Traffic Management System (TMS) Delivery Agreement
Digital Systems Program
Contract Number IPD-19-7821

Transport for NSW (ABN 18 804 239 602) (TfNSW)
Siemens Mobility Pty Ltd (ABN 39 625 304 556) (the Contractor)
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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 Traffic Management System will be deployed in stages procured under Statements of Work. The scope of Statement of Work 1 is the delivery of a Traffic Management System capable of being deployed across the Network including all functionality detailed in the TMS Subsystem SSRS, to be implemented as Deployment Stage 1. The scope of Statement of Work 3 is the provision of visualisation for the Traffic Management System, being the capability of the TMS Subsystem relating to visualising information from non-ETCS Level 2 areas of the Network.

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 TMS Subsystem, 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 TMS Subsystem under a TMS 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 Precedent

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 Precedent), 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) and Schedule 2 (Agreement Details).

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

1.4  Satisfaction of Conditions Precedent

(a) The Contractor must satisfy the Contractor Conditions Precedent and SOW Conditions Precedent on or before the relevant Cut Off Date.

(b) The Contractor must promptly notify TfNSW if it discovers that any Contractor Condition Precedent or SOW Condition Precedent 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 Precedent and SOW Conditions Precedent have either been satisfied or waived by TfNSW.

1.5  Failure to satisfy Conditions Precedent

(a) If any Condition Precedent or SOW Condition Precedent 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 Contractor Condition Precedent or SOW Condition Precedent to be so satisfied; 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 Conditions Precedent or SOW Condition Precedent 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 under a clause referred to in clause 1.1(b); 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).

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 ten (10) Years after the date of entry into in revenue service operation of the System in the first Deployment Area (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 five (5) 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 fifteen (15) 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 the supplier of the TMS Subsystem, 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) the TMS 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 TMS 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 any of the Works or Assets, or in respect of any part of the System or Network, and that TfNSW may at any time perform or supply any part of the Contractor’s Activities or Assets itself or procure them from a Third Party. The Contractor further acknowledges that multiple trackside and signalling and control systems may be operated in parallel on, or 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
4 Structure of Agreement

4.1 Elements

(a) This Agreement consists of the following parts:

(i) any Special Conditions;

(ii) clauses 1 (Conditions Precedent) 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 or any Contractor’s Program included in a SOW);

(vii) excluding the Information Documents and Materials, any document incorporated by reference in:

(A) a clause to this Agreement;

(B) a Schedule to this Agreement; or

(C) a SOW, other than as identified in paragraph (vi); and

(viii) for each SOW, the relevant Concept Design 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;
(ii) the System Definition and Requirements;

(iii) the PR;

(iv) any other design, specifications or requirements relating to the Contractor’s Activities as set out in this Agreement, including in any SOW, and any other documents relating to the TMS Subsystem or Contractor’s Activities referenced in this Agreement, including in any SOW or the PR, including any Project Plans developed by TfNSW (excluding any such documents that form part of the Contractor’s Solution); and

(v) the Contractor’s Solution,

as varied through any Variation (Contract Specifications).

(c) The System Definition and Requirements consist of the following parts:

(i) the TMS Subsystem SSRS and the parts of the TMS 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;

(ii) each of the other documents relating to the TMS 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; and

(iii) Schedule 2 (Contractor’s Solution Description) to Statement of Work 1,

as varied through any Variation (Contractor’s Solution).

4.2 Order of precedence

(a) Subject to paragraphs (f) and (g), 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 paragraphs (f) and (g), 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) If there is any ambiguity, discrepancy or inconsistency between any Special Conditions specified in a SOW and any other parts of this Agreement, then for the purposes of that SOW only, those Special Conditions will prevail to the extent of the inconsistency.

(e) Subject to paragraphs (f) and (g), 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.

(f) 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, the Project Plan developed by TfNSW will prevail to the extent of the inconsistency.

(g) To the extent that any part or provision of:

(i) this Agreement;

(ii) the Contract Specifications;

(iii) subject to clause 6.1(e), the System Definition and Requirements; or

(iv) the Contractor’s Solution,

imposes higher standards, greater responsibilities and/or additional requirements on the Contractor, the Contractor must satisfy and meet those higher standards, greater responsibilities and/or additional requirements unless TfNSW otherwise Directs in writing. For clarity, this paragraph applies both in respect of higher standards, greater responsibilities or additional requirements between the items referred to in paragraphs (i) to (iv) and also within each of those items.

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.
Part B Rollout Program

5 Staged Delivery, New SOWs and Variations

5.1 Deployment Stage 1

(a) TfNSW intends to implement the TMS Subsystem progressively in a number of stages.

(b) As of the Commencement Date, TfNSW is only engaging the Contractor to provide the Contractor’s Activities for Deployment Stage 1, as described in Statement of Work 1 and Statement of Work 3, and to perform the Management SOW.

5.2 Future work

(a) If TfNSW wishes to engage the Contractor to deploy the TMS 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 (including any Major Enhancement or implementation of any future Upgrade), 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). The intention is that Major Enhancements and Minor Enhancements performed prior to commencement of the TLS Agreement will be performed under this Agreement, and Minor Enhancements performed after commencement of the TLS Agreement will be performed under the TLS Agreement.

(c) 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) whether any, or how many, Future Deployment Areas or how much Future Project Work may be awarded to the Contractor; or

(iii) the process by which TfNSW procures goods or services in respect of Future Deployment Areas and Future Project Work.

(d) The Contractor acknowledges that:

(i) any Future Deployment Area or Future Project Work may be awarded to Other Contractors or any Third Party; and

(ii) TfNSW’s approach to procurement of Future Deployment Areas and Future Project Work may change from time to time.

(e) Without prejudice to paragraph (c), 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:
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 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) 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) and section 6 (Changes in Laws, Approvals and Standards) of Schedule 7 (New SOWs and Variation Procedures).

6 Supply obligations

6.1 Scope of obligations

(a) For each SOW, the Contractor must:

(i) deliver the TMS 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 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 the Milestone Date.
(b) If something that is required to be done, supplied or procured in order to deliver the TMS 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, nothing requires TfNSW to provide any commercial in confidence or other confidential material or any documents, resources, documents, access, facilities or other Materials that TfNSW, a Stakeholder or Other Contractor does not have the rights or the ability to provide to the Contractor in order to meet a TfNSW Dependency. If such circumstances arise, the parties will work together with a view to agreeing an alternative way for the TfNSW Dependency to be met.

(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 TMS Subsystem by the Contractor in Deployment Stage 1 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 TMS Subsystem;

(ii) supply the TMS Subsystem, including all necessary Tools and test equipment, any related hardware and Software, and (where necessary) localisation activities required to support operation of the TMS Subsystem on the Network and meet the Contract Specifications;

(iii) perform all data designs and associated testing for the relevant Deployment Area, with the ability for the TMS Subsystem to be deployed across the Network;

(iv) install the TMS Subsystem on the TMS server infrastructure in nominated Rail Transport Entity facilities;

(v) configure workstations in the Sydney Trains Rail Operations Centre and/or other locations as appropriate;

(vi) provide and support the TMS Subsystem components required to facilitate testing at an integration test facility nominated by TfNSW in Sydney;

(vii) interface and connect the TMS 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);

(viii) successfully complete all Acceptance and Verification Activities required to demonstrate to TfNSW’s reasonable satisfaction that the TMS Subsystem meets the requirements of this Agreement, including the Contract Specifications, including as further described in clauses 10 (Verification) and 11 (Acceptance);

(ix) support and participate in integration and operational testing for the Program and System generally, including entry into service;

(x) support and maintain the TMS Subsystem prior to the commencement of services under the TLS Agreement, including as further described in clause 22 (Project Delivery Support);
(xi) provide training (including a train the trainer program using a simulator at a TfNSW training facility) and training materials in accordance with Industry Best Practice to enable TfNSW and the relevant Rail Transport Entities to support and maintain the TMS Subsystem;

(xii) perform all activities necessary to achieve commissioning and operational readiness of the TMS Subsystem;

(xiii) obtain all Approvals in respect of the TMS 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);

(xiv) otherwise meet the Objectives and the Contract Specifications;

(xv) comply with the Contractor's obligations, and perform such tasks, activities and services, as would be reasonably expected of, an AEO; and

(xvi) achieve Provisional Acceptance and Final Acceptance of the TMS Subsystem in accordance with this Agreement.

(d) The Contractor acknowledges and agrees that key components of the TMS Subsystem to be delivered by the Contractor include (as further defined in the Contract Specifications):

(i) signalling indication and controls;

(ii) “Automatic Route Setting” (ARS);

(iii) “Conflict Detection and Resolution” (CDR) functionality;

(iv) real time timetable planning and management;

(v) service regulation based on pre-defined schemes;

(vi) support of ATO;

(vii) the visualisation of information from non-ETCS Level 2 areas of the Network;

(viii) rail operator's timetable publishing/planning interface;

(ix) customer information interface;

(x) providing Rail Transport Entities with the functionality to allow rail operators to perform overall service regulation and network management in response to an incident on the Network;

(xi) management of planned network outages (possessions);

(xii) integrations with Interfacing Systems as required; and

(xiii) 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 TMS Subsystem supports, enables 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.

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) Omissions or misdescriptions of details or requirements relating to the TMS 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 TMS Subsystem and the Contractor’s Activities;

(ii) are required to be performed under the ASA Charter; or

(iii) the Contractor knew or reasonably should have known or should have included in the TMS Subsystem or the Contractor’s Activities,

will not relieve the Contractor from performing such omitted or mis-described 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

The Contractor:

(a) must use and supply workmanship:
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(i) 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

(ii) which is fit for purpose;

(b) must use and supply materials (including the Assets and Contractor’s Equipment) which are:

(i) 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

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

(c) despite any other provision in this Agreement to the contrary, must ensure that no other services or facilities are:

(i) damaged or destroyed; or

(ii) disconnected, disrupted, interfered with or interrupted,

by reason of the performance of the Contractor's Activities, without prior approval by TfNSW;

(d) must use all reasonable efforts to inform itself of the requirements of TfNSW and perform the Contractor’s Activities in accordance with those requirements where those requirements are not inconsistent with this Agreement, and regularly consult with TfNSW during the performance of the Contractor’s Activities;

(e) 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

(f) must allow TfNSW access to the quality assurance and management system of the Contractor and its Subcontractors.

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, any actual or prospective suppliers for the Trackside Subsystem Packages, 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 Commencement 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 five (5) 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) by notice to the Contractor, 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 which are required to fully evidence that:

(A) the Agreement requirements and all Contract Specifications have been met;

(B) all System and TMS Subsystem requirements:
   - are satisfied by the design of the TMS Subsystem;
   - will be and have been implemented by the manufacture and/or construction of the TMS Subsystem; and
   - in each case have been Verified;

(C) all Defects have been investigated and rectified;

(D) hazards and risks in relation to, or in connection with, the Contractor’s Activities have been mitigated so far as is reasonably practicable;

(E) configuration changes have been fully implemented;

(F) the process required for Review of Document Deliverables identified in this Agreement and the PR have been followed; and

(G) Contractor’s Program commitments have been undertaken and successfully completed;

(ii) Document Deliverables that are listed as Document Deliverables for submission in any Project Plan;

(iii) Technical Documents;

(iv) Design Documentation;

(v) Document Deliverables that are deemed significant by TfNSW as contemplated by TfNSW’s ‘Process for the Engineering Diligence Review for AEO Designs and Assets’;

(vi) Document Deliverables that are required to operate the NSW Rail Assets;

(vii) Document Deliverables that are updated or amended, having previously achieved a Confirmed Document status; and

(viii) 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, 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 TMS 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 use reasonable endeavours to provide any information, materials, documents or instructions requested by the Contractor;

(b) TfNSW will use reasonable endeavours 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 the Contractor will not be entitled to make, and TfNSW will not be liable upon, any Claim against TfNSW in respect of the accuracy, suitability or sufficiency of such information, materials, documents or instructions; and

(d) if TfNSW does not provide, or is delayed in providing, 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

8.1 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 or any Government Authority in relation to any information requested by TfNSW or that Government Authority 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.

8.2 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.

8.3 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.

8.4 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 (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; and

(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.
8.5 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.

(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 8.5 or any other act or omission of the Contractor or its Associates. 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 TMS Subsystem, the System or the Program.

8.6 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.

8.7 TfNSW’s Right to Access

(a) Subject to clauses 8.8 (Access by TfNSW to Contractor Sites) and 8.9 (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.

8.8 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 8.8.

8.9 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.

8.10 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:

clause 7 (Development, submission and Review of Document Deliverables);

(ii) Schedule 8 (Review Procedures); and

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 TMS 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:

   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

   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:

   without prejudice to its obligations under Schedule 17 (Governance and Management), convene and manage meetings with TfNSW in respect of the design of the TMS Subsystem;

   convene and manage all Design Presentations;

   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

   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):

   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

   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;

(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 TMS Subsystem;

(ii) informally exchange information regarding the development of the design of the TMS 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:
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(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 TMS Subsystem before completion of TfNSW’s review.

9.7 Concept Design

(a) The Contractor acknowledges and agrees that:

(i) prior to the SOW Commencement Dates for Statement of Work 1 and Statement of Work 3 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 will 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 involving Design Activities, 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,
(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 TMS 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 TMS 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 TMS 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 Deployment Stage 1, 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 TMS 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 TMS 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 TMS 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;

(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 TMS 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 TMS 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;
   (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 TMS 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 TMS Subsystem

(a) If a SOW requires Provisional Acceptance, then the Contractor must present the TMS 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 TMS 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 TMS Subsystem for Provisional Acceptance advising of the proposed date and time on which the Contractor proposes to first present the TMS 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 TMS Subsystem for Provisional Acceptance where the TMS Subsystem has previously been the subject of a Rejection Certificate under paragraph (f).

(c) The Contractor may present the TMS 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 TMS Subsystem have been met or issue a Provisional Acceptance Certificate in respect of the TMS 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 TMS Subsystem have been satisfied.
(e) If TfNSW is satisfied that the Provisional Acceptance Criteria for the TMS Subsystem have been satisfied, 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 TfNSW is not satisfied that the TMS Subsystem meets the Provisional Acceptance Criteria for the TMS 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 five (5) Business Days after the later of the:

(i) completion of all relevant TfNSW activities in relation to Provisional Acceptance; and

(ii) date when the Contractor provides TfNSW with all information required under paragraph (d).

(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 TMS Subsystem meets the Provisional Acceptance Criteria for the TMS 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 TMS 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 TMS Subsystem in accordance with paragraph (e).

11.4 Final Acceptance of the TMS Subsystem

(a) If a SOW requires Final Acceptance, then the Contractor must present the TMS 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 TMS Subsystem have been satisfied.

(c) If TfNSW is satisfied that the TMS Subsystem meets the Final Acceptance Criteria for the TMS Subsystem, TfNSW will issue a Final Acceptance Certificate for the TMS 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 TfNSW is not satisfied that the TMS Subsystem meets the Final Acceptance Criteria for the TMS 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 five (5) Business Days after the later of the:

(i) completion of all relevant TfNSW activities in relation to Final Acceptance; and

(ii) date when the Contractor provides TfNSW with all information required under paragraph (b).

(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 TMS Subsystem meets the Final Acceptance Criteria for the TMS 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 TMS 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) TfNSW is satisfied that the Acceptance Criteria for the Milestone have been met, and stating the date on which TfNSW determines that Acceptance of the Milestone has been achieved; or

(B) TfNSW is not satisfied that the Acceptance Criteria for the Milestone have been met, and providing a list of items that are apparent and which TfNSW believes 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 clause 11.5(a)(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 TMS 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(a) and 23.2(d), TfNSW may, in respect of any:

(i) Defect, 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, acting reasonably, 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, 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) TfNSW must act reasonably in the circumstances in determining which of the options in paragraphs (b)(i), (b)(ii) and, where applicable, (b)(iii), it elects to pursue in respect of any Defect.
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 TMS Subsystem under that SOW.

(d) 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.
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 the Transaction Documents;

(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 the Transaction Documents;

(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 the Transaction Documents and the overall Program.

