recipient under the Contract; and
 - (c) the terms of the Contract (including any statement of work entered into under it),
- but excludes any such information which the Recipient can establish:
- (d) is or became generally available in the public domain other than through a breach of confidence;
 - (e) was independently developed by the Recipient; or
 - (f) was rightfully received by the Recipient from a third party (that is not a Rail Transport Entity or Other Contractor) who is under no obligation of confidentiality in respect of that information and who has not obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the Principal.

For the avoidance of doubt, the following information will be the Principal's Confidential Information:

- (g) information developed by the Contractor specifically for the Principal;
- (h) Confidential Information of a Rail Transport Entity; and
- (i) all information provided to the Proponent by or on behalf of the Principal, a Rail Transport Entity or their Associates in relation to the Contractor's Activities, the Program or the Works.

In the event of uncertainty as to whether:

- (j) any information is Confidential Information; or
- (k) any information is lawfully within the public domain,

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

Warranty and covenant

2. The Recipient warrants and covenants that it will treat and keep the Confidential Information in the strictest of secrecy and confidentiality and expressly acknowledges and agrees that the Confidential Information is of a secret and confidential nature.
3. The Recipient warrants and covenants that it will do everything reasonably necessary to protect and maintain the confidentiality of the Confidential Information.
4. Subject to paragraph 6 below, the Recipient may not disclose to any person other than:
 - (a) the Principal;
 - (b) the legal advisors and employees of the Recipient and the Recipient's Related Bodies Corporate on the condition that the employment contracts of such employees contain suitable confidentiality provisions which protect the confidentiality of the Confidential Information to the same extent as this deed poll; or
 - (c) a person who has signed a confidentiality deed poll in the form of this document in favour of the Principal pursuant to the Contract,the Confidential Information, that the Confidential Information has been made available to the Recipient or that discussions or negotiations are taking place concerning the Contract.
5. The Recipient undertakes:
 - (a) to protect and safeguard Confidential Information against unauthorised use or disclosure;
 - (b) not to use Confidential Information for any reason or purpose except as directed by the Principal; and
 - (c) to comply with any security measures in connection with Confidential Information that may be required by the Principal.

Authorised disclosure

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

Return of Confidential Information

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

Continuing obligation

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

Injunctive relief

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

Further assurances

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

Non-waiver

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

Jurisdiction

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

No revocation

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



Executed as a Deed Poll

Signed, sealed and delivered by the Recipient: in the presence of:

Recipient

Witness

Name (please print)

Name (please print)



Schedule 24 Confidentiality and Intellectual Property Deed Poll





Schedule 25 Form of Escrow Deed





Schedule 26 Form of Contractor Deed Poll



Schedule 27 Form of Deed of Novation

Schedule 27 Form of Deed of Novation

Dated the Effective Date

Parties Transport for NSW (ABN 18 804 239 602) **(Retiring Party)**
Siemens Mobility Pty Ltd (ABN 39 625 304 556) **(Continuing Party)**
[] **(Substitute Party)**

Recitals

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

This deed provides

1 Definitions and interpretation

1.1 Definitions

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

Contract means the agreement between the Retiring Party and the Continuing Party entitled Trackage Delivery Agreement, and includes:

- (a) all the Statements of Work formed in accordance with the Contract; and
- (b) any and all other agreements entered into between the Retiring Party and the Continuing Party under or in connection with the foregoing,

except for any Statements of Work or agreements that are identified in the Schedule as being excluded.

Contract Guarantees means the guarantees or unconditional undertakings (if any) issued or required to be issued under the Contract in respect of the performance by a party to the Contract, by a bank, insurer or, where required by the Contract, by a Related Entity of that party.

Effective Date means the date on which the last party to execute this deed executes this deed.

