

COMMERCIAL-IN-CONFIDENCE



Transport

NEC

IT Managed Services Agreement

Execution Copy

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List of Exhibits

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Exhibit 8 – [Omitted]

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Exhibit 10 – [Omitted]

Exhibit 11 – [Omitted]

Exhibit 12 – [Omitted]

Exhibit 13 - Service Reports

Attachment 13A – Description of Service Reports

Exhibit 14 - Not Used

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Exhibit 19 - Policies and Procedures (Including Work, Health and Safety)

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Exhibit 21 – [Omitted]

Exhibit 22 – [Omitted]

Exhibit 23 - Service Variation Forms

Exhibit 24 - Eligible Recipients

Exhibit 25 – Transport Confidentiality Deed

Exhibit 26 – Subcontractor Statutory Declaration

Exhibit 27 – Supplier Confidentiality Deed

Exhibit 28 – Not Used

Exhibit 29 – [Omitted]

Exhibit 30 – [Omitted]

Exhibit 31 – [Omitted]

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This Agreement is made on

2015

Parties

- 1 **Transport for New South Wales** (ABN 18 804 239 602), a corporation constituted under the provisions of the *Transport Administration Amendment Act 2010* (NSW), of 18 Lee Street, Chippendale, NSW 2008 (**Transport**).
- 2 **NEC IT Services Australia Pty Ltd** (ABN 27 096 278 198) registered in Australia of 649-655 Springvale Rd, Mulgrave, Vic 3170 (the **Supplier**).

Recitals

- A Transport has operational control over public transport services in New South Wales, is constituted as a corporation under the provisions of the *Transport Administration Amendment Act 2010* (NSW) and is a NSW Government agency.
- B Transport wishes to engage the Supplier to, and the Supplier wishes to, perform and manage certain technology infrastructure services that are currently performed by Transport, the Eligible Recipients and/or the Displaced Suppliers.
- C Transport wishes to achieve the Objectives set out in clause 2.
- D Transport has distributed a Request for Proposal to the Supplier and a number of other potential service providers dated 16 September 2013 containing a description of its current and future needs for the services referred to in TfNSW RFP2013/042 which the Supplier has responded to by way of a proposal titled "TfNSW 2013/36 - Next Generation Infrastructure Services End User Computing" and subsequent updates to that proposal.
- E Having conducted its own investigations into the services which Transport requires to be provided, and understanding Transport's requirements for those services, the Supplier has represented that it is able to meet Transport's requirements, provide Transport with the required services in accordance with the terms of this Agreement, has the capability to deliver significant cost savings and improved services to Transport and is capable of conducting, and will conduct, itself as a professional IT services provider.
- F In reliance on the proposal documents described in recital D, the representations described in recital E, and on other representations made by the Supplier to Transport in the course of its discussions with Transport, Transport has decided to enter into this Agreement to engage the Supplier to perform the services and the Parties have agreed that the Supplier will perform the services on the terms set out in this Agreement.
- G Transport may also engage the Supplier to perform, and if so engaged the Supplier must perform, additional IT services from time to time in accordance with the terms of this Agreement.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

- (a) Capitalised terms used in this Agreement have the meanings specified in Exhibit 1 (Definitions).

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- (b) Attachment 1-A contains a Technical Glossary for acronyms and abbreviations used throughout the Exhibits.

1.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation;
- (b) an obligation or liability assumed by, or a right conferred on, 2 or more Parties binds or benefits all of them jointly and each of them severally;
- (c) the expression **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to any Party includes that Party's executors, administrators, successors and permitted assigns, including any person taking by way of novation;
- (e) a reference to any document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (h) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Agreement, and a reference to this Agreement includes any schedule, exhibit or annexure to this Agreement;
- (i) where 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 word **includes** in any form is not a word of limitation;
- (k) a reference to time is to local time in Sydney;
- (l) a reference to **\$** or **dollar** is to Australian currency;
- (m) references to payments to any Party to this Agreement will be construed to include payments to another person upon the direction of such Party;
- (n) a reference to an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (o) a right includes a benefit, remedy, discretion or power;
- (p) if any day appointed or specified by this Agreement for the payment of any money or doing of any thing falls on a day which is not a Business Day, the day so appointed or specified shall be deemed to be the next Business Day;
- (q) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded; and
- (r) no provision of this Agreement is to be interpreted to the disadvantage of a Party because that Party (or its representative) drafted that provision.

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1.3 Precedence of Documents

In the event of a conflict, inconsistency or ambiguity between any provisions or parts of the body of this Agreement, the Exhibits, the annexures to the Exhibits, and any attachments, the provisions will prevail in the following decreasing order of precedence:

- (a) clauses 1 to 40 of this Agreement;
- (b) Exhibit 1;
- (c) Exhibits 2 and 15 (and their Attachments), Exhibit 20 and Attachment 4B;
- (d) Exhibits 3 and 4 (and their Attachments);
- (e) all Exhibits other than those specified in (b), (c) and (d) above;
- (f) all Attachments other than those specified in (b), (c) and (d) above;
- (g) the Appendices;
- (h) the Project Statements of Work;
- (i) the Technical Solution Document; and
- (j) any RACI documents included in the above items (b) to (i) inclusive.