13.2  Compliance

The Contractor must:

(a) 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) not depart from the current version of the Contractor's Program that have been Reviewed by TfNSW without prior approval of 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);

- TfNSW grants an extension to a Milestone Date pursuant to clause 15.4 (Discretion to extend Milestone Dates); or

- the Contractor chooses to compress the Contractor’s Activities or otherwise accelerate progress pursuant to clause 14.4 (Compression by Contractor); and

(B) Variations,

within five (5) 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 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 (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) When updating the Contractor’s Program, the Contractor must ensure that the updated Contractor’s Program:

(i) 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));

(ii) 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;

(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).

(c) Any updated Contractor’s Program must be submitted to TfNSW for Review and is not binding until Confirmed.
13.4 TfNSW may request updates

If, at any time the:

(a) Contractor’s Program does not comply with the requirements of the Transaction Documents; 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 the Transaction Documents (including clause 13.3); 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), 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 immediately notify TfNSW, giving reasons. If, following receipt of such notice, TfNSW confirms a Direction under paragraph (a), the Contractor must 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 immediately notify TfNSW, giving reasons. If, following receipt of such notice, TfNSW confirms a Direction under paragraph (a), the Contractor must 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 or 14.5 (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 or 14.5 (as applicable); or

(B) withdraw its Direction under clause 14.3 or 14.5 (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 or 14.5 (as applicable) or withdraw its Direction under clause 14.3 or 14.5 (as applicable).

(b) TfNSW may at any time by notice withdraw any Direction given by it under clause 14.3 or 14.5 (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 five (5) Business Days of receiving a Direction under clause 14.3 or 14.5 (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) the delays referred to in this clause 15;

(ii) all Hold Points and Witness Points; 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), 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
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) 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) unless the parties agree otherwise, the Contractor has followed and continues to follow the process set out in clause 33 (Resolution of Matters) and Schedule 18 (Issue Resolution Procedure), including by providing 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);

(iii) 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;

(v) the Contractor has used, and continues to use, all reasonable endeavours to mitigate the effects of the delay and works and co-operates with the Rail Transport Entities and Interface Contractors to mitigate the extent and impact of the delay; and

(vi) the Contractor has not been given a Direction to compress under clause 15.5 (Compression by TfNSW).

(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; and

(iii) the Contractor cannot make any Claim against TfNSW, 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 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 that the relevant Milestone Date should be extended, the relevant Milestone Date will be extended by a reasonable period determined by TfNSW and notified to the Contractor within twenty-eight (28) days after the later of:

(i) conclusion of the process set out in clause 33 (Resolution of Matters) and Schedule 18 (Issue Resolution Procedure); and

(ii) 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) 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

(ii) 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) This clause 15.3 and clause 15.6 (Compensation Events) set 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.
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 five (5) 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); or

(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) If TfNSW gives a Direction to the Contractor under paragraph (a):

(i) if the Contractor would, but for the Direction, have been entitled to an extension of time to the relevant Milestone Date for the cause of delay in respect of which the Contractor made a claim under clause 15.3 (Extension of Time), the Contractor will, to the extent it would have been entitled to an extension of time, 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 cause of 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) In respect of:

(i) a Compensation Event that is also an EOT Event, where the Contractor is granted an extension of time under clause 15.3 (Extension of Time) for a
delay caused by a Compensation Event, then to the extent the delay for
which the extension of time has been granted; or

(ii) for a Compensation Event that is not also an EOT Event, where the
occurrence of that Compensation Event,

directly causes the Contractor to incur additional costs or expenses in the
performance of the Contractor’s Activities, then, subject to paragraphs (b), (c) and
(d), the Contractor may be entitled to claim compensation calculated in accordance
with the Pricing Principles in section 3 of Schedule 11 (Pricing Terms).

(b) Each of the following is a condition precedent to the Contractor receiving
compensation pursuant to this clause:

(i) the relevant additional 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) unless the parties agree otherwise, the Contractor has followed and
continues to follow the process set out in clause 33 (Resolution of Matters)
and Schedule 18 (Issue Resolution Procedure), including by providing 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) the cause and extent of the Compensation Event is beyond the reasonable
control of the Contractor; and

(iv) the Contractor has used and continues to use all reasonable endeavours to
mitigate the effects of the Compensation Event and works and co-operates
with the Rail Transport Entities and Interface Contractors to mitigate the
extent and impact of the Compensation Event and any associated costs or
expenses.

(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) 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

(ii) 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) This clause sets out the Contractor’s sole and exclusive 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; or

(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).

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 their 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

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;
(c) the Contract Specifications; and
(d) the relevant SOW.

17 TfNSW Supplied Items

The Contractor:

(a) agrees that, in respect of Supplied Items, the Contractor:

(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 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) and (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 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 TMS Subsystem of,

such items in accordance with this Agreement.

(c) If the Contractor adds to, or replaces, any Asset (including use of the 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) the Assets remains with the Contractor until the earlier of:

(A) installation on the Network (except for Spares); and

(B) otherwise, 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 Assets coming into the care, custody or control of the Contractor, including:

(C) under any clause of this Agreement dealing with the rectification of Defects; or

(D) under any clause of this Agreement dealing with the maintenance or support of the Assets,

while any such activities are being carried out, until such time as the Assets are returned into the care, custody and control of TfNSW; 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 which by virtue of clause 18.2 (Risk):

(i) is at the risk of the Contractor;

(ii) by virtue of clause 22.1 (Care of the Works) is under the care of the Contractor; or

(iii) risk has passed to TfNSW, where the destruction, loss or damage is 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) promptly repair, replace, reinstate or remedy the destruction, loss or damage or, where TfNSW elects to do so itself or to engage a Third Party to do so, reimburse TfNSW for its and any Third Party's costs and expenses to 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) Subject to 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 no additional amounts are, or will be, payable by TfNSW in respect of those Works other than the Fees.

(c) Where the destruction, loss or damage contemplated by paragraph (a)(i) or (a)(ii) 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) will be treated as if it were a Variation the subject of a Direction by TfNSW.

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 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 or refurbished (provided that where they are refurbished, they are of equivalent quality as if they were new and continue to comply with the Contract Specifications). Spares provided as part of the first Deployment Stage must be new;

(ii) functionally compatible with the replaced model and version of those components installed or to be installed for use on the Network where, unless otherwise agreed by TfNSW, the Contractor has ratified and tested that functionally compatible Spare for local compatibility with TfNSW’s instance of the TMS Subsystem; and

(iii) fit for purpose and otherwise comply with the requirements of this Agreement.
19.2 Management of inventory

(a) The Contractor must create and submit for Review a Spares and Consumables Strategy which includes details of the minimum stock of Spares required to be held by the Contractor for the performance of the Contractor’s Activities in accordance with this Agreement (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) The Contractor must establish and maintain the Spares Inventory:

(i) such that it is sufficient for the Contractor to meet its obligations under this Agreement, including performing Corrective Maintenance Services within the times required under the relevant Statement of Work; and

(ii) in accordance with the Asset Management Plan and the Confirmed Spares and Consumables Strategy.

(d) 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.

(e) The Contractor bears all risk in relation to the:

(i) availability, cost, quality, functionality, delivery, integration, fitness for purpose, Obsolescence and maintenance of Spares; and

(ii) storage of Spares which are in the care, custody or control of the Contractor.

(f) Without limiting paragraph (d) or clause 34.2 (Audit and Inspection), if at any time the Spares Inventory is not at the levels required by this Agreement or not available to the Contractor:

(i) the Contractor must promptly notify TfNSW; and

(ii) except for where a Spare is required as a result of an Excepted Risk in circumstances where risk in the Asset is with TfNSW under clause 18.2, the Contractor must, at TfNSW’s option either:

(A) restock such inventory to the levels required at no expense to TfNSW; or

(B) 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,

within ten (10) Business Days (or such other period of time as the parties may agree) after receiving TfNSW’s notice.

19.3 Title

Title to and property in the Spares shall vest (free of all Security Interests and Third Party rights) progressively in TfNSW on 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 process and requirements reasonably nominated by TfNSW.

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 Rail Transport Entity considers 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).

(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 DLP Expiry Date for a SOW, the:

(i) 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; and

(ii) Contractor:

(A) indemnifies and must keep indemnified each of the TfNSW Indemnified Persons in respect of any 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 or an Other Contractor for the purpose of carrying out the Contractor's Activities;

(B) subject to paragraph (C), must promptly replace any lost or damaged Asset or Works provided under the relevant Statement of Work or otherwise make good any loss or damage to which the indemnity in paragraph (A) applies; and

(C) where the loss or damage of the Asset or Works 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) Subject to paragraph (d), 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 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)(ii)(C) as a result of an Excepted Risk, this replacement, making good or repair will be treated as if it were a Variation the subject of a Direction by TfNSW.

(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 in 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 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 require 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

(a) The Contractor must promptly notify TfNSW of all Defects discovered by the Contractor or of which it is aware.
(b) Without limiting paragraph (a), the Contractor must track and manage all Defects 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 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)), the Contractor must, in accordance with TfNSW’s Directions, promptly identify the root cause of and otherwise repair, replace or rectify (at the Contractor’s discretion) 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) If the Defects Liability Period under SOW 1 expires prior to the commencement of services under the TLS Agreement, then the Contractor:

(i) must comply with the obligations under paragraph (a) in respect of any Defect identified prior to commencement of the TLS Agreement; and

(ii) may charge TfNSW for any such service in accordance the Schedule of Rates set out in Schedule 11 (Pricing Terms), unless the parties agree to a Variation to extend the Defects Liability Period.

(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).

(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 Contractor’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 any Defects Liability Period.

23.3 Batch Defects

(a) 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) must, within such period as may reasonably be specified in such notice, rectify, repair or replace (at TfNSW’s discretion, after consultation with the Contractor) all such Assets; and
(ii) 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.

(b) 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; or

(ii) permanently cease the delivery, installation and/or commissioning of all such Assets.

(c) 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 (b) 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.

(d) This clause 23.3 applies to an Asset, for the period from the date on which title in that Asset transfers to TfNSW in accordance with this Agreement until the expiry of the following periods:

(i) for server hardware, 60 months; and

(ii) for workstation hardware, 48 months.

23.4 General

(a) TfNSW may Direct the Contractor as to the:

(i) times and dates for; and

(ii) work method that must be employed in,

performing the activities under this clause 23.

(b) 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 Laws 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) 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:

(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 entry into in revenue service operation of the System in the first Deployment Area;

(ii) Contractor’s obligation to perform the TLS Activities in respect of the first Deployment Area to go into in revenue service operation 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 Deployment Area other than the first Deployment Area to go into in revenue service operation will commence at the point at which that Deployment Area goes into in revenue service operation.

(b) TfNSW must provide at least twenty (20) Business Days’ notice to the Contractor prior to:

(i) the first Deployment Area going into in revenue service operation; and

(ii) each subsequent Deployment Area going into in revenue service operation,

which notice must set out the date that TfNSW intends the relevant Deployment Area to go into in revenue service operation.

(c) Unless agreed otherwise with TfNSW:

(i) 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;

(ii) 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;

(iii) 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

(iv) 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 in revenue service operation of the System in the first Deployment Area;

(b) without limiting paragraph (c), the Contractor must select components of the TMS Subsystem so that, as far as reasonably foreseeable, Spares or suitable, backwards compatible replacements, are readily available for the Design Life of the TMS Subsystem;

(c) it must ensure that, in respect of each Deployment Area, all components of the TMS Subsystem to be deployed or used in respect of that Deployment Area do not become Obsolete within the seven (7) year period commencing on the date on which title in respect of that Asset passes to TfNSW;

(d) the TMS Subsystem (and each component of it) will for its Design Life:

(i) continue to be fully supported by the Contractor;

(ii) continue to:

(A) operate in accordance with the applicable Contract Specifications; and

(B) be fit for purpose,

provided that the Contractor will not be liable for a breach of this obligation to the extent that that breach arises as a result of a failure of a Rail Transport Entity to perform any maintenance in respect of the TMS Subsystem (or the relevant component of it) where performance of that maintenance is required or contemplated to be performed by a Rail Transport Entity under the TLS Agreement; and

(iii) remain compatible and interoperable with the Interfacing Systems, assuming that:

(A) where the Interfacing Systems are Subsystems, those Interfacing Subsystems continue to comply with the SSRSs and ICDs for those Interfacing Systems; and
Part E  Post-installation obligations

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 input into 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 TMS Subsystem (including developments to the same that the Contractor makes at the request of other customers) under the TLS Agreement.

(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 TMS 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) include 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 TMS 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 TMS Subsystem;

(D) improve security relating to the System or TMS Subsystem;

(E) reduce or mitigate risks in relation to the System or TMS 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 versions of Software that forms part of the TMS 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.
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) 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; 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;

(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 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.

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) Each SOW (including the Management 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:

(i) nominate certain positions as Key Delivery Positions from the date included in the notice;

(ii) nominate certain Contractor Personnel to Key Delivery Positions from the date included in the notice;

(iii) 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

(iv) 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 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;

(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 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 a 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.

(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 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 change to 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, 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 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, that entity will cease to be an Approved Subcontractor or 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, TfNSW must notify the Contractor whether TfNSW consents or does not consent to the engagement of the proposed Subcontractor. TfNSW will endeavour, where reasonably practicable, to provide such notice within four (4) weeks of TfNSW’s receipt of the information provided under paragraph (a).

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, 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):

(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) be consistent with this Agreement as to:

(i) co-operation and collaboration;

(ii) confidentiality, privacy and intellectual property obligations;

(iii) compliance obligations (including workplace health and safety) to the extent relevant to the Subcontractor’s services;

(iv) performance remediation and escrow provisions;

(v) termination and disengagement rights; and

(vi) Contractor Personnel rights and obligations;

(b) engage the Subcontractor in connection with the execution of the relevant part of the Program as an independent contractor of the Contractor; and

(c) 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) if requested by TfNSW, ensure that a Subcontractor or Project Related Body Corporate attends meetings of governance forums (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);

(b) 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;

(c) ensure that a Subcontractor or Project Related Body Corporate is aware of, and complies with, all of the terms of this Agreement that are relevant to that Subcontractor’s or Project Related Body Corporate’s role in the performance of the applicable obligations, including in particular the obligations in respect of:

(i) co-operation and collaboration;

(ii) confidentiality, privacy and intellectual property obligations;

(iii) compliance obligations (including workplace health and safety) to the extent relevant to the Subcontractor’s services;

(iv) performance remediation and escrow provisions; and

(v) Contractor Personnel rights and obligations;

(d) 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;

(e) 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));

(f) 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;

(g) 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;

(h) 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;

(i) 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;
(j) 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

(k) 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);

(ii) limit or otherwise affect TfNSW’s rights against the Contractor (including those arising out of any warranties given under this Agreement); 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.
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).

28.2 Most favoured pricing
29 Invoices and Payment

29.1 Payment claims

(a) The Contractor may within five (5) Business Days of the end of each calendar month or 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), 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) make any payment claim using the invoice and cost reporting template supplied by TfNSW; and

(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.

(d) The Contractor is not entitled to submit a payment claim to TfNSW, and TfNSW is not obliged to make any payment to the Contractor, until the Contractor has provided TfNSW with copies of all relevant certificates of currency in respect of all Contractor Insurance Policies.

(e) Subject to clauses 29.2 (Payment schedule) to 29.6 (Disputed Amounts) inclusive, TfNSW may accept the Contractor’s payment claim submitted pursuant to paragraph (a) and, subject to clause 29.3(d), issue a Recipient Created Tax Invoice.

(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) If TfNSW intends to make a payment that is less than the amount claimed by the Contractor in a payment claim, TfNSW must, within ten (10) Business Days following receipt of a payment claim give the Contractor:

(i) a payment schedule which sets out:

(A) 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 29.4 (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) 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(d), 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

(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 (d), 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) If the Contractor has not notified TfNSW within three (3) 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) 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 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 or any Rail Transport Entity under any Transaction Document; and

(ii) other claims relating to the Program which TfNSW or any Rail Transport Entity has against the Contractor, whether under this Agreement, another Transaction Document or otherwise (including at Law),

including any overpayment by TfNSW against a payment claim that is found to have been incorrectly rendered.

(b) This clause does not prejudice other available means of recovery.

29.5 Late invoicing

Without limiting clause 29.8:

(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 29.5 and will not otherwise have any liability for costs, charges or fees associated with such Contractor’s Activities.