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

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

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation, and, unless the context indicates a contrary intention:
- (b) an obligation or a liability assumed by, or a right conferred on, two (2) or more persons binds or benefits them jointly and severally;
- (c) an expression importing a natural person includes any individual, estate of an individual, company or other body corporate, partnership, trust, joint venture (whether incorporated or unincorporated), association, Government Authority and other entity;
- (d) a reference to a party is to a party to this deed, and a reference to a party includes a reference to that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation or statutory transfer;
- (e) a reference to a document or instrument (including this deed) is to that document or instrument as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute, regulation, proclamation, ordinance, by-law, code or other law includes all statutes, regulations, proclamations, ordinances, by-laws, codes or other laws amending, consolidating, re-enacting or replacing it, whether passed by the same or another Government Authority with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (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 part, clause, party, Schedule, Attachment or Annexure is a reference to a part and clause of, and a party, Schedule, Attachment or Annexure to, this deed and a reference to this deed includes any part, clause, Schedule, Attachment or Annexure;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) the meaning of general words is not limited by specific examples introduced by "including", or "for example" or similar expressions; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

2 Condition Precedent to Novation

Clause 3 (Novation) of this deed shall have no force and effect until the Effective Date.

3 Novation

3.1 Novation

On and from the Effective Date:

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

3.2 Assumptions of rights and obligations

On and from the Effective Date:

- (a) the Substitute Party:
 - (i) will be bound by and shall comply with the terms of the Contract as amended by this deed, and shall enjoy the rights and benefits conferred on the Retiring Party under the terms of the Contract; and
 - (ii) will assume the obligations and Liability of the Retiring Party under the terms of the Contract, in all respects as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party (but provided that the Substitute Party will not assume any obligations and/or Liabilities of the Retiring Party under or in respect of the Contract arising or accruing before the Effective Date); and
- (b) the Continuing Party will comply with the terms of the Contract on the basis that the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.

3.3 Release by Continuing Party

The Continuing Party releases the Retiring Party from:

- (a) any obligation or Liability under or in respect of the Contract arising or accruing on or from the Effective Date; and
- (b) any Claim it has against the Retiring Party under or in respect of the Contract with regards to a matter arising on or from the Effective Date,

except that nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract.

3.4 Release by Retiring Party

The Retiring Party releases the Continuing Party from:

- (a) any obligation or Liability under or in respect of the Contract arising or accruing on or from the Effective Date; and
- (b) any Claim it has against the Continuing Party under or in respect of the Contract with regards to a matter arising on or from the Effective Date,

except that nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract.

4 Ongoing Rights of Retiring Party

4.1 Direct Enquiries

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

4.2 Retiring Party to have benefit of Promises

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

4.3 Report by Continuing Party

- (a) The Continuing Party undertakes to the Retiring Party that it will exercise all reasonable skill, care and diligence to ensure that the design intent of the Works as contained in the Design Documentation in existence at the date of execution of this deed, is (save to the extent amended pursuant to a Variation agreed in accordance with the terms of the Contract) reflected in the completion of the Design Documentation and in the execution of the Works.
- (b) Without limiting the above, the Continuing Party must conduct such inspections of the Works at such times and in such detail as may reasonably be expected of a consultant engaged in a project of the size and complexity of the Works.
- (c) The Continuing Party must act in good faith and in the best interests of the Retiring Party (to the extent that these do not conflict with the interests of the Continuing Party) and advise the Retiring Party about any matter in which the Continuing Party has been instructed by the Substitute Party to provide the Contractor's Activities in a manner which is, or may result in an outcome which is, not in accordance with the requirements of the Contract at the same time that the instruction is provided to the Continuing Party, including:
 - (i) any instruction or direction which it receives, or any work or services it becomes aware of, which in the reasonable opinion of the Continuing Party, is not in accordance with any provision of the Contract including where the Substitute Party's instructions:

- (A) in relation to design are not consistent with the Contract or may result in the Works to be constructed not being fit for their intended purpose (as defined in the Contract); or
 - (B) require the Continuing Party to issue a certificate under the Contract where the conditions for the issue of that certificate under the Contract have not been satisfied; and
- (ii) any non-conformity of any Design Documentation produced pursuant to the Contract, or any material divergences from the Design Documentation in existence at the date of this deed, upon becoming aware of the non-conformity.

5 Insurance

On and from the Effective Date:

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

6 Replacement of Guarantees

The Continuing Party and the Substitute Party must replace or procure the replacement of the Contract Guarantees on and from the Effective Date with guarantees on similar terms in favour of:

- (a) in the case of the Continuing Party, the Substitute Party; and
- (b) in the case of the Substitute Party, the Continuing Party.