29.6 Disputed Amounts

(a) 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.

(b) Where TfNSW withholds payment of any part of a payment claim in accordance with paragraph (a):

(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).

29.7 Payment of Subcontractors

The Contractor acknowledges and agrees that, without limiting clause 29.1(d) 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.

29.8 Statement of Outstanding Claims and Release

(a) In respect of each Statement of Work, the Contractor must submit to TfNSW a statement of outstanding Claims no later than the date (the Final Claim Date) that is the later of:

(i) twenty-eight (28) days after the expiry of the last Defects Liability Period under the relevant Statement of Work; and

(ii) the date of Final Acceptance of the TMS Subsystem under that Statement of Work,

which statement 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 Final Claim Date (the Statement of Outstanding Claims).

(b) Each 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 Final Claim Date, including all Claims which:

(i) have been made;

(ii) could have been made; or

(iii) should have been made,

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

(c) The 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 the Final Claim Date in respect of a Statement of Work, the Contractor is not entitled to make any further Claim (not identified in the Statement of Outstanding Claims which has been given to TfNSW within the time required by, and in accordance with paragraph (a)) whatsoever against any TfNSW Indemnified Person, and no TfNSW Indemnified Person will be liable upon any further Claim by the Contractor 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.

(d) The claims and statements required under this clause 29.8 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.

(e) Without limiting paragraph (d), the Contractor cannot include in any Statement of Outstanding Claims any Claims that it is not entitled to make or that are barred or waived under this Agreement.

(f) 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 Final Claim Date for that Statement of Work except for any Claim which both:

(i) has been included in the Statement of Outstanding Claims for that Statement of Work which has been 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.

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 organisations providing services or solutions to equivalent customers (Benchmarking).

(b) The Benchmarking must take into account all relevant characteristics of the Contractor’s Activities being provided to TfNSW, which may include all or some 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.
(e) The benchmarker will assess a pool of organisations, 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.

(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.

(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, Statement of Work 3 or any subsequently agreed Statement of Work.
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:

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;
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 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;

(Records); and

(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 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, the Contractor will not be required to disclose its profit margins or costs associated with performing the Contractor’s Activities);

(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 Remediying 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 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;

(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, Probit 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, Probit 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 Probit 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 TMS Subsystems 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 TMS Subsystems;

(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 TMS Subsystems 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 TMS Subsystems; 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 TMS Subsystem 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

[Redacted text]
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) 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.

(c) 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) 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 TMS 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 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:

(a) to the extent the TfNSW Data is within the possession or under the control of the Contractor or any Contractor Personnel, 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 which reflect Industry Best Practice and are no less rigorous than those maintained by:

(a) TfNSW as of the Execution Date (or implemented by TfNSW in the future); 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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*Gilbert + Tobin 3465-6812-5456 v1*
Part I  Information Handling and Security
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 so that TfNSW may consider seeking 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) any tendering process for an agreement analogous to or similar to the Transaction Documents.
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 TMS 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.

(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 Laws, Change in Approvals 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 6.3 (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 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 a Rail Transport Entity has obtained or requires a Rail Transport Entity 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;

(iii) without prejudice to clause 43.1(a)(iv), comply with, satisfy, carry out and fulfil the conditions and requirements of all Approvals to the extent relevant to the Contractor’s Activities (whether obtained by the Contractor, or obtained by 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;

(iv) not cause any Rail Transport Entity to fail to comply with, carry out or fulfil the requirements of any Approval as defined in clauses 43.1(a)(iv)(A) to (C) that the Rail Transport Entity is required to comply with, 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.

(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; and

(B) all studies and reports required because of the design of the Works or the TMS Subsystem proposed by the Contractor; 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 outs 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) 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 TMS Subsystem that comply with the AEO Authorisation and ASA Requirements and the requirements of this Agreement;

(iii) develop and maintain a competency management system for the Contractor’s Activities as part of its AEO Authorisation;

(iv) carry out its own assurance on the Contractor’s Activities and the TMS Subsystem;

(v) 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;

(vi) cooperate, and ensure the Contractor Personnel cooperate, fully with the ASA in the performance of the ASA's functions;

(vii) 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;

(viii) comply, and ensure the Contractor Personnel comply, with the Directions, instructions and requirements issued by the ASA;

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

(x) 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

(xi) 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 TMS 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 TMS 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 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, indemnifies 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) During any period:

(i) for which the Contractor is specified in a SOW as being; or

(ii) that TfNSW Directs the Contractor to be,

in Control of any part of a Delivery Location:

(iii) 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;

(iv) 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

(v) 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 not specified in the relevant SOW as being; or

(ii) TfNSW has not Directed that the Contractor is 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, in respect of any part of a Delivery Location which a SOW or Direction specifies that the Contractor is in Control:

(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)(iii) to (c)(v).

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 substantially 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:
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(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 46.6(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 the Contractor’s Activities, provided that the Contractor’s responsibility to indemnify the TfNSW Indemnified Persons will be reduced to the extent that an act or omission of a TfNSW Indemnified Person, an Interface Contractor or an agent of a TfNSW Indemnified Person contributed to the Claim.

(m) 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; 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 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) 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;

(vii) not do, or omit to do, anything that is, or is likely to be, prejudicial to the performance of the Contractor's Activities;

(viii) 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

(ix) 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)(viii).

(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 an act or omission of the Contractor or any of its Associates.

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
48.3 Transport planning

(a) The Contractor acknowledges that TfNSW 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 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 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 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 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;

(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 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) 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
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(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 by any Investigative Authority in connection with the Contractor’s Activities, including any infringement notice, fine or penalty.
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) the costs (if any) of implementing the Action Plan;

(v) a timeline for the implementation of the Action Plan; and

(vi) 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.
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 two (2) 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.

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 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,
within two (2) Business Days of TfNSW notifying the Contractor to do
so (or such longer period as notified by TfNSW);

(v) the Contractor fails to achieve any Milestone by the relevant Milestone Date
or, based on reasonable forecasts by TfNSW, is unlikely to achieve any
Milestone by the relevant Milestone Date; or

(vi) any event occurs which would entitle TfNSW to terminate this Agreement or
Sydney Trains to terminate the TLS Agreement, in whole or in part.

(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 Subcontractor, 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, 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, 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 paragraph (h) applies regardless of whether such assistance, materials or resources are provided under or in accordance with clause 53.3 (Enhanced Cooperation Right), this clause 54 or otherwise.
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.
(d) Each of the following is a condition precedent to the Contractor being entitled to recover Fees or costs under paragraph (c):

(i) 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;

(ii) unless the parties agree otherwise, the Contractor has followed and continues to follow the process set out in clause 33 (Resolution of Matters) and section 2.1 (Issue Resolution Process) of Schedule 18 (Issue Resolution Procedure), including by providing 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);

(iii) the cause and extent of the suspension is beyond the reasonable control of the Contractor; and

(iv) 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:

(i) the Contractor incurs or encounters in performing the Contractor's Activities; or

(ii) 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.

(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.
56.2 Form of Unconditional Undertaking

(a) The unconditional undertakings to be provided under this clause 56 are for the purpose of ensuring the due and proper performance by the Contractor of its obligations under this Agreement.

(c) A SOW will be considered to be “on foot” for purposes of paragraph (b) and clauses 56.3(a) and 56.3(b) for so long as any Defects Liability Period under that SOW has not expired.

(d) Each unconditional undertaking taken out for purposes of paragraph (b) must be:
   (i) in the form of Schedule 29 (Form of Unconditional Undertaking);
   (ii) in favour of TfNSW;
   (iii) issued by an Institution approved by TfNSW that maintains the Required Rating; and
   (iv) where required by Law, duly stamped.

(e) TfNSW:
   (i) may have recourse to any unconditional undertaking provided under this Agreement where, in TfNSW’s opinion, the Contractor is not ensuring or has not ensured the due and proper performance of its obligations under this Agreement;
   (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 (e)(ii)(B) on trust for the Contractor.

(f) 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), if there are no other SOWs on foot (other than the Management SOW) TfNSW must:

(i) within twenty-eight (28) days after the expiration of all the Defects Liability Periods under a SOW (or such other date as may be nominated in the SOW), release so much of the unconditional undertakings provided by the Contractor as may then be held by TfNSW, to such amount as TfNSW determines to be reasonable, having regard to remaining Defects; and

(ii) within twenty-eight (28) days after the completion of all outstanding Defects to TfNSW’s satisfaction, release the balance of the unconditional undertakings referred to in paragraph (a)(i) as may then be held by TfNSW, and as soon as reasonably practicable return the original executed unconditional undertakings to the Institution(s) that issued them.

(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, and provided there are no other SOWs on foot (other than the Management SOW), 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). Subsequent to TfNSW’s release of the security held by it pursuant to this clause, TfNSW must as soon as reasonably practicable return the original executed unconditional undertakings to the Institution(s) that issued them.

(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 bona fide 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
56.5 Additional Unconditional Undertaking

(a) If at any time the unconditional undertakings provided under this clause 56 have a total value less than the amount set out in clause 56.2(b), TfNSW may Direct the Contractor to provide additional security in the form of an unconditional undertaking so as to ensure that the proportion of the Fees which the unconditional undertakings represent does not diminish.

(b) The Contractor must provide such additional security in the form of an unconditional undertaking within ten (10) Business Days of a Direction under paragraph (a).

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 alternate sources, workarounds or other means; 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.
58 Termination

[Text content redacted, presumably containing detailed conditions or clauses regarding termination within the Digital Systems Program – TMS Delivery Agreement.]
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.

(b) Where TfNSW terminates under paragraph (a), the Contractor must do everything that is reasonably practicable to mitigate its losses arising as a consequence of a termination under paragraph (a), 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.

(c) Subject to paragraphs (b) and (e), where TfNSW terminates this Agreement under paragraph (a), the Contractor will be entitled to payment of the following amounts as determined by TfNSW:

(i) for work carried out prior to the date of termination:

(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 work carried out to the date of termination; and/or

(B) in relation to any work carried out prior to the date of termination 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 obligation under paragraph (b).

(d) Subject to paragraphs (b) and (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 clause 58.4 and clause 59 (Disengagement).

(e) Paragraph (c) does not apply to termination of the Management SOW by TfNSW under paragraph (a), in the event of which termination the Contractor will not be entitled to the payment of any Termination Costs, or any other amounts.

(f) Paragraph (c) sets out the only amounts TfNSW is required to pay in the event TfNSW terminates under paragraph (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.

(g) Once TfNSW has paid the amounts in paragraph (c), no further compensation is payable for that termination.

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 Early Warning Notice in respect of the amount overdue stating that the Contractor intends to terminate the Agreement if TfNSW does not pay the overdue amount within thirty (30) days after receipt of the Early Warning Notice;

(iii) TfNSW fails to pay such overdue amount to the Contractor within thirty (30) days after receipt of the Early Warning Notice issued pursuant to paragraph (ii); and

(iv) there is no dispute between TfNSW and the Contractor in relation to such Fees.

(b) 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).
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 nomineeReplacement 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 any such disclosure of the Contractor’s Confidential Information will exclude, or be reasonably redacted to exclude, Confidential Information of the Contractor that is sensitive pricing information.
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, Statement of Work 1, Statement of Work 3 and the Management SOW) and each SOW Commencement Date (in respect of each SOW other than Statement of Work 1, Statement of Work 3 and the Management SOW), 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) 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 Program (including the storage of 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 on 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
62 Indemnities
63 Liability

[Redacted text]
Part L   Risk Allocation
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 6 (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 6 (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 6 (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;
Part L  Risk Allocation

(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 policy only, names TfNSW, Sydney Trains, NSW Trains and TAHE as additional insureds under the policy for the purposes of this Program only, and 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;

d) except in relation to the Professional Indemnity Insurance policy, 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;

e) except in relation to the Marine Transit Insurance policy, includes a cross liability clause in which the insurer agrees:

(i) 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

(ii) 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;

(f) contains a term which requires the lead insurer or the Contractor’s broker to give TfNSW thirty (30) Business Days’ notice prior to 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.

To the extent that the Contractor is unable to comply with this paragraph (f) only, having taken all reasonable steps to do so, the Contractor must provide notice to TfNSW immediately upon becoming aware of any of the facts set out in paragraphs (i) to (iv) of this paragraph (f);

(g) except in relation to the Professional Indemnity Insurance, contains a term providing that notice of a claim by any insured will be accepted by the insurer as notice by all insureds;

(h) does not exclude coverage for innocent non-disclosure;

(i) 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;

(j) 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

(k) 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, 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 (k)(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 Subcontractors 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.

64.6 Evidence of insurance

The Contractor must provide to TfNSW:

(a) certified 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) certified copies of all cover notes;

(ii) a certificate of currency satisfactory to TfNSW 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.

64.7 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 64.6(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.

64.8 Proportionate liability and the Contractor Insurance Policies

The Contractor must ensure that the Contractor Insurance Policies required to be taken out pursuant to clause 64.2(a):

(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.
64.9 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;
(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; and

(iii) each TfNSW Indemnified Person exercising rights in relation to, or otherwise enforcing the indemnities, releases and other rights as if they were a party to this Agreement.

(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), anything the Rail Transport Entities 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.
The Contractor:

(i) waives any Claims that it may have against TfNSW as a result of the exercise by any Rail Transport Entity 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 that the Contractor will provide to the relevant Government Authority; and
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.

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 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.
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 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) 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

If TfNSW is required under the terms of this Agreement to exercise best or reasonable endeavours, the Contractor acknowledges that TfNSW:

(a) 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;

(b) cannot guarantee the relevant outcome; and

(c) by undertaking to exercise best or reasonable endeavours, 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.
1 Definitions

The following definitions apply in this Agreement:

**Aboriginal Participation Plan** means the plan required under the APP Policy.

**Aboriginal Participation Report** means the report required under the APP Policy.

**Accept, Accepted, or Acceptance** means:

(a) in relation to the TMS Subsystem, Provisional Acceptance and/or Final Acceptance of the TMS 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 TMS 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 8.4(a)(ii).

**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.
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).

Adjusted Charge means a Charge that has been varied by the application of an Escalation Factor (as defined in section 6.1 (Escalation) of Schedule 11 (Pricing Terms)) under Schedule 11 (Pricing Terms).

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:

(a) the use of any Rail Transport Entity Sites;

(b) the safe operation of the Network;
(c) the operational capacity or efficiency of the Network; or

(d) the future safe operation of the Network or the 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:

(e) the Network, NSW Rail Assets and any Rail Transport Entity Sites;

(f) the safety of any Rail Transport Entity's passengers, station patrons or representatives of any Rail Transport Entity; or

(g) 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.

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

**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 affecting rail operations; or

(c) to enable TfNSW to occupy and use for its intended purpose the completed Works or a part thereof,

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.
Asset or Assets means all items designed, developed, supplied, delivered, provided, produced, tested or commissioned by or on behalf of the Contractor under this Agreement or the TLS Agreement, and includes:

(a) the TMS Subsystem and all of the components that make up the TMS Subsystem, including the Software;

(b) Document Deliverables;

(c) Spares, Tools, consumables and chattels, unfixed goods and materials supplied as part of the Contractor's Activities or the TLS Activities under the TLS Agreement; and

(d) any part of the Works that the Contractor is required to design, procure, construct, implement, modify, integrate or bring into operational readiness, including as further described in this Agreement (including any SOW) and the TLS Agreement.

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

Asset Management Plan means the plan of that name defined in Appendix 6 (PR Definitions) of the PR.

Asset Management System has the meaning given in Appendix 6 (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).
**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:

1. the Minister for Transport and Infrastructure;
2. the Secretary of Transport for NSW; and
3. 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.

**ATO Standard** means the international Standards relating to ATO over ETCS, including:

(a) SUBSET-125: System Requirements Specification

(b) SUBSET-126: ATO-OB / ATO-TS Interface (FFFIS application layer);

(c) SUBSET-130: ETCS-OB / ATO-OB Interface (FFFIS application layer);

(d) SUBSET-131: ATO-TS / TMS Interface (FIS); and

(e) SUBSET-139: ATO-OB / Train Interface (FIS).
which, as of the SOW Execution Date for Statement of Work 1 is in draft form.

**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.

**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** means a defect that is liable according to Schedule 11 (Pricing Terms).

**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).

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


**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) the introduction of a new Approval not existing at the SOW Execution Date; or

(b) the amendment of an Approval existing at the SOW Execution Date.

**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 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), Schedule 11A (Pricing Tables), Schedule 11B (Resource Unit Definitions) and Schedule 11C (Labour Rates) 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).
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):
   - 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
   - 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 TMS Subsystem prepared for Deployment Stage 1 as part of the Contractor’s response to the RFP (as attached to Statement of Work 1);

(b) the design for any visualisation of the TMS Subsystem (as attached to Statement of Work 3); and

(c) the concept design included in the Contractor’s SOW Proposal (in respect of any New SOWs) as attached to the relevant SOW.

Conditions Precedent means each of the conditions listed in Item 2 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(b) 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).

Contract Value at any point in time means the total aggregate value of all amounts then paid or payable to the Contractor under this Agreement, including all SOWs, and 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 this Agreement, including all SOWs, for the remainder of the Term. 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 Term. For the purposes of performing this calculation, amounts paid or payable under all SOWs entered into under the Agreement at any time (including under SOWs which may have already been performed and completed at the time of the calculation) are taken into account.

Contractor Conditions Precedent means the Conditions Precedent identified as such in Item 2 of Schedule 2 (Agreement Details).

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 6 (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**

**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) performance of the Works; 

(b) supply of the Assets in accordance with this Agreement; 

(c) the provision of the Contractor’s Equipment; 

(d) performance of the Verification Activities; and
(e) anything customarily performed in connection with the performance of, or incidental or ancillary to, the obligations in paragraphs (a) to (d).

**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 Commencement Date is the person set out in Item 3 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 is a Key Person for the purposes of the Agreement.

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

**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.

**Cut Off Date** means:

(a) in relation to the Conditions Precedent, the relevant date set out in Item 2 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 TMS Subsystem to pass Acceptance or Verification, or any other issue which would cause the TMS Subsystem or associated Assets not to pass Acceptance or Verification.

**Defects Liability Period (or DLP)** means the period from the date on which a Provisional Acceptance Certificate is issued under the relevant Statement of Work until the applicable DLP Expiry Date.

**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 8.1(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 TMS Subsystem will be deployed, and includes Package 1A, Package 1B and each Future Deployment Area.

**Deployment Stage** means each stage of the design, development and rollout of the TMS Subsystem, as specified in a SOW.

**Deployment Stage 1** means the initial design, development and rollout of the TMS Subsystem as described in SOW 1.

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

**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 TMS Subsystem; and

(b) documentation (including certificates and check lists) to evidence that the design documentation complies with the requirements of this Agreement,

and includes the Designs.

**Design Life** of an Asset means:

(a) in respect of the TMS Subsystem deployed in connection with any Deployment Stage, a period of twenty (20) years from the commencement of TLS Activities in respect of that Deployment Stage; and

(b) in respect of any other Asset, the greater of:

   twenty (20) years from the commencement of TLS Activities in respect of that Asset or such lesser Design Life period for that Asset as may be specified in the SSRS;

   the period of serviceable use for which it has been designed; and

   any longer period specified in the Contract Specifications.

**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.

Direct Loss has the meaning given in Schedule 18 of the Agreement.

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 interruption of the Contractor’s Activities, including any 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 Charges** has the meaning given in section 8.3 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 Expiry Date**
**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 TMS 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 and the Contractor for the Trackside Subsystem 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 6 (PR Definitions) of the PR.

**EOT Event**
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).

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)(ii).

Factory Acceptance Testing or FAT means testing of the individual TMS Subsystem elements against the relevant requirements from the Contract Specifications as identified in a SOW, which testing is conducted at a factory site.

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 TMS Subsystem has met the Final Acceptance Criteria for the TMS Subsystem.

Final Acceptance Certificate means a certificate issued by TfNSW in the form of Schedule 10 (Form of Final Acceptance Certificate) certifying that the TMS Subsystem has achieved Final Acceptance.

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

Final Claim Date has the meaning given in clause 29.8(a).

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

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**

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

**Future Project Work** means:

(a) a Minor Enhancement to be performed prior to commencement of the TLS Agreement, a Major Enhancement or an Upgrade; and

(b) 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 TMS Subsystem in a Future Deployment Area.

**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.

**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;
   
(v) any unauthorised removal of trees;

(vi) a non-compliance with an Approval or Third Party Agreement; or

(vii) any public complaint; or

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

(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 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.

**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, Statement of Work 1, Statement of Work 3 and the Management SOW) and each SOW Commencement Date (in respect of each SOW other than Statement of Work 1, Statement of Work 3 and the Management SOW) 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.

**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, that supplies goods or services to a Rail Transport Entity;

(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 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 TMS 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 TMS Subsystem, as contained in Schedule 3 (System Definition and Requirements).

**Interface Work** or **Interfacing Work** means any work or activities undertaken by any Interface 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 Interface 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 TMS Subsystem is required to interface or integrate, including as identified in any SOW, the Contract Specifications or the Interface Contractor Matrix; and

(b) each other system, solution, hardware, network or Software, including legacy or new, with which the TMS Subsystem is required to interface or integrate, as set out in any SOW or the Contract Specifications 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 of Schedule 2 (Agreement Details); and

(c) such other subcontracting of particular Contractor’s Activities as nominated by TfNSW from time to time.

**Labour Rates** means the labour rate elements of the Schedule of Rates, as set out in Schedule 11C (Labour Rates).

**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, decision, requirement, official interpretation or administrative direction by any Government Authority;

(c) common law; and

(d) the requirements and conditions of Approvals.

**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.

**Legal Opinion** means a legal opinion:

(a) from:

   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

   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**

**Major Enhancement**

**Management SOW** means the Statement of Work relating to the Contractor’s overarching responsibilities under this Agreement, executed by the parties on or around the Execution Date and identified as “Statement of Work 2”.

**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 and Tools.

**Material Breach**
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 means a Modification to the TMS Subsystem (bespoke or commercial off-the-shelf) that provides the TMS 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 Commencement 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 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).

Obsolete means where any Asset (or any part of it) is obsolete or otherwise transitions from:

(a) being available from or fully supported by the original manufacturer to being either not available or not fully supported, where the Contractor has not ratified and tested, in the same manner as is described in Schedule 5 (Service Schedule) of the TLS Agreement, a functionally compatible substitute Asset; or

(b) operability to non-functionality or non-operability due to external reasons, other than on a temporary basis,

and Obsolescence has a corresponding meaning.

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 plan and TfNSW’s operational readiness 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).
Ownership has the meaning given to ‘control’ in section 50AA of the Corporations Act.

Package 1A means the T4 Eastern Suburbs and Illawarra section of the Network between Cronulla and Sutherland (subject to the exact transition points being defined by TfNSW).

Package 1B means the T4 Eastern Suburbs and Illawarra section of the Network between Bondi Junction and Redfern (subject to the exact transition points being defined by TfNSW).

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 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 enable the monitoring and reporting requirements set out in the TLS Agreement.

Permitted Sublicensee has the meaning given in clause 37.3(c).

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.

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 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.

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:

   any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and

   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:

   the public interest; or

   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:

   reasonable standards of ethical behaviour; or

   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 7.2 of Schedule 8 (Review Procedures).

**Proceed at Risk Notice** has the meaning given in section 7.2 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).
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 TMS Subsystem has met the Provisional Acceptance Criteria for the TMS Subsystem.

Provisional Acceptance Certificate means a certificate issued by TfNSW in the form of Schedule 9 (Form of Provisional Acceptance Certificate) certifying that the TMS Subsystem has achieved Provisional Acceptance.

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

Qualified Subcontractor has the meaning given in clause 27.1(d).

Qualifying Change in Approval

Qualifying Change in Law
Qualifying Change in Standard

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 Schedule 12 (Form of Rejection Certificate).

**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).

**Report** means each of the reports described in this Agreement, including 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 has the meaning given in Recital E.

**Required Rating**

- [ ]

**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.

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).

SBB

SBB Software

Schedule of Rates means the schedule of rates set out in Schedule 11A (Pricing Tables) and Schedule 11C (Labour Rates).

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:

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, any software, tools or object libraries embedded in that software and all Materials relating to that software and/or its design, development, Modification, operation, support or maintenance.

**SOW** or **Statement of Work** means Statement of Work 1, Statement of Work 3, the Management SOW 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 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 3.3(a)(ii) 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 of Schedule 7 (New SOWs and Variation Procedures).
SOW Variations means a Variation to a SOW made in accordance with the Variation Procedure.

Spares means rotables and capital spares for the Assets and other spare parts for the Assets.

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.

Spares Inventory has the meaning given in clause 19.2(a).

Special Conditions means any terms and conditions specified in the “Special Conditions” section of any SOW that are expressly stated to prevail to the extent of any inconsistency with the terms of this Agreement, with reference to clause 4.2 (Order of Precedence).

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).
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 Outstanding Claims has the meaning given in clause 29.8(a).

Statement of Work 1 or SOW 1 means the Statement of Work(s) relating to the initial stage of the TMS rollout, executed by the parties on or around the Execution Date.

Statement of Work 3 or SOW 3 means the Statement of Work relating to the rollout of TMS Visualisation across the Network, 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 Subsystems;

(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 TMS 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 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 TMS 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 TMS 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).

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, 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, manufacture, construction, verification, operation, maintenance, and disposal of the TMS 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 6 (PR Definitions) of the PR.

Technology Evolution Template Statement of Work means the standard terms that apply:

(a) to the deployment of the TMS Subsystem in a Future Deployment Area, as set out in Part A of Attachment A (Statement of Work Templates) of Schedule 7 (New SOWs and Variation Procedures); and

(b) for the performance of any Future Project Work not connected with the rollout of the TMS Subsystem in a Future Deployment Area, as set out in Part B of Attachment A (Statement of Work Templates) 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 58.4(c) (Termination by TfNSW for convenience).

Test Readiness Review means the review conducted in accordance with the PR.

Testing and Commissioning Plan means TfNSW’s 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 TMS 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:

   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 Policies means:

(a) the insurance policies set out in Item 7 (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 means:

- [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, 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, including through any TfNSW vendor portal or publicly available website.

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:}

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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);

(b) the agreements referred to in the relevant SOW in respect of which:

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 TMS Subsystem (CW2405133) entered into on or about the Execution Date.

TLS Impact Statement
**TMS Subsystem** means the Traffic Management System component of the System, and includes those elements of any interfaces required to be built, maintained or supported by the Contractor as contemplated by the Contract Specifications. The TMS Subsystem is to be delivered under this Agreement, and supported under the TLS Agreement. References to the TMS Subsystem are to that Subsystem as Modified from time to time. Further details regarding the capability of the TMS Subsystem are set out in the SSRS.

**TMS Visualisation** means the capability of the TMS Subsystem relating to visualising information from non ETCS L2 areas of the Network, the Specifications for which are set out in section 6 – Monitor Network in the TMS SSRS and ISD85.

**Tools** means all tools required for the efficient use, maintenance, modification, operation, support, configuration, repair or monitoring of the TMS Subsystem (or any component of it) that do not form part of the TMS Subsystem, including:

(a) the Contractor Tools; and

(b) the Licensed Tools.

**Trackside Agreements** means any agreements entered into by TfNSW or Sydney Trains for the design, build, implementation and through-life support of a Trackside Subsystem as part of the Program.

**Trackside Subsystem** means the component of the System that includes ETCS Level 2 trackside elements and signalling equipment, and includes those elements of any interfaces required to be built, maintained or supported by a Trackside Supplier as contemplated by the Contract Specifications. There may be more than one Trackside Subsystem.

**Trackside Supplier** means the supplier(s) for the design, build, implementation and through-life support of a Trackside Subsystem under the Trackside Agreements.

**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.

**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 contemplated by, or entered into under or in connection with, the documents listed in (a) to (d).
**Unit Rate** has the meaning given in Schedule 11 (Pricing Terms).

**Update** means Software that has been produced primarily to overcome defects in, or to improve the operation of, the relevant part of the Software without significantly altering the Contract Specifications, whether or not that Software 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, in respect of Software, any new release that has been produced primarily to extend, alter or improve the Software by adding additional functionality or performance enhancement (whether or not defects in that Software are also corrected).

**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 4.2 (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 TMS 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:

that have previously failed a Verification Activity; or

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.

**Working Groups** means the governance forums of that name described in Schedule 17 (Governance and Management) and the relevant SOWs.

**Works** means:

(a) the works, functions, tasks and responsibilities described in SOW 1, SOW 3, the Management SOW 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) 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;

(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; and

(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.
## Schedule 2  Agreement Details

<table>
<thead>
<tr>
<th>1</th>
<th>Parties</th>
<th>TfNSW</th>
<th>Transport for NSW (ABN 18 804 239 602) of Level 1, 18 Lee Street, Chippendale NSW 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor</td>
<td>Siemens Mobility Pty Ltd (ABN 39 625 304 556) of 160 Herring Road, Macquarie Park NSW 2113</td>
<td></td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2</th>
<th>Conditions Precedent (clause 1)</th>
<th>Contractor Conditions Precedent</th>
</tr>
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<tbody>
<tr>
<td>(a)</td>
<td>Unconditional delivery to TfNSW of an original Parent Company Guarantee duly executed by the parent company of the Contractor;</td>
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<tr>
<td>(b)</td>
<td>Where a guarantor to the Parent Company Guarantee is incorporated outside of Australia, delivery to TfNSW of a Legal Opinion in respect of the Guarantor in a form reasonably acceptable to TfNSW from lawyers reasonably acceptable to TfNSW;</td>
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</tr>
<tr>
<td>(c)</td>
<td>Delivery to TfNSW of copies of certificates of currency evidencing that the Contractor Insurance Policies required under this Agreement have been effected and are current;</td>
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<tr>
<td>(d)</td>
<td>Confirmation to TfNSW (in the form of a letter duly executed by the Contractor) that the Contractor’s overseas manufacturers have taken out sufficient insurances to cover the manufacture and/or assembly of the materials, equipment or components which are used in connection with the Contractor’s Activities;</td>
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</tr>
<tr>
<td>(e)</td>
<td>Unconditional delivery to TfNSW of an original Contractor Deed Poll, duly executed by the Contractor in favour of TAHE, Sydney Trains, and such other entities as may be nominated by TfNSW;</td>
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<tr>
<td>(f)</td>
<td>Delivery to TfNSW of evidence of AEO Authorisation and required Accreditations;</td>
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<tr>
<td>(g)</td>
<td>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, TfNSW, and such other entities as may be nominated by Sydney Trains;</td>
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<tr>
<td>(h)</td>
<td>Unconditional delivery to TfNSW of an original Confidentiality and Intellectual Property Deed Poll duly executed by the Contractor; and</td>
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<tr>
<td>Description</td>
<td>Details</td>
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<tr>
<td>(i) 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.</td>
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</tr>
<tr>
<td>Other Conditions Precedent</td>
<td>Receipt by TfNSW of original Trackside Agreements duly executed by TfNSW and at least one Trackside Supplier.</td>
<td></td>
</tr>
<tr>
<td>Cut Off Date</td>
<td>One (1) month after the Execution Date, except for the Trackside Agreements. For the Trackside Agreements, the Cut Off Date is 31 October 2020.</td>
<td></td>
</tr>
<tr>
<td>3 Representatives (clause 32.2)</td>
<td>Contractor’s Representative</td>
<td></td>
</tr>
<tr>
<td></td>
<td>TfNSW Representative</td>
<td></td>
</tr>
<tr>
<td>4 Subcontractors (clause 27.3)</td>
<td>Pre-Approved Subcontractors</td>
<td>Not applicable.</td>
</tr>
</tbody>
</table>
| 5 | Liability Cap  
(clause 63.1) | Liability Cap | Subject to clauses 63.2 and 63.3, 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:

- [ ]
- [ ]

The liability cap will be adjusted in accordance with the escalation process detailed in section 6 of Schedule 11 (Pricing Terms) (but applying the Australian consumer price index (CPI) "weighted average of 8 capital cities" for the previous 12 months as published by the Australian Bureau of Statistics, during the quarter immediately preceding the notice of adjustment, as the Escalation Factor) on the first day of each Year, commencing on the first anniversary of the Commencement Date.

| 6 | Contractor Insurance Policies  
(clause 64) | Professional Indemnity insurance | A group professional indemnity insurance policy which is renewed annually with a cover of [masked] per claim and in the annual aggregate, to be maintained for the Term and for [masked] following the end of the Term.