7 Overriding effect

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

8 Representations and warranties

8.1 Authority

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

8.2 Authorisations

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

8.3 Binding obligations

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

9 Duties, Costs and Expenses

9.1 Stamp Duty

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

9.2 Costs

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

9.3 GST

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;
- (b) the party receiving the payment will provide a tax invoice; and
- (c) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

10 General

10.1 Governing law

This deed is governed by and must be construed according to the laws applying in New South Wales.

10.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts 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 this deed; and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within paragraph (a).

10.3 Amendments

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

10.4 Waiver

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

10.5 Counterparts

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

10.6 Severance

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

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

10.7 Further acts and documents

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

10.8 Assignment

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

10.9 Liability

The Continuing Party's liability:

- (a) to the Retiring Party and the Substitute Party under this deed and under the Contract (whether arising in contract, tort (including negligence), statute, equity, an indemnity or otherwise) will not exceed (in aggregate) the liability which the

Continuing Party would have had under the Contract if the Contract had named, as principal, the Retiring Party and the Substitute Party jointly and severally; and

- (b) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Contract, and will not (save to the extent the liability of the Continuing Party would be uncapped in accordance with clause 63.2 (Uncapped Liability) of the Contract) exceed the Continuing Party's total aggregate liability under the Contract as set out in Item 6 (Liability Cap) of Schedule 2 (Agreement Details) of the Contract.



Executed as a deed poll.

Signed, sealed and delivered by

Transport for NSW (ABN 18 804 239 602)

By [insert name of TfNSW's representative] as authorised signatory

In the presence of: [insert name of witness not a party to this Deed]

Signature of TfNSW's representative

Signature of TfNSW's witness

Print Name

Print Name

Date

Date

Signed, sealed and delivered by

Siemens Mobility Pty Ltd (ABN 39 625 304 556)

in accordance with s127 of the Corporations Act 2001 (Cth) by:

Signature Director

Signature of Director/Secretary

Print name

Print name

Date

Date

Signed, sealed and delivered by [Insert appropriate signature block for Substitute Party]

in accordance with s127 of the Corporations Act 2001 (Cth) by:

Signature Director

Signature of Director/Secretary

Print name

Print name

Date

Date

Schedule – Statements of Work and other agreements excluded from definition of Contract:

[list excluded Statements of Work and other agreements, if any]





Schedule 28 Form of Parent Company Guarantee



Schedule 29 Form of Unconditional Undertaking



Schedule 30 Statement of Interests and Associations

Schedule 30 Statement of Interests and Associations

Date:

Name:

Organisation:

To: Transport for NSW
TfNSW

In relation to: The Digital Systems Program

Declaration

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

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

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

Disclosure

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)

(if further space is required please attach a separate signed letter)



I undertake to:

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

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

Executed as a deed poll

Signed, sealed and delivered by the Contractor: in the presence of:

Contractor

Witness

Name (please print)

Name (please print)

Date

Date



Schedule 31 Not Used



Schedule 32 Third Party Agreements

None, as at the Execution Date.



Schedule 33 Form of Subcontractor Deed of Novation

Schedule 33 Form of Subcontractor Deed of Novation

Dated the Effective Date

Parties **[Insert Contractor details] (Retiring Party)**
 [Insert Subcontractor details] (Continuing Party)
 Transport for NSW (ABN 18 804 239 602) **(Substitute Party)**

Recitals

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

This deed provides

1 Definitions and interpretation

1.1 Definitions

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

Contract means the agreement between the Retiring Party and the Continuing Party entitled **[insert description of Subcontract]** and includes any and all agreements formed in accordance with the Contract (except for any agreements that are identified in the Schedule as being excluded).

Contract Guarantees means the guarantees or unconditional undertakings (if any) issued or required to be issued under the Contract in respect of the performance by a party to the Contract, by a bank, insurer or, where required by the Contract, by a Related Entity of that party.

Effective Date means the date on which the last party to execute this deed executes this deed.

Liability means all liabilities, losses, claims, damages, outgoings, costs and expenses of whatever description.