The policy 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 acts, errors or omissions of the Contractor and its Representatives in the course of carrying out the Contractor’s Activities.

The Contractor must ensure that its Subcontractors have professional indemnity insurance on equivalent terms (including as to the value of the cover), unless TfNSW agrees that such insurance is not relevant to their scope of work.

The professional indemnity insurance is not required to be a localised policy.
<p>| Marine Transit insurance | 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. The maximum deductibles permitted are: [redacted]. The insurance must be maintained for the Term of this Agreement plus [redacted]. |
|---------------------------------------------------------------|
| Workers compensation insurance | 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. 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. The Contractor must ensure that its Subcontractors are similarly insured in respect of their employees. |
| 7 TfNSW Insurance (clause 64) | Public and Product Liability insurance |
| Amount: [redacted] for any [redacted] and in the aggregate in respect to product liability |
| Minimum Period: Rolling [redacted] adjustable policy |
| Coverage: Australia only |
| 8 Notices (clause 65.1(b)) | TfNSW |
| Contractor | |</p>
<table>
<thead>
<tr>
<th>9</th>
<th>Interface Contractors</th>
<th>Interface Contractors</th>
<th>N/A</th>
</tr>
</thead>
</table>

Schedule 3  System Definition and Requirements
Schedule 4  Process Requirements (PR)
| Schedule 5 | Not Used |
1 General

1.1 Coverage

This Schedule 7 sets out the process the parties must comply with:

(a) to agree a New SOW for:
   deployment of the TMS Subsystem (or any part of it), 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

   (ii) Future Project Work (as set out in section 3 (Future Deployments and Future Project Work));

(b) in order to implement a Variation (as set out in section 4 (Variations));

(c) where TfNSW wishes to issue a Direction to Proceed (as set out in section 5 (Directions to Proceed)); and

(d) 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)).

1.2 TfNSW discretion and binding nature

(a) 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.

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 detriment to the Assets or the Program.

(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, the Contractor’s Activities or the Contractor’s Program to enable the Contractor’s Solution, the Contractor’s Activities, the
Contractor’s Program or the TMS 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 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:

- does not entitle the Contractor to any Claim against TfNSW in relation to same; and
- does 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 TMS 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, including functionality added to Deployment Stage 1 or functionality across the Network.

(b) If TfNSW wishes to request a SOW Proposal TfNSW may:

- give a draft New SOW to the Contractor; or
- 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 relevant form as set out in and contain the relevant information anticipated in Attachment A (Statement of Work Templates) 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 TMS Subsystem, including all or any of the Assets and/or Works required in respect of the TMS Subsystem.

(e) The Contractor acknowledges and agrees that, in respect of any New SOW, TfNSW may request that any interfaces to the TMS Subsystem external or adjacent systems are designed as open interfaces.

3.2 Provision of SOW Proposal

(a) The Contractor must within twenty (20) Business Days of receiving a request from TfNSW pursuant to section 3.1(a), provide to TfNSW (as applicable):

- the Contractor’s proposed amendments to the draft New SOW; or
- a proposed New SOW,

which proposal will constitute a SOW Proposal for the purposes of this Schedule, together

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:

- 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 the timeframe required by TfNSW or if no timeframe is specified then, at a minimum, within ten (10) Business Days, update and re-submit the SOW Proposal to TfNSW incorporating 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 TfNSW may:

   treat the non-agreement as an Issue for the purposes of clause 33 (Resolution of Matters); or

   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).

4 Variations

4.1 Variation Request

(a) Subject to paragraph (b):

   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

(ii) 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 three (3) months’ notice. Any such Variation Request must be discussed at the next Contract Representatives Meeting prior to the issue of a formal Variation Request by TfNSW.

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 the period set out in TfNSW’s Variation Request (or if no time
is specified, within twenty (20) Business Days 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

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
Dependences, 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 earlier of (i) the date it is agreed
between the parties, and (ii) 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 the timeframe required by TfNSW (or if
no timeframe is specified then, at a minimum, within ten (10) Business Days), re-
submit the Variation Proposal to TfNSW incorporating 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 initiated by the Contractor under section 4.1(a)(ii) 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;

(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:

may (no later than ten (10) Business Days after the Direction) provide whatever information it considers may assist TfNSW to determine; and

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 is 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 other 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 or compression under clause 15.5(c) (Direction to Proceed Event), 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:

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

subject to paragraph (g), 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 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 comply with a Direction to Proceed irrespective of:
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

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:

relieve the Contractor from its obligations to provide a Variation Proposal or SOW Proposal (as applicable) or estimate under clauses 14.5 or 15.5(c) (and any amendments to a Variation Proposal or SOW Proposal);

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

limit or otherwise affect either party's rights under this Agreement.

(d) Once a Variation or New SOW is executed for such Direction to Proceed, subject to paragraph (g):

(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;

(ii) any amounts paid under paragraph (a)(ii) are deemed to be amounts paid under the Variation or New SOW; and

(iii) 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.

(e) 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:

this section will no longer apply in respect of the relevant Direction to Proceed and any corresponding Direction to Proceed will cease; and

subject to paragraph (g), 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 (e) will be calculated in accordance with section 7.

(f) There is no limitation on the power of TfNSW to issue a Direction to Proceed, and no Direction to Proceed will invalidate this Agreement.

(g) For clarity, in no circumstances will the Contractor be entitled to any costs or amounts for complying with a Direction to Proceed, where such Direction to Proceed is in relation to remedying a breach or non-compliance with this Agreement (including a Defect) or addressing the consequences of such a breach.
or non-compliance, or where the Contractor is not entitled to any costs or compensation in respect of the relevant Variation.

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:

- containing details of the Change in Laws and stating whether the Contractor considers them a Qualifying Change in Law;
- stating the impact that the Change in Law has on the Contractor’s ability to meet the Milestones (if any);
- stating the impact the Change in Law would have on the Contract Specifications; and
- 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 any Qualifying Change in Law (if any), including sufficient information to support the estimates.

(b) If TfNSW considers that any Change in Law necessitates a Variation, TfNSW may:

- issue a Variation Request requiring the Contractor to prepare a Variation Proposal in accordance with section 4.2 (Variation Proposal) for the Change in Law;
- 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
- take such other action as TfNSW considers necessary to ensure that the TMS Subsystem complies with the Change in Law.

(c) Whether or not a Change in Law requires a Variation:

- 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

(ii) 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:

- if the relevant Approval was obtained by TfNSW, 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

(ii) 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 TfNSW considers that the Change in Approval necessitates a Variation, TfNSW may:

- issue a Variation Request requiring the Contractor to prepare a Variation Proposal in accordance with section 4.2 (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

(ii) 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:

- the Contractor notifies TfNSW of a Change in Standard in accordance with clause 43.1(b)(ii); or

- TfNSW notifies the Contractor of a Change in Standard,

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:

(i) issue a Variation Request requiring the Contractor to prepare a Variation Proposal in accordance with section 4.2 (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;

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) Whether or not a Change in Standard requires a Variation:

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 (d) 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

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.

(d) Notwithstanding anything to the contrary, in respect of a Compensation Event for a Change in Standard that is not a Qualifying Change in Standard, 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 TMS Subsystem for TfNSW and not for the development (including any associated testing) of such updates to the TMS Subsystem.

(e) If the Contractor submits a Variation Proposal pursuant to section 6.3(a)(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

if TfNSW rejects the Variation Proposal, TfNSW must issue a Direction pursuant to either section 6.3(a)(ii) (to avoid) or (iii) (to disregard), the Change in Standard.

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).
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

The ‘Review Period’ for a Submitted Document is twenty (20) Business Days (or such longer period as the parties may agree) from the date the Reviewing Party receives the relevant information reasonably required to support the request for Review or comment or in order to make the election or determination. Provided that in each case if at any time during the Review Period the Reviewing Party 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 not include the time that the Contractor takes to provide that information after the request for that additional information is made.
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

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:

(a) a Submitted Document:
   - is incomplete, of poor quality or otherwise is not in a condition to allow the Reviewing Party to adequately review it;
   - is not fit for purpose;
   - does not comply with the relevant Mandatory Requirements; or
   - is otherwise not in accordance with, or is not submitted in accordance with, the requirements of this Agreement in respect of the Submitted Document;

(b) the Contractor’s performance of its obligations under this Agreement would be adversely affected by the implementation of the Submitted Document;

(c) 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 the implementation of the Submitted Document;

(d) the implementation of the Submitted Document or proceeding on the basis of the Submitted Document would adversely affect any right of any Rail Transport Entity under this Agreement or Interface Contractor Agreement or its ability to enforce any such right;

(e) the ability of any Rail Transport Entity to exercise their respective rights or to perform their respective obligations or responsibilities, including under this Agreement or Interface Contractor Agreement, would be adversely affected by the implementation of the Submitted Document;

(f) 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 the implementation of the Submitted Document; or

(g) the implementation 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 this Agreement or any Interface Contractor Agreement.
5.2 Contractor’s Programs

Where the Submitted Document is a Contractor’s Program under this Agreement, in addition to its rights under section 5.1, 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:

(a) without limiting section 5.1(a)(iv), it does not comply with the requirements for the Contractor’s Program set out in this Agreement; or

(b) compliance with the Contractor’s Program would (on the balance of probabilities):

   (i) not allow for any Milestone to be achieved by its relevant Milestone Date;

   (ii) adversely affect the Integrated Program, including any Rail Transport Entity’s or any Other Contractor’s ability to meet the Integrated Program;

   (iii) not allow an Other Contractor to meet any timeframes or milestones under the Integrated Program;

   (iv) adversely affect the safety of any person;

   (v) impact on the performance of any “TfNSW Dependency” or similar under any Interface Contractor Agreement;

   (vi) increase the risk of any claim against any Rail Transport Entity by any Other Contractor or Interface Contractor;

   (vii) mean that the period of carrying out programmed work exceeds or falls short of the period reasonably required for that work; or

   (viii) increase the likelihood of disruption to the conduct of the operation functions of a Rail Transport Entity in respect of the Network.

5.3 Project Plans

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:

(a) without limiting section 5.1(a)(iv), it does not comply with the requirements for the relevant Project Plan set out in this Agreement;

(b) 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 or the activities of any Interface Contractor;

(c) there is a risk that the safety of any person would be adversely affected;

(d) the period for carrying out work under the plan would exceed or fall short of the period reasonably required for the relevant work;

(e) the plan is otherwise not in accordance with Industry Best Practice; or
(f) the Life Cycle Costs to the NSW Rail Assets to a Rail Transport Entity will be increased.

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 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 to 4.3.

7 Compliance with Submitted Documents

7.1 Comments on Submitted Documents

(a) Where any Reviewing Party comments on a Submitted Document under section 5 (Grounds on which the Reviewing Party may make comments), the Contractor must, subject to paragraph (b), 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:

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, 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) 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 (Comments on Submitted Documents),

(Proceed at Risk).

(b) The Contractor:

- may not Proceed at Risk past a Hold Point without the verification and subsequent written authorisation of TfNSW; and
- subject to paragraph (i), 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); 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

(iv) 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.
Form of Provisional Acceptance Certificate

This certificate is given in accordance with the TMS Delivery Agreement between TfNSW and the Contractor dated [date], with respect to the Program. Words defined in the TMS Delivery Agreement have the same meaning in this certificate.

In accordance with the terms of clause 11.3 of the TMS Delivery Agreement, TfNSW certifies that the TMS Subsystem meets the Provisional Acceptance Criteria.

TfNSW hereby gives notice of the Minor Defects (if any) affecting the abovementioned TMS Subsystem, as identified in the attached list.

For the purposes of the TMS Delivery Agreement, the date of this certificate is the date of Provisional Acceptance in respect of the above TMS Subsystem.

Signed for and on behalf of TfNSW by:

Name

Signature

Position (TfNSW Representative)

Date

Attachment – List of Minor Defects

<table>
<thead>
<tr>
<th>No.</th>
<th>Minor Defect</th>
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<tbody>
<tr>
<td>1</td>
<td>[Insert]</td>
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</table>
Schedule 10  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 TMS Delivery Agreement between TfNSW and the Contractor dated , with respect to the Program. Words defined in the TMS Delivery Agreement have the same meaning in this certificate.

In accordance with the terms of clause 11.4 of the TMS Delivery Agreement, TfNSW certifies that the TMS Subsystem meets the Final Acceptance Criteria.

For the purposes of the TMS Delivery Agreement, the date of this certificate is the date of Final Acceptance in respect of the above TMS Subsystem.

Signed for and on behalf of TfNSW by:

Name                                      Signature

Position (TfNSW Representative)               Date
Schedule 11  Pricing Terms
Schedule 11B – Resource Unit Definitions
Schedule 11C – Labour Rates
Schedule 12  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 TMS Delivery Agreement between TfNSW and the Contractor dated , with respect to the Program. Words defined in the TMS Delivery Agreement have the same meaning in this certificate.

In accordance with the terms of clause 11 of the TMS Delivery Agreement, TfNSW gives notice that the TMS Subsystem does not meet the Provisional Acceptance Criteria / Final Acceptance Criteria for the TMS Subsystem.

TfNSW hereby gives notice of the required rectification work which must be completed before the TMS Subsystem may be re-submitted for Provisional Acceptance/ Final Acceptance, as identified in the attached list.

Signed for and on behalf of TfNSW by:

<table>
<thead>
<tr>
<th>Name</th>
<th>Signature</th>
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<tr>
<th>Position (TfNSW Representative)</th>
<th>Date</th>
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</table>

Attachment – List of Required Rectification Work

<table>
<thead>
<tr>
<th>No.</th>
<th>Description of Required Rectification Work</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>[Insert]</td>
</tr>
</tbody>
</table>
Schedule 13  Not Used
Schedule 14  Collaboration Principles

Part A - Digital Systems Team Charter

See separate document
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**
- An integrated and collaborative approach
- New systems, new ways of working
- Whole of life thinking
- A learning and growth culture
- Early wins for customers
- Configure not customise
- No network disruption

**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
Part B – Draft Collaboration Principles

See separate document
Digital Systems Program - 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 goal1.

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:

<table>
<thead>
<tr>
<th>Principle</th>
<th>What does this mean?</th>
<th>Expectation</th>
</tr>
</thead>
</table>
| 1. Program first (best for Program) | • Shifting the perspective from self-interest (individual party’s interest) to joint interests  
• Understand that all parties win or lose together (reputation risk of all parties needs to be managed) | • 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 Program  
• The parties will work together to overcome great challenges and make the Program a success for all participants  
• The parties will celebrate the Program successes | 
| 2. Be open (information sharing) | • 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 | • Communicate regularly, honestly, openly, and skilfully – including when conflicts arise  
• Maintain open risk and opportunity registers (without prejudice) | 

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1 Insert reference Holding definition (agree definition)
## Digital Systems Program - Collaboration Principles

<table>
<thead>
<tr>
<th>Principle</th>
<th>What does this mean?</th>
<th>Expectation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Proactive communication and information sharing is key to Program success</td>
<td>• 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</td>
</tr>
<tr>
<td></td>
<td>• Good communications enable good relationships and efficient operations</td>
<td></td>
</tr>
<tr>
<td>3. Respect and understanding for all people on the Program</td>
<td>• In order to achieve collaboration all parties must individually and collectively respect and be understanding of the perspectives of each party</td>
<td>• 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</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• 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</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• 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</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Have brave and honest discussions that will facilitate innovation in approach and delivery of the Program</td>
</tr>
<tr>
<td>4. Raising issues early without blame and shame</td>
<td></td>
<td>• Each party will own its mistakes and seek to remedy them quickly</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• 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</td>
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<tr>
<td></td>
<td></td>
<td>• Adopt a ‘win-win’ mindset and ensure those involved in administering agreements between parties have the skills required for ‘win-win’ outcomes</td>
</tr>
<tr>
<td>5. Work through uncertainty by building on each other’s ideas</td>
<td></td>
<td>• Participate in collaborative discussions and ensure that the right people within each party’s respective organisations are involved and informed in a timely manner</td>
</tr>
</tbody>
</table>
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.
1 Interface co-operation and collaboration

1.1 General

(a) Without limiting section 2 (Interfacing Systems), the Contractor:

acknowledges the importance of active co-operation and collaboration with Interface Contractors to facilitate the overall delivery of the System and Program; and

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 TMS Subsystem and Interfacing Systems, and between the Works and Interfacing Works.

(b) 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.

(c) In addition, the Contractor must:

provide all reasonable co-operation and collaboration required by TfNSW to enable the design, development, implementation, testing and commissioning of the System, the TMS 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;

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 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) protect the Works and other improvements on the Delivery Locations in Control of the Contractor from accidental damage by Interface Contractors and provide means of receiving, storing and protecting goods and equipment supplied by Interface Contractors;

(xii) fully co-operate with Interface Contractors, and do everything necessary to:

(A) facilitate the execution of work by Interface Contractors, including providing Interface Contractors with such assistance as may be Directed by TfNSW; and

(B) ensure the effective coordination of the design, implementation, testing and commissioning of the Works and the TMS Subsystem, with the design, implementation, testing and commission of the Interface Work and the Interfacing System (including the Design Documentation and ICDs);

(xiii) 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 (xiv)) 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;

(xiv) provide for the purposes of paragraph (xiii) (unless otherwise Directed by TfNSW) the number and form of copies of the SWMSs specified in each relevant SOW;
(xv) without limiting section 2, work directly with Interface Contractors to complete the design of the Works and provide all necessary information to the Interface Contractor in respect of the Works and the TMS Subsystem to permit the Interface 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

(xvi) 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.

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 TMS Subsystem and the Contractor’s Activities to TfNSW, the System Integrator and any Interface Contractor as necessary or desirable to facilitate the effective and efficient design, development, implementation, operation and maintenance of the System, the Program, the TMS 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, TMS 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:

provided in a timely manner and, where the date requested is reasonable, by the requested date; and

of a high quality and standard.

(d) The Contractor must:

ensure and warrant that its Contractor Inputs are accurate; and

cooperate, meet with, liaise, and share information 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 Interface Contractors in a manner which supports the delivery of the Program, including by:

- providing sufficient allowance for the performance of activities by Interface Contractors;
- (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;
- reviewing all programs provided by Interface Contractors and confirming that they adequately allow for the Contractor’s Activities and the interfaces of the Interface Work with the Contractor’s Activities;
- monitoring the progress of the Interface Work (to the extent practicable);
- notifying TfNSW of any interface or sequence of activities that may affect the performance of the Contractor’s Activities or Interface Works; and
- providing TfNSW and Interface 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:

- the timing of the Interface Contractors’ activities will be as discovered by the Contractor;
- 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 Interface Contractor, may adversely impact upon, delay or disrupt any one or more Interface 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
- 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. 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:

- the provision of information;
- the obtaining of information;
- the adequacy of information provided to, or received from, Interface Contractors;
- the compatibility and integration of the Works and TMS Subsystem with the Interface Work and Interfacing Systems;
- coordination in accordance with these Interface Requirements and the Collaboration Principles; and
- 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:

- 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
- 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:
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 Interface Work

The Contractor:

(a) acknowledges and agrees that:

no act or omission by an Interface Contractor in connection with any Interface Works will, whether or not it causes any delay, disruption or interference to the Contractor's Activities, constitute an EOT Event or Compensation Event or otherwise entitle the Contractor to make a Claim against TfNSW, except to the extent such act or omission is:

(A) a negligent act or omission of a Rail Transport Entity (other than TfNSW), the System Integrator, the Independent Safety Assessor or the Change Manager;

(B) expressly identified as a TfNSW Dependency; or

(C) as set out in section 2 (Interfacing Systems); and

except where TfNSW Directs a Variation in circumstances where the Contractor has fully complied with these Interface Requirements, the Contractor is not entitled to make, and TfNSW will not be liable upon, any Claim by the Contractor arising out of or in connection with:

(A) the Interface Contractors carrying out their work; or

(B) any act or omission of an Interface Contractor; and

(b) warrants that the Fees and the Contractor's Program contain sufficient allowances for the assumption by the Contractor of the obligations and risks under these Interface Requirements, including the cost of all the design iterations and other Works required to accommodate Interface Works and interface and integration with each Interfacing System.

(c) This section 1.6 does not apply to a Third Party who is not providing goods or services to a Rail Transport Entity in relation to the Program, and is not listed in Schedule 2 (Agreement Details) or in a SOW.

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 TMS 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.
(c) In respect of any technical interface between the TMS Subsystem and any Interfacing System, where the Lead Supplier is the Contractor or any of its Associates and the Participating Supplier is also the Contractor or any of its Associates:

the Contractor is solely and strictly liable for the design and implementation of that technical interface (including in respect of any delays) and ensuring that the TMS Subsystem and that Interfacing System each comply with their respective SSRS (if any) and ICD and are fully integrated and compatible with each other; and

subject to clause 3.3(b) of the Agreement, no defect or error in the ICD or technical interface or delay, disruption or interference to the Contractor’s Activities arising from that ICD or technical interface will constitute an EOT Event or Compensation Event or otherwise entitle the Contractor to make a Claim against TfNSW and TfNSW will not be liable upon any Claim by the Contractor arising out of or in connection with that technical interface.

(d) Where the Contractor or any of its Associates is the Lead Supplier, but none of them are also the Participating Supplier, in respect of any technical interface between the TMS Subsystem and any Interfacing System:

(i) the Contractor is strictly liable for any defect or error in the ICD for that technical interface (notwithstanding any comment, input, co-development, sign-off or endorsement on the ICD by any Participating Supplier) and for ensuring that, if the Interfacing System is built and Interfacing Works are delivered by the Participating Supplier(s) in accordance with the ICD, the TMS Subsystem and that Interfacing System each comply with their respective SSRSs (if any) and contractual requirements and are fully integrated and compatible with each other;

(ii) no defect or error in the ICD or failure of the TMS Subsystem to comply with the ICD or the ISD will constitute an EOT Event or Compensation Event or otherwise entitle the Contractor to make a Claim against TfNSW; and

(iii) TfNSW will not be liable upon any Claim by the Contractor arising out of or in connection with that technical interface except that, provided the ICD is correct and without error, the build of the Interfacing System and delivery of the Interface Works by the Participating Supplier(s) in accordance with the ICD and the Integrated Program is a TfNSW Dependency, any delay in which may entitle the Contractor to an extension of time or compensation in accordance with clauses 15.3 and 15.6, respectively.

(e) Where the Contractor or any of its Associates is a Participating Supplier, but none of them are also the Lead Supplier, in respect of any technical interface between the TMS Subsystem and any Interfacing System:

subject to paragraph (iii), the delivery of the Interface Works by the Lead Supplier or, if applicable, any other Participating Supplier(s) under an ICD in accordance with the ICD and the Integrated Program is a TfNSW Dependency, and any delay in which may entitle the Contractor to an extension of time or compensation in accordance with clauses 15.3 and 15.6, respectively;

any defect or error in, or Variation to, the ICD caused or contributed to by the Contractor is an EOT Event and a Compensation Event which may
entitle the Contractor to an extension of time or compensation in accordance with clauses 15.3 and 15.6, respectively; and

(iii) the Contractor is liable for any defect or error in the technical interface to the extent caused by the TMS Subsystem not complying with the ICD, this Agreement or the Contract Specifications and, except as outlined in paragraphs (i) and (ii), TfNSW will not be liable upon any Claim by the Contractor arising out of or in connection with that technical interface.
Attachment A  Interface Contractor Matrix
Schedule 16  Reports

See separate document
Traffic Management System (TMS)
Delivery Agreement
Digital Systems Program
Schedule 16 – Reports

Contract Number: IPD-19-7821
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1. Reporting Requirements

1.1. General

1.1.1. Without limiting any reporting requirements set out in a Statement of Work (SOW) or elsewhere in this Agreement, the Contractor must:

(a) 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:

(i) the frequency stipulated in that table, unless otherwise agreed by TfNSW; and

(ii) the requirements set out in this Schedule and the Agreement; and

(b) 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)).

1.1.2. 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.

1.1.3. Each Report must be relevant and appropriate to the purpose and stage of work for which they are developed.

1.1.4. The Contractor shall obtain TfNSW’s approval of the proposed Report format.

Table 1 - Reports and Frequency

<table>
<thead>
<tr>
<th>Report</th>
<th>Frequency</th>
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<tbody>
<tr>
<td><strong>Delivery Phase Progress Report</strong></td>
<td></td>
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<tr>
<td>Delivery Phase Progress Report (DPPR)</td>
<td>Monthly</td>
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<tr>
<td></td>
<td>No later than five (5) Business Days after the end of every month during the Term</td>
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<tr>
<td><strong>Commercial Monthly Report</strong></td>
<td></td>
</tr>
<tr>
<td>Commercial Monthly Report</td>
<td>Monthly</td>
</tr>
<tr>
<td></td>
<td>First Business Day of each month during the Term</td>
</tr>
<tr>
<td><strong>Weekly Report</strong></td>
<td></td>
</tr>
<tr>
<td>Weekly Report</td>
<td>Second Business Day of each week during the Term</td>
</tr>
<tr>
<td><strong>Timesheets (only applicable for Contractor's Activities delivered on a Unit Rate or Target Budget basis where Labour Rates - as defined in Schedule 11A (Pricing Tables) - are utilised)</strong></td>
<td></td>
</tr>
<tr>
<td>Timesheet for each Contractor Personnel</td>
<td>Second Business Day of each week during the Term</td>
</tr>
<tr>
<td>Contractor Mobilisation Form</td>
<td>As required following commencement of new Contractor Personnel</td>
</tr>
</tbody>
</table>
1.2. Delivery Phase Progress Report

1.2.1. 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.

1.2.2. 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.

1.2.3. The DPPR shall address Delivery Phase Activities, including:

(a) the status and progress of the design;
(b) the status and progress of the Works and Assets, including:
   (i) all Assets (including tools and Spares);
   (ii) all Technical Packages;
   (iii) all mock-ups; and
   (iv) all Approvals;
(c) photographic evidence of progress where relevant and possible;
(d) significant changes in circumstances affecting the Contractor’s Activities and the Contractor’s Program, including Variations;
(e) the status of major procurement orders;
(f) the status of manufacture;
(g) the status of each proposed Key Subcontract; and
(h) where applicable, the status of any activities against all the requirements of Approvals.

1.2.4. The DPPR shall address progress, including:

(a) the status and progress towards completion, including actual / forecasted achievement of:
   (i) Milestone Dates;
   (ii) dates of Provisional Acceptance;
   (iii) the date of Final Acceptance; and
   (iv) date of delivery of all Assets (such as tools) not covered by the Acceptance Criteria set out in the Agreement;
(b) forecast dates for milestone payments;
(c) cash flow progression (in the form of an S-curve) based on earned value and forecast costs to the end of the Delivery Phase;
(d) status of operational readiness activities;
(e) a summary of major planned activities over the next month and quarter;
(f) a list and timing of Hold Points and Witness Points planned for the forthcoming three (3) month period;
(g) 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

(h) significant changes in circumstances affecting the Contractor’s Program, including justifying any changes to the critical path and Variations.

1.2.5. The DPPR shall address risk, including:

(a) a description of each significant risk to the Objectives;

(b) the cause and potential consequences of each significant risk; and

(c) the actions planned and underway to treat each significant risk.

1.2.6. The DPPR shall address work health and safety, including:

(a) leading safety indicators and proactive actions;

(b) lagging safety indicators for all Delivery Locations, including:
   (i) details of injuries and near misses;
   (ii) lost time injuries; and
   (iii) medically treated injuries; and
   (iv) a consolidated SWMS register showing active and completed SWMS.

1.2.7. The DPPR shall address Contractor Personnel and Contractor’s Equipment, including:

(a) for each Delivery Location:
   (i) minimum, maximum, and average number of Contractor’s Personnel on-site;
   (ii) average number of Apprentices and Trainees; and
   (iii) total hours worked per Delivery Location;

(b) a comparison of the above data with the planned resources;

(c) significant changes in circumstances affecting Contractor’s Personnel; and

(d) the actual number and categories of Contractor’s Equipment.

1.2.8. The DPPR shall address compliance, including:

(a) 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;

(b) details of all corrective and preventative actions taken by the Contractor, the status of those actions and audits of such actions;

(c) the status and progress of:
   (i) Reviews;
   (ii) audits; and
   (iii) authorisation and Accreditation;

(d) verification metrics;

(e) quality metrics addressing key non-conformances identifying actions planned and underway to treat the non-conformance; and
1.2.9. The DPPR shall detail any inputs required from TfNSW in the next monthly reporting period.

1.2.10. The DPPR shall include:

   (a) an updated Contractor’s Program;
   (b) an updated project risk register, identifying changes;
   (c) an updated project hazard log, identifying changes;
   (d) an updated DNG Database, identifying changes; and
   (e) an updated organisation chart, identifying changes.

1.2.11. The DPPR shall address any other information TfNSW reasonably requires.

1.3. Commercial Monthly Report

1.3.1. 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).

1.3.2. The Contractor must include in the Commercial Monthly Report the following information for the previous month:

   (a) 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;
   (b) an extract of the Contractor’s Program;
   (c) for Contractor’s Activities delivered on a Unit Rate or Target Budget basis using Labour Rates (as defined in Schedule 11A (Pricing Tables)), details of hours expended, and cost incurred in the relevant month per Contractor Personnel with a breakdown of activities undertaken (if applicable);
   (d) any Reimbursable Expense items being claimed (if applicable), including details of authorisation and amounts claimed substantiated with receipts;
   (e) a cumulative of the total amounts incurred in connection with the Contractor’s Activities provided during the relevant month;
   (f) details of the amounts claimed under a payment claim to date and the amount of the payment claim(s) in the relevant month;
   (g) cost reporting to monitor on a monthly basis the actual cost, forecast cost to complete and forecast final cost against the Target Budget (as amended) for the individual Statement of Work, and separate lists for the cost of approved Variations, claims and outstanding claims for Variations;
   (h) 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;
   (i) details of Fees invoiced against any Target Budget or estimated fees based on the Labour Rates;
   (j) details of unconditional undertakings on foot and their status;
(k) details of Liquidated Damages and status;

(l) cooperation, coordination, industrial relations and interface matters with Other Contractors;

(m) a written summary covering the completed Contractor’s Activities and upcoming activities, in a form suitable for inclusion on TfNSW’s website;

(n) activities of a mediator or similar process under the Dispute Resolution Procedures where established under the Agreement;

(o) a narrative including:

   (i) the activities completed in the relevant month and a look ahead of activities

   (ii) key risks;

   (iii) detailed explanation of any slippages against the Contractor’s Program;

   (iv) list of Assets; and

   (v) any relevant information that would assist TfNSW in managing the program of activities and the Fees; and

any other information TfNSW reasonably requires.
1.4. **Weekly Report**

1.4.1. 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).

1.4.2. The Contractor must record the following information in the Weekly Report:

(a) a summary of activities completed during the previous week;
(b) a rolling four (4) week look-ahead schedule of proposed activities;
(c) slippage from the Contractor’s Program (if any) to be clearly explained and documented;
(d) proposed actions to catch up with any slippage from the Contractor’s Program (if any);
(e) list of Assets showing:
   (i) documents in development by the Contractor;
   (ii) documents that will be submitted to TfNSW for Review in the current week;
   (iii) the status of documents that have been submitted to TfNSW for Review (in review, reviewed with comments, reviewed with no comments); and
   (iv) a summary of stakeholder consultation performed and issues arising; and
(f) list of activities showing:
   (i) activities in development by the Contractor; and
   (ii) activities that are planned and to be completed.
1.5. **Timesheets**

1.5.1. For Contractor’s Activities delivered on a Unit Rate or Target Budget basis using Labour Rates (as defined in Schedule 11A (Pricing Tables)), the Contractor must submit a weekly timesheet, broken down daily, for each Contractor Personnel involved in providing such Contractor’s Activities, clearly showing:

(a) accurate recording of the time spent in the performance of the Contractor’s Activities; and

(b) a daily record of tasks performed.

1.5.2. 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.