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

1.2 Interpretation

In this deed, headings are for convenience only and do not affect interpretation and, unless the context indicates a contrary intention:

- (a) an obligation or a liability assumed by, or a right conferred on, two (2) or more persons binds or benefits them jointly and severally;
- (b) an expression importing a natural person includes any individual, estate of an individual, company or other body corporate, partnership, trust, joint venture (whether incorporated or unincorporated), association, government authority and other entity;
- (c) a reference to a party is to a party to this deed, and a reference to a party includes a reference to that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation or statutory transfer;
- (d) a reference to a document or instrument (including this deed) is to that document or instrument as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute, regulation, proclamation, ordinance, by-law, code or other law includes all statutes, regulations, proclamations, ordinances, by-laws, codes or other laws amending, consolidating, re-enacting or replacing it, whether passed by the same or another government authority with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a part, clause, party, Schedule, Attachment or Annexure is a reference to a part and clause of, and a party, Schedule, Attachment or Annexure to, this deed and a reference to this deed includes any part, clause, Schedule, Attachment or Annexure;
- (h) 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;
- (i) the meaning of general words is not limited by specific examples introduced by "including", or "for example" or similar expressions; and
- (j) a reference to "\$" or "dollar" is to Australian currency.

2 Condition Precedent to Novation

Clause 3 (Novation) of this deed shall have no force and effect until the Effective Date.

3 Novation

3.1 Novation

On and from the Effective Date:

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

3.2 Assumptions of rights and obligations

On and from the Effective Date:

- (a) the Substitute Party:
 - (i) will be bound by and shall comply with the terms of the Contract as amended by this deed, and shall enjoy the rights and benefits conferred on the Retiring Party under the terms of the Contract arising or accruing on or from the Effective Date; and
 - (ii) will assume the obligations and Liability of the Retiring Party under the terms of the Contract, in all respects as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party (but provided that the Substitute Party will not assume any obligations and/or Liabilities of the Retiring Party under or in respect of the Contract arising or accruing before the Effective Date); and
- (b) the Continuing Party will comply with the terms of the Contract on the basis that the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.

3.3 Release by Continuing Party

The Continuing Party releases the Retiring Party from:

- (a) any obligation or Liability under or in respect of the Contract arising or accruing on or from the Effective Date; and
- (b) any claim it has against the Retiring Party under or in respect of the Contract with regards to a matter arising on or from the Effective Date,

except that nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract.

3.4 Release by Retiring Party

The Retiring Party releases the Continuing Party from:

- (a) any obligation or Liability under or in respect of the Contract arising or accruing on or from the Effective Date; and
- (b) any claim it has against the Continuing Party under or in respect of the Contract with regards to a matter arising on or from the Effective Date.

except that nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract.

3.5 Acknowledgment by the Retiring Party

- (a) The Retiring Party acknowledges and agrees that the Substitute Party will only be bound by the Contract on and from, and will only assume obligations and Liability under or in respect of the Contract arising or accruing on or after, the Effective Date.
- (b) The Retiring Party indemnifies and must keep indemnified the Substitute Party against any Liability suffered or incurred by, or any claim made against, the

Substitute Party in connection with any obligations or matters under or in respect of the Contract arising or accruing before the Effective Date.

- (c) The Substitute Party indemnifies and must keep indemnified the Retiring Party against any Liability suffered or incurred by, or any claim made against, the Retiring Party in connection with any obligations or matters under or in respect of the Contract arising or accruing on or from the Effective Date, except where the Liability arises from or in connection with or the claim relates to an obligation or matter under or in respect of the Contract arising or accruing before the Effective Date.
- (d) The Retiring Party acknowledges and agrees that nothing in this deed affects any rights the Continuing Party may have against the Retiring Party in respect of any obligations and/or Liabilities of the Retiring Party under or in respect of the Contract arising or accruing before the Effective Date.

4 Insurance

On and from the Effective Date:

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

5 Replacement of Guarantees

The Continuing Party and the Substitute Party must (subject to the return of the existing Contract Guarantees) replace or procure the replacement of the Contract Guarantees on and from the Effective Date with guarantees on similar terms and for the uncalled amount in favour of:

- (a) in the case of the Continuing Party, the Substitute Party; and
- (b) in the case of the Substitute Party, the Continuing Party.

6 Overriding effect

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

7 Representations and warranties

7.1 Authority

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

7.2 Authorisations

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

7.3 Binding obligations

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

8 Duties, Costs and Expenses

8.1 Stamp Duty

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

8.2 Costs

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

8.3 GST

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;
- (b) the party receiving the payment will provide a tax invoice; and
- (c) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

9 General

9.1 Governing law

This deed is governed by and must be construed according to the laws applying in New South Wales.