1.5.3. The Contractor must provide TfNSW with substantiation reports for timesheets payment claims in accordance with clause 29.1 (Payment Claims) of the Agreement.

1.5.4. Where a calendar month end occurs during a week for which Timesheets are required, the Contractor Representative may authorise a partial week in order to facilitate invoicing within the time requirements of clause 29.1 (Payment Claims) of the Agreement.

1.5.5. A Timesheet for the remainder of any partial week will be required to be authorised on the second Business Day of the following week.
Schedule 17  Governance and Management

See separate document
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1. Introduction

1.1.1. This Schedule specifies the roles, structures, forums and Contractor’s Activities relating to the overall management and governance of this Agreement, including:

(a) the applicable governance roles and structures;
(b) a description of each governance forum; and
(c) associated governance and management reporting obligations.
2. Governance

2.1. Governance Roles

2.1.1. The Contractor must appoint and ensure that it has in place the following governance roles:

(a) **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;

(b) **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;

(c) **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;

(d) **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

(e) **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.

2.2. Governance Structure

2.2.1. Governance for the Program operates across a number of layers:

(a) **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:

   (i) TfNSW corporate governance;

   (ii) TfNSW Infrastructure and Services Division (I&S) governance; and

   (iii) Program-wide supplier governance; and

(b) **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).

2.2.2. 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.

2.2.3. Figure 1 below depicts the Agreement governance structure.
2.2.4. Table 1 below details, in respect of each of the Agreement governance forums:

(a) attendees;
(b) the responsibilities of that forum;
(c) the roles of each of the parties;
(d) the frequency of meetings and the logistics associated with such meetings; and
(e) 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.

2.2.5. 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>
<thead>
<tr>
<th>Forum</th>
<th>Attendees</th>
<th>Responsibilities</th>
<th>Roles</th>
<th>Frequency &amp; Logistics</th>
<th>Interfaces with other Forums</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Executive Forum</td>
<td>TfNSW&lt;br&gt;TfNSW Executive Director(s) or appropriate delegate Contractor&lt;br&gt;Contractor Executive Sponsor</td>
<td>▪ Health check on progress of the relationship and Program;&lt;br&gt;▪ Act as the escalation point for matters arising at lower governance levels;&lt;br&gt;▪ Act as the escalation point for Issues escalated in accordance with Schedule 18 (Issue Resolution Procedure);&lt;br&gt;▪ Act as the final governance escalation point for Disputes raised in accordance with Schedule 19 (Dispute Resolution Procedure); and&lt;br&gt;▪ Other matters, as required.</td>
<td>TfNSW&lt;br&gt;TfNSW&lt;br&gt;Contractor Executive Sponsor</td>
<td>Annual, or as requested by TfNSW. Meetings held at a location nominated by TfNSW</td>
<td>▪ Escalation of matters from the Program Executive Forum</td>
</tr>
<tr>
<td>2. Program Executive Forum</td>
<td>TfNSW&lt;br&gt;TfNSW DS Program Executive Director(s) Contractor&lt;br&gt;Senior Contractor Representative</td>
<td>▪ Strategic direction and leadership for the program, including:&lt;br&gt;  o ensuring outcomes align with TfNSW’s objectives and business case;&lt;br&gt;  o monitoring strategic risks and mitigation strategies;&lt;br&gt;  o monitoring interdependencies with work undertaken in relation to the project and with other TfNSW initiatives;&lt;br&gt;  o monitor and review progress of project budgets;</td>
<td>TfNSW&lt;br&gt;TfNSW&lt;br&gt;Contractor</td>
<td>6-monthly, or as requested by TfNSW. Meetings held at a location nominated by TfNSW</td>
<td>▪ Escalation of matters from the Contract Representative Meeting&lt;br&gt;▪ Escalation of matters to the Executive Forum</td>
</tr>
</tbody>
</table>
### Forum

<table>
<thead>
<tr>
<th>Attendees</th>
<th>Responsibilities</th>
<th>Roles</th>
<th>Frequency &amp; Logistics</th>
<th>Interases with other Forums</th>
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<tr>
<td><strong>3. Contract Representatives Meetings</strong></td>
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</tr>
<tr>
<td>TfNSW TfNSW Representative(s) Contractor Contractor’s Representative(s)</td>
<td>▪ 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;</td>
<td>TfNSW TfNSW Contributes to, and participates in, the forum. Contractor Monthly Meetings held at a location nominated by TfNSW</td>
<td></td>
<td>▪ Escalation of matters from the Delivery and Commercial Management Meetings</td>
</tr>
<tr>
<td>Forum</td>
<td>Attendees</td>
<td>Responsibilities</td>
<td>Roles</td>
<td>Frequency &amp; Logistics</td>
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<tr>
<td>4. Delivery Management Meeting</td>
<td>TfNSW TfNSW Director Delivery Contractor Project Director</td>
<td>▪ 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).</td>
<td>Issues Contractor’s Program, Delivery Phase Progress Report and Commercial Monthly Report Leads, manages, runs, and participates.</td>
<td>Monthly, or as required by TfNSW Meetings held at a location nominated by TfNSW</td>
</tr>
</tbody>
</table>

**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.
<table>
<thead>
<tr>
<th>Forum</th>
<th>Attendees</th>
<th>Responsibilities</th>
<th>Roles</th>
<th>Frequency &amp; Logistics</th>
<th>Interfaces with other Forums</th>
</tr>
</thead>
</table>
| 5. Commercial Management Meeting | **TfNSW**
Commercial / Contract Manager Business Representatives (as required)
**Contractor**
Commercial / Contract Manager | ▪ 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 services;
▪ 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 | **TfNSW**
Manages and runs the forum. | Monthly, or as required by TfNSW Meets held at a location nominated by TfNSW | Same as above |

**Contractor**
Issues Contractor’s Program and Commercial Monthly Report
Contributes to, and participates in, the forum.
<table>
<thead>
<tr>
<th>Forum</th>
<th>Attendees</th>
<th>Responsibilities</th>
<th>Roles</th>
<th>Frequency &amp; Logistics</th>
<th>Interfaces with other Forums</th>
</tr>
</thead>
</table>
| 6. System Integration Committee | **TfNSW**  
Program Director,  
Director SI,  
Director TSA,  
Director Delivery  
**Sydney Trains**  
Chief Transformation Officer  
**System Integrator**  
Manager Systems Integration  
**Contractor**  
Contractor Personnel as required | ▪ Act as the escalation point for Issues escalated in accordance with Schedule 18 (Issue Resolution Procedure).  
▪ Facilitate decisions on requirements:  
  o Review options and recommend approval of changes to the SRS (changes to be progressed in accordance with the Variation Procedures);  
  o Clarify scope of and interpreting the Business Requirement Specifications;  
  o Identify requirements changes that have commercial, schedule, legal, risk, benefits and/or assurance implications and escalate to the SLT Strategy Forum; and  
  o 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 accordance with the Variation Procedures):  
  o Review scope change request forms – understand the change, why it is necessary, risks, benefits, schedule, commercial and assurance impacts;  
  o Discuss and review trade-offs and implications to broader program of change; | **TfNSW**  
Manages and runs the forum.  
**Sydney Trains (DSTO)**  
Contributes to, and participates in, the forum.  
**System Integrator**  
Contributes to, and participates in, the forum.  
**Contractor**  
Contributes to, and participates in, the forum. | Fortnightly or as required by TfNSW  
▪ Escalation of matters from Working Groups  
▪ Escalation of matters from Contract Representative Meetings  
▪ Tables strategic decisions to the SLT forum |
<table>
<thead>
<tr>
<th>Forum</th>
<th>Attendees</th>
<th>Responsibilities</th>
<th>Roles</th>
<th>Frequency &amp; Logistics</th>
<th>Interfaces with other Forums</th>
</tr>
</thead>
</table>
| Other Contractors        | As required       | ▪ 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.  
▪ Working Groups:  
  ▪ 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 not able to be agreed by the Committee or are outside delegated authority of the Committee.  
▪ Review of configurations gate submissions: |
<table>
<thead>
<tr>
<th>Forum</th>
<th>Attendees</th>
<th>Responsibilities</th>
<th>Roles</th>
<th>Frequency &amp; Logistics</th>
<th>Interfaces with other Forums</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. Working Groups (refer to Statement of Work for further details on each Working Group)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TfNSW**
- As required

**Contractor**
- Discipline Lead(s)

- 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 working group;

**TfNSW**
- Manages and runs the forums.

**Contractor**
- Compiles and presents submissions in the forum in accordance with TfNSW format (Refer to Statement of Work for the frequency of each Working Group)
- Meetings held at a location nominated by TfNSW

- 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 forums
### Schedule 17 – Governance and Management

<table>
<thead>
<tr>
<th>Forum</th>
<th>Attendees</th>
<th>Responsibilities</th>
<th>Roles</th>
<th>Frequency &amp; Logistics</th>
<th>Interfaces with other Forums</th>
</tr>
</thead>
</table>
| 8. Delivery Stand-up Meetings | **TfNSW** Project Management, **Contractor** Project Manager and relevant team members | ▪ 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. | **TfNSW** Manages and runs the meeting.  
**Contractor** Contributes to, and participates in, the meeting. | Multiple times weekly as required  
Meetings held at a location nominated by TfNSW | Escalation of matters to the relevant Working Groups |

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.

Refer to Statement of Work for further details.
2.3. General

2.3.1. Within the governance structure, some of the governance forums will be bilateral and will only include representatives from TfNSW and the Contractor (initially the ‘TMS 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.

2.3.2. 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.

2.3.3. 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.

2.3.4. 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.

2.3.5. Prior to each governance forum meeting:

   (a) 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;

   (b) 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

   (c) the chair shall prepare an agenda, to be delivered to the Contractor prior to the meeting.

2.3.6. In participating in the meetings of the governance forums, the Contractor must:

   (a) prepare for and participate fully and actively in the meetings and associated activities;

   (b) 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.);

   (c) ensure all action items allocated to it are completed within the specified timeframes, or if no timeframe is provided then within a reasonable time;

   (d) 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

   (e) provide such information and documentation as the relevant governance forum requires in connection with agenda items and to discharge its responsibilities.

2.3.7. The parties must ensure that within five (5) Business Days of the relevant meeting:

   (a) meeting minutes are taken by the relevant chair and distributed to the members of the meeting; and

   (b) 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:
(i) Delivery Stand up meetings – No approval required;
(ii) Working Groups – No approval required;
(iii) Delivery Management Meeting – TfNSW Director Delivery and the Contractor’s Project Director;
(iv) Commercial Management Meeting – TfNSW Commercial / Contract Manager, and the Contractor’s Commercial / Contract Manager;
(v) Contract Representatives Meeting – TfNSW Representative and the Contractor’s Representative;
(vi) Program Executive Forum – TfNSW DS Program Executive Director (or appropriate delegate) and Contractor’s Senior Contractor Representative; and
(vii) Executive Forum – TfNSW Executive Director (or appropriate delegate) and Contractor Executive Sponsor.

2.3.8. 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).

2.3.9. 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:

(a) TfNSW’s Supplier Relationship Meetings; and
(b) Executive Leadership Team Meetings,
and providing relevant information and feedback into:
(c) Delivery Management Meetings; and
(d) Contract Management Meetings.

2.4. Governance and Management Reporting

2.4.1. The Contractor must comply with the reporting requirements in Schedule 16 (Reports).

2.4.2. 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.

2.4.3. 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.
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:

   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

(ii) 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

   (ii) 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

(ii) 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):

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;
(iii) 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 17 (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;

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;
2.3 Bar

(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.

2.4 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:

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**);

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

<table>
<thead>
<tr>
<th>Governance Forums</th>
<th>Frequency</th>
<th>Identification</th>
<th>Validation</th>
<th>Verification</th>
<th>Escalation</th>
<th>Resolution</th>
<th>Variation</th>
<th>Dispute</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supplier or TNSW</td>
<td>As required</td>
<td>Potential issue identified</td>
<td>10 wd*</td>
<td>Initial early warning notice</td>
<td></td>
<td>Resolution</td>
<td>Variation</td>
<td>Dispute notice issued</td>
</tr>
<tr>
<td>TMS Progress Contract Management Meeting</td>
<td>Fortnightly</td>
<td>Potential issue discussed</td>
<td></td>
<td>Detailed early warning notice</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TMS Progress and Contract Management Delivery Meeting</td>
<td>Fortnightly</td>
<td>Potential issue discussed</td>
<td></td>
<td>Issue reviewed</td>
<td>5 wd*</td>
<td>Resolution</td>
<td>Variation</td>
<td></td>
</tr>
<tr>
<td>TMS Contract Representatives Meeting</td>
<td>Monthly or As needed</td>
<td>Potential issue discussed</td>
<td></td>
<td>Issue reviewed</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Systems Integration Committee</td>
<td>Monthly or As needed</td>
<td>Potential issue discussed</td>
<td></td>
<td>Issue discussed</td>
<td>5 wd*</td>
<td>Resolution</td>
<td>Variation</td>
<td></td>
</tr>
<tr>
<td>Program Executive Forum</td>
<td>6 Monthly or As needed</td>
<td>Potential issue discussed</td>
<td></td>
<td>Issue discussed</td>
<td>5 wd*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive Forum</td>
<td>As needed</td>
<td>Potential issue discussed</td>
<td>10 wd*</td>
<td>Issue addressed</td>
<td>5 wd*</td>
<td>Resolution</td>
<td>Variation</td>
<td></td>
</tr>
</tbody>
</table>

*working days to resolve steps / complete documentation

**Key**
- Informal process steps
- Formal process steps
- Resolution Process
- Variation Process
- Dispute Process
- Process flow
- Escalation flow
- Resolution, variation and dispute process flow

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Schedule 19  Dispute Resolution Procedure

1  Disputes

1.1  Dispute Notice

(a)  Subject to sections 1(b) 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);

   (ii) specify the Issue in dispute;

   (iii) provide detailed particulars of the party's reasons for being dissatisfied, including the relevant matters of fact and Law;

   (iv) set out the position which the party believes is correct both in relation to liability and quantum;

   (v) 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:

   the Dispute to mediation or for expert determination; and /or

   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):

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), the arbitrator will have the power to grant all legal, equitable and statutory remedies, except punitive damages; and

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
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.

1.2 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 AGREEMENT

To: [Expert]

By the TMS 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 TMS 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

See separate document
Traffic Management System (TMS)
Delivery Agreement
Digital Systems Program
Schedule 20 – Disengagement

Contract Number: IPD-19-7821
1. Introduction

1.1. Introduction

1.1.1. This Schedule, together with clause 59 (Disengagement) of the Agreement, sets out the Contractor's obligations in relation to Disengagement.

1.2. Scope

1.2.1. The Contractor must provide the Disengagement Services set out in this Schedule, which include:

   a) 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;

   b) provision of the Disengagement Plan for approval by TfNSW in accordance with section 3 (Preparation and Approval of Disengagement Plan) of this Schedule; and

   c) 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.

1.2.2. 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:

   a) expiry of the Agreement (in whole or in part, including any SOW);

   b) termination of the Agreement (in whole or in part, including any SOW) for any reason; and

   c) termination of any of the Contractor's Activities (or any part of any of the Contractor's Activities) for any reason.

1.2.3. The Contractor must provide the Specific Disengagement Services 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 achievement of the objectives of this Schedule (including those set out in section 1.3), 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

1.3.1. The objectives of the Disengagement Services are, amongst other things:

   a) 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);
(b) to enable TfNSW to plan for the transition of the Removed Services from the Contractor to TfNSW or a Replacement Contractor;

(c) to enable TfNSW to transition the Removed Services from the Contractor to TfNSW or a Replacement Contractor;

(d) to enable TfNSW or a Replacement Contractor to perform the Removed Services in substitution for the Contractor from handover of the Removed Services; and

(e) to eliminate or minimise any disruption or deterioration of the Contractor’s Activities or the System during and as a result of Disengagement.