9.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts 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 this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within paragraph (a).

9.3 Amendments

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

9.4 Waiver

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

9.5 Counterparts

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

9.6 Severance

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

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

9.7 Further acts and documents

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

9.8 Assignment

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

Executed as a deed

Signed, sealed and delivered by

Transport for NSW (ABN 18 804 239 602)By *[insert name of TfNSW's representative]* as authorised signatoryIn the presence of: *[insert name of witness]***Signature of TfNSW's representative****Signature of TfNSW's witness****Print Name****Print Name****Date****Date**Signed, sealed and delivered by **[Insert appropriate signature block for Retiring Party]**in accordance with s127 of the *Corporations Act 2001* (Cth) by:**Signature Director****Signature of Director/Secretary****Print name****Print name****Date****Date**Signed, sealed and delivered by **[Insert appropriate signature block for Continuing Party]**in accordance with s127 of the *Corporations Act 2001* (Cth) by:**Signature Director****Signature of Director/Secretary****Print name****Print name****Date****Date**

Schedule – Agreements excluded from definition of Contract:

[list excluded agreements, if any]





Schedule 34 Form of Access Indemnity

Schedule 34 Form of Access Indemnity

DATE **[insert]**

BETWEEN Transport for NSW (ABN 18 804 239 602) (**TfNSW**)

AND Siemens Mobility Pty Ltd (ABN 39 625 304 556) (**Contractor**)

1 Recitals

- A. TfNSW and the Contractor entered into an agreement numbered **[insert]** (**Delivery Agreement**).
 - B. TfNSW is able to procure access to the Delivery Location.
 - C. The Contractor wishes to gain access to the Delivery Location.
 - D. This Indemnity records the arrangements between the parties in relation to any such access to the Delivery Location.
-

2 Operative

- (a) In this Indemnity, any word, expression, reference or term used which is defined in the Delivery Agreement and is not specifically defined in this Indemnity will, unless the context requires otherwise, have in this Indemnity the same meaning as in the Delivery Agreement.
- (b) In consideration of TfNSW providing or procuring the provision of access to the Delivery Location, the Contractor covenants and agrees with TfNSW that:
 - (i) the Contractor will make good any damage to the Delivery Location caused by it (or on its behalf) in connection with the access to the Delivery Location;

the Contractor releases and indemnifies the TfNSW Indemnified Persons on demand from and against any Loss (including any Claim made by, or liability to, a third party) the relevant TfNSW Indemnified Person may suffer or incur arising out of, or in respect of, or in connection with a wrongful act or omission of the Contractor in the course of any access to the Delivery Location, except to the extent that the wrongful act or omission of the relevant TfNSW Indemnified Person has caused or contributed to that Loss; and

in the conduct of accessing the Delivery Location, the Contractor will do all reasonable acts and things to minimise any disruption to TfNSW or its invitees and to minimise inconvenience and disruption to the operation of the Delivery Location.
- (c) The Contractor's liability:
 - to TfNSW or the TfNSW Indemnified Persons under this Indemnity and under the Delivery Agreement (whether arising in contract, tort (including negligence), statute, equity, an indemnity or otherwise) will not exceed (in

aggregate) the liability which the Contractor would have had under the Delivery Agreement if the Delivery Agreement had named, as principal, the TfNSW and the TfNSW Indemnified Persons jointly and severally; and

is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Delivery Agreement, and will not (save to the extent the liability of the Contractor would be uncapped in accordance with clause 63.2 (Uncapped Liability) of the Delivery Agreement) exceed the Contractor's total aggregate liability under the Delivery Agreement as set out in Schedule 2 Item 6 (Liability Cap) of the Delivery Agreement.

- (d) Each party must bear their own costs in relation to TfNSW providing or procuring the provision of access to the Contractor to a Delivery Location.
- (e) This Indemnity is governed by and construed in accordance with the law of New South Wales.
- (f) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.



Executed as a deed

Signed, sealed and delivered by Transport for NSW by its authorised representative in the presence of:

_____ Signature of witness	_____ Signature of authorised representative
_____ Full name of witness	_____ Full name of authorised representative

Signed, sealed and delivered by Siemens Mobility Pty Ltd 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



Schedule 35 Options

None, as at the Execution Date.



Execution page