1.4. TfNSW Nominees

1.4.1. 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

2.1.1. Notwithstanding clause 59.2 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, renegotiation 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:

(a) performance histories related to the Contractor’s Activities and the TMS Subsystem;

(b) inventories of Assets and Third-Party contracts related to the Contractor’s Activities and the TMS Subsystem;

(c) inventories of data and documentation related to the Contractor’s Activities;

(d) technical and environment descriptions related to the Contractor’s Activities and the TMS Subsystem;

(e) technical and / or operational training materials; and

(f) scope of service descriptions.
2.2. Provision of Information and Documentation

2.2.1. Notwithstanding clause 59.2 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, without limitation, any of the documentation listed in Appendix A (Disengagement Documentation and Data) to this Schedule.

2.2.2. The Contractor must ensure that all documentation provided to TfNSW under this section 2.2 (Provision of Information and Documentation):

(a) 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

(b) 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).

2.2.3. 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

2.3.1. The Contractor must permit:

(a) 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

(b) 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

2.4.1. 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.
2.5. No Charges for General Disengagement Assistance

2.5.1. TfNSW is not liable for any Fees or expenses incurred by the Contractor as a result of the provision of general Disengagement assistance by the Contractor in accordance with this section 2 (General Disengagement Assistance).

3. Preparation and Approval of Disengagement Plan

3.1. Preparation of Disengagement Plan

3.1.1. 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 TMS Subsystem and the Contractor’s Activities). At a minimum, the Disengagement Plan must, unless otherwise agreed in writing by TfNSW, address the following:

(a) approach and strategy for the Disengagement, including in relation to ensuring continuity of the Contractor’s Activities and the TMS Subsystem;

(b) methodology and processes for Disengagement, including:

(i) the process describing how the Contractor will comply with the project closing requirements of AS/NZS ISO/IEC 15288; and

(ii) 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;

(c) tasks, activities, Milestones, Contractor’s Activities and Assets;

(d) allocation of roles and responsibilities between the Contractor and TfNSW or its selected Replacement Contractor;

(e) 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;

(f) details of the Key Contractor Personnel who are proposed to perform the Disengagement Services (including number of FTEs & skills and experience of such Key Contractor Personnel);

(g) 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:

(i) contracts;
(ii) interfaces;

(iii) agreements;

(iv) warranties and guarantees;

(v) Intellectual Property Rights in Assigned IP; and

(vi) supply and procurement arrangements;

(h) processes describing how the Contractor will ensure all Assets are at the target condition by the end of the Disengagement Period;

(i) 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:

(i) notifying the location and condition of each Asset;

(ii) provision of learning and assessment;

(iii) provision of Spares and consumables; and

(iv) provision of Tools;

(j) approach to assignment or novation of any subcontracts and any other Third Party contracts to ensure effective transition;

(k) the transfer of any licences;

(l) access to premises and systems;

(m) cut-over strategies;

(n) testing strategy, acceptance procedure and criteria;

(o) training strategy (including training of the staff of TfNSW / the Replacement Contractor, as applicable) and plans for facilitating knowledge transfer;

(p) security requirements, including the transfer of security entitlements, passes, contractor identification, procurement entitlements, or any other related matters;

(q) 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;

(r) process for return to TfNSW of, or destruction of (at TfNSW’s election), Materials, data and TfNSW’s Confidential Information;

(s) communication plan;

(t) interdependencies;

(u) risk management;
(v) 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;

(w) the handover of:

(i) all operational data;

(ii) 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;

(iii) 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;

(iv) correspondence with any Government Authority; and

(v) 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;

(x) a post-implementation review meeting (at TfNSW’s discretion) between TfNSW, the Contractor and, if required by TfNSW, any Replacement Contractor; and

(y) 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.

3.1.2. 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

3.2.1. 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 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

3.3.1. 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, prepare a detailed Disengagement Plan for Disengagement of specific Removed Services
The Detailed Disengagement Plan is subject to approval by TfNSW and must, among other things:

(a) 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;

(b) be prepared in consultation with TfNSW and take account of TfNSW specific requirements and any obligations for the Disengagement;

(c) provide names and details of the Key Contractor Personnel that will provide the Disengagement Services, including the following details in respect of each Key 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).

(d) 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;

(e) 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;

(f) 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:

(i) 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

(ii) TfNSW and any of TfNSW’s business partners and external users; and

(g) if requested by TfNSW, provide a staged or phased Detailed Disengagement Plan.

3.4. TfNSW’s Approval of the Disengagement Plans

3.4.1. 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

4.1.1. The Contractor must provide the Disengagement Services set out in this section 4 (Specific Disengagement Assistance) until:

(a) the acceptance criteria set out in the Disengagement Plan have been met, as reasonably determined by TfNSW; or

(b) the expiry of the Disengagement Period,

as nominated by TfNSW.

4.1.2. 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).

4.1.3. The Contractor must conduct the Disengagement Services to meet the objectives specified in section 1.3 (Objectives) of this Schedule, including by:

a) 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;

b) 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;

c) using its best endeavours to mitigate TfNSW’s costs resulting from the Disengagement, including TfNSW’s costs in relation to Other Contractors;

d) continuing to provide the Contractor’s Activities to the standards required under the Agreement;

e) not making any material change to the level of service or number or Contractor Personnel assigned to perform Contractor’s Activities under this Agreement;

f) 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;

g) 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

h) 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

4.2.1. The Contractor must transfer all knowledge regarding the Removed Services and the TMS Subsystem to TfNSW, including by:

(a) 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 TMS 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;

(b) 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 ensure TfNSW’s critical business requirements are met (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);

(c) 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);

(d) 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);

(e) explaining the interfaces and interdependencies for all Removed Services and Infrastructure used to deliver the Removed Services;

(f) explaining and reviewing all test, data and production software libraries with TfNSW Personnel or the personnel of the Replacement Contractor (if different);

(g) 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;

(h) 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);

(i) providing shadow Contractor Personnel for the Removed Services following migration to TfNSW or the Replacement Contractor; and

(j) providing training and training documentation for the transfer of knowledge to TfNSW Personnel or the personnel of the Replacement Contractor (if different).
4.3. Access

4.3.1. 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

4.4.1. The Contractor must permit:

(a) 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

(b) 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 and that the use of such documentation is limited in accordance with the scope of the licence in clause 37.3 (Contractor-Licensed IP)

4.4.2. Any Contractor 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

4.5.1. 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.

4.5.2. This includes, to the extent applicable to the Removed Services and as requested by TfNSW, the following:

(a) 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);

(b) delivering Software (but excluding source code except as provided by (l) below) and SOE images used to provide the Removed Services;
(c) delivering object libraries, reference files, scripts and software tools used to provide the Removed Services (but excluding source code except as provided by (l) below);

(d) delivering systems support profiles and monitoring and system logs;

(e) 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;

(f) providing TfNSW with any incident or problem logs TfNSW does not already have;

(g) freezing all or any discretionary Software changes, other than emergency Modifications necessary to address processing incidents and problems;

(h) providing assistance in notifying Third Party suppliers of the procedure to be followed during Disengagement;

(i) 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;

(j) transferring Assets to TfNSW in accordance with the requirements of this Schedule;

(k) providing reasonable assistance to TfNSW in establishing or transferring naming conventions;

(l) in respect of:

   (i) any Assigned IP; or

   (ii) Contractor Licenced IP only where TfNSW has been granted a licence pursuant to this Agreement to modify or adapt extending beyond the Term, deliver 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 object code, technical specifications and Materials, and user documentation for the Software and any other material which a relevantly qualified programmer would require to modify or adapt that Software;

(m) delivering the content listings of all relevant requested data files and copies of control file information to TfNSW;

(n) providing reasonable assistance to TfNSW in loading the data files;

(o) providing reasonable assistance to TfNSW with the movement of data from then existing systems or databases to the new environment;
(p) providing an image copy of each operating system environment in dump/restore mode to TfNSW;

(q) in conjunction with TfNSW, participating in all migration planning activities;

(r) providing reasonable assistance to TfNSW in the execution of testing, including conducting parallel operations and testing;

(s) conducting rehearsals of each migration prior to cut-over as scheduled by TfNSW;

(t) working in conjunction with TfNSW to conduct cut-over and migration of the Removed Services at times specified by TfNSW;

(u) providing post cut-over and service stabilisation assistance following Disengagement of the Removed Services;

(v) 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:

   (i) document, update and provide functional organisation charts, operating level agreements with Third Party suppliers, phone trees, contact lists, and standard operating procedures; and

   (ii) 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;

(w) 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

(x) providing continuity of Contractor’s Activities and operations throughout the Disengagement.

4.6. Offer to Transfer Contractor’s Equipment, Software and Service Agreements

4.6.1. TfNSW retains the right to purchase or lease any item of Contractor’s Equipment or to license any item of Software from the Contractor during a Disengagement (of all or part of the Contractor’s Activities).

4.6.2. The Contractor must:

   (a) offer to provide TfNSW with continued use of each item of Contractor’s Equipment used to deliver the Removed Services in accordance with section 4.7 (Contractor’s Equipment and Other Material);
(c) provide use of each Third Party contract used to deliver the Removed Services not otherwise obtainable by TfNSW from the relevant Third Party on reasonable commercial terms.

4.6.3. 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:

(a) obtaining all necessary Third Party consents if possible; and

(b) preparing and executing all required bills of sale, assignment and novation deeds.

4.7. Contractor’s Equipment and Other Material

4.7.1. 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

4.8.1. 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):

(a) 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

(b) 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.

4.8.2. If novation rights were achieved under 4.8(a)(i), at TfNSW’s request, the Contractor must promptly perform all actions necessary to effect such novation of contracts.

4.8.3. If novation rights were not achieved under 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

4.9.1. 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.

4.9.2. The Contractor must perform all activities requested by TfNSW in relation to:

(a) segregation and removal of Contractor’s Equipment, Software, Materials, documents and other physical assets from TfNSW, Contractor or Third Party premises; and
(b) the delivery to and installation of these items at the new premises at which they are to be installed.

4.10. Engaging Contractor Personnel

4.10.1. 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;

4.10.2. 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;

4.10.3. After notification by TfNSW or its nominee under this section 4.10 (Engaging Contractor Personnel), the Contractor must:

(a) 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, with the exception of existing termination periods up to four (4) weeks;

(b) give TfNSW or its nominee reasonable access to such Contractor Personnel for interviews and recruitment;

(c) 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

(d) 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

4.11.1. 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 utilizations 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 used 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 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 of all Software (system software, management tools, middleware, database software, office automation and applications) including, up-to-date and accurate product descriptions, version numbers, currency, vendor details, licence and maintenance details, description of function and installation details (including which devices and locations).
11. Full details of all licence and maintenance fees, 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, including Software contracts, equipment contracts, lease contracts, maintenance contracts, and Third Party service provider 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.
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 information concerning the Removed Services required by TfNSW.
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:

the processes the Contractor will implement to protect its work and any part of the TMS 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 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;

(ii) 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

(iii) ensure it is properly integrated with TfNSW’s own business continuity and disaster recovery processes, 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, 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) if requested by TfNSW (in its sole discretion), must 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:

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;

(ii) immediately notify TfNSW of any threat or any disruption to Contractor's ability to provide the Contractor’s Activities; and

for the duration of any disruption to the Contractor’s Activities, 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

See separate document
Schedule 22  Form of Subcontractor Deed

Deed dated the __________ day of __________ 20

Between ("TfNSW")

Transport for NSW (ABN 18 804 239 602)

And ("the Contractor")

Siemens Mobility Pty Ltd (ABN 39 625 304 556)

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 TMS 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:

AffectedActivities 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.

TMS Delivery Agreement means the agreement entitled “TMS Delivery Agreement” dated [*] and entered into between TfNSW and the Contractor.

1.2 Definitions in TMS Delivery Agreement

Subject to clause 1.1, capitalised terms used in this Deed that are defined in the TMS 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 TMS 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:

(a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and

(b) in any other case, the person must do it on or by the previous 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:

(A) all of its obligations under the Subcontract and this Deed; and

(B) all the terms and conditions of the TMS Delivery Agreement, as though references in the TMS Delivery Agreement to the “Contractor” were references to the “Subcontractor”, but only to the extent they are relevant to the goods and services to be provided by the Subcontractor. The Subcontractor acknowledges that the following provisions of the TMS Delivery Agreement will be relevant to the goods and services to be provided by the Subcontractor: provisions relating to sites, personnel, compliance obligations (including workplace health and safety), action plans, enhanced co-operation and supervision, performance remediation (including step-in), subcontracting, escrow, interface requirements, termination and disengagement rights, and the intellectual property, confidentiality, privacy and security provisions of the TMS Delivery Agreement;

(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 and the TMS Delivery Agreement;

(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 Laws;

(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 remain at all relevant times fit for their purpose as specified in the Subcontract; and

(E) so that the works carried out or performed by the Subcontractor, when completed, will be and will remain at all relevant times fit for their intended purpose as specified in 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 suitable and adequate level and cover of insurance as appropriate to reflect the nature of the activity, service or goods the subject of the Subcontract;

(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, 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 TfNSW has the right under the TMS 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 two (2) 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 frequency as TfNSW may require) on such resolution to TfNSW; and

(D) 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 assistance, access, 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 associated source code); 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) The liability of the Subcontractor under this Deed is not affected by TfNSW exercising or refraining from exercising any or all of its rights in respect of the Contractor under the TMS Delivery Agreement or under any other document or agreement entered into or provided under or in connection with the TMS Delivery Agreement or at Law or in equity.
(b) 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.

(c) For the avoidance of doubt, other than as expressly set out in this Deed, 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 contractor under the Subcontract, to the extent that those obligations or liabilities relate to the Subcontract or this Deed.

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 (b) below, execute the Subcontract novation in the form of Schedule 33 (Form of Subcontractor Deed of Novation) to the TMS 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 exercise any right or power under the Subcontract that may be contrary to the interests of TfNSW, or refuse to exercise any right or power under the Subcontract for the interests of TfNSW, pending novation of the Subcontract.

(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 notice issued by TfNSW under 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 such notice 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: [Insert]
Attention: [Insert]

TfNSW

Address: Level 1, 219 Cleveland Street, Strawberry Hills, NSW, 2016
Email: [Insert]
Attention: [Insert]

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 TMS 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.

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.
Execution page

EXECUTED as a deed.

Signed, sealed, 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, delivered by
Siemens Mobility Pty Ltd (ACN 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, delivered by [insert Subcontractors’ name and ACN/ABN]
in accordance with s127 of the Corporations Act 2001 (Cth) by:

Signature Director  Signature of Director/Secretary

Print name  Print name

Date  Date
Schedule 23  Form of Confidentiality Deed Poll

See separate document
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, delivered by the Recipient: in the presence of:

__________________________________ ______________________________  
Recipient Witness

__________________________________ ______________________________  
Name (please print) Name (please print)
Schedule 25  Form of Escrow Deed
Schedule 26  Form of Contractor Deed Poll
Schedule 27  Form of Deed of Novation

See separate document
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 TMS 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 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 and promptly 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, 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; 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 to 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.
Executed as a deed poll.

Signed, sealed and delivered for and on behalf of TfNSW

**Transport for NSW (ABN 18 804 239 602)**

Signed, sealed and delivered by

Signature of TfNSW's representative

Print Name

Date

In the presence of: [insert name of witness]

Signature of TfNSW's witness

Print Name

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

Print name

Date

Signature of Director/Secretary

Print name

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

Print name

Date

Signature of Director/Secretary

Print name

Date
Schedule – Statements of Work and other agreements excluded from definition of Contract:

[ list excluded Statements of Work and other agreements, if any ]
Schedule 29   Form of Unconditional Undertaking
Schedule 30    Statement of Interests and Associations

See separate document
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, 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

See separate document
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; 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.
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 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.

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 for and on behalf of TfNSW

Transport for NSW (ABN 18 804 239 602)

By [insert name of TfNSW's representative]

In the presence of: [insert name of witness]

Signature of TfNSW's representative

Print Name

Date

Signature of TfNSW's witness

Print Name

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

Print name

Date

Signature of Director/Secretary

Print name

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

Print name

Date

Signature of Director/Secretary

Print name

Date
Schedule – Agreements excluded from definition of Contract:

[ list excluded agreements, if any ]
Schedule 34  Form of Access Indemnity

See separate document
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;

(ii) 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 an 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

(iii) 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 deed (whether arising in contract, tort (including negligence), statute, equity, an indemnity or otherwise):

(i) will not exceed the liability the Contractor has under the Delivery Agreement; and
(ii) 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 5 (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, 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, 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.