2 Objectives

2.1 Objectives of the Agreement

Transport's Objectives in entering into this Agreement to receive the Initial Services are to:

- (a) align with Transport's and the NSW State Government's operating principles;
- (b) replace existing major IT sourcing contracts with ones that ensure:
 - (i) efficiency and effectiveness is improved;
 - (ii) IT performance is improved from the perspective of the business, including greater stability, reliability, faster fulfilment and projects, speed of fixes, greater cost transparency;
 - (iii) the full size and scale of Transport and all Eligible Recipients is leveraged to achieve scale, consistency, effectiveness and improved risk management; and
 - (iv) commercial flexibility to allow for adoption of cloud computing services, new operating technologies, private sector participation and other new ways of operating, without penalty to Transport;
- (c) while at the same time:
 - (i) delivering efficiencies and new ways of working that support the formation of the integrated Transport authority;
 - (ii) providing increased capacity and agility that can better respond to future changes in the delivery and administration of Transport and the Eligible Recipients;
 - (iii) supporting the sector-wide reform under the Corporate Shared Services Reform Program (CSSRP); and
 - (iv) aligning with the NSW State Government ICT strategy and the Transport ICT strategy;
- (d) leverage the knowledge and processes of industry leading Suppliers to introduce rigour to the service delivery processes of Transport;

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- (e) obtain access to specialist resources and technological innovation;
- (f) increase levels of service to end users of the Services through business aligned and measurable service level arrangements;
- (g) lower the cost of service delivery within Transport via continuous improvement methodology that the Supplier achieves from implementation of new technologies and/or business practices and via best market practice benchmarking procedures;
- (h) enable Transport to focus on core business processes;
- (i) smoothly and successfully transition to a new service delivery model in the required timeframe;
- (j) improve quality of service delivery to the organisation and end-users of the Services and add value to Transport;
- (k) keep informed and aware of the Services being provided through regular reviews and reports; and
- (l) reassess service levels and costs in light of any movement in industry best practice, (collectively, the **Objectives**).

2.2 Effect of the Objectives

- (a) The Objectives are intended to describe the intention of the Parties in entering into this Agreement and are not intended to take precedence over any other express terms of this Agreement or to expand or reduce the scope of the Parties' obligations under this Agreement.
- (b) To the extent that any terms of this Agreement do not address a particular circumstance, are unclear or ambiguous, those terms are to be interpreted, to the extent legally permissible, by reference to the Objectives.
- (c) To the extent that any terms of this Agreement require the Parties to discuss, negotiate or agree on a particular matter, each Party must act to give the fullest possible effect to the Objectives.
- (d) Without limiting any other obligation of the Supplier set out in this Agreement, the Supplier must use Best Endeavours to ensure that Transport realises the Objectives.
- (e) As part of a meeting of the Joint Strategic Forum conducted under Exhibit 6 (Governance Model), the Parties must, at least once each Contract Year:
 - (i) review whether the performance of the Services during the previous Contract Year achieved the Objectives, and if not and if requested by either Party, discuss whether any variation to this Agreement is required in order to ensure that the Objectives are achieved in forthcoming Contract Years; and
 - (ii) if requested by either Party, discuss variations to the Objectives to reflect changes in Transport's business environment and business objectives since the Service Commencement Date.

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3 Conditions precedent

3.1 Commencement of Agreement

- (a) Subject to clause 3.1(b), this Agreement does not commence until each of the Conditions Precedent has been satisfied or waived in accordance with this clause 2 (**Effective Date**).
- (b) The following clauses of this Agreement commence on the Execution Date: 1, 2, 3, 4.1, 14, 16, **Error! Reference source not found.**, **Error! Reference source not found.**, 24, 25, 29, 30, **Error! Reference source not found.**, **Error! Reference source not found.**, 34, 38, 39 and 40.

3.2 Supplier Conditions Precedent

The Agreement is conditional on the Supplier delivering to Transport an original, facsimile or pdf counterparts, in a form and substance reasonably satisfactory to Transport, of:

- (a) a bank guarantee (in the form set out in Exhibit 29B)... [Remainder omitted];
- (b) a parent guarantee in the form of Exhibit 29A; and
- (c) certificates of currency for the insurance required under Exhibit 21 (Required Insurance).

3.3 Transport's benefit

Each of the Conditions Precedent is for the sole benefit of Transport and may only be waived in writing by Transport in its absolute discretion.

3.4 Time for satisfaction of Conditions Precedent

- (a) [Omitted].
- (b) The Supplier must notify Transport promptly and in any event within 2 Business Days of each Condition Precedent that the Supplier considers to be satisfied or to have become incapable of being satisfied.

3.5 Failure to satisfy Conditions Precedent

If any Condition Precedent is not satisfied, or waived by Transport pursuant to clause 3.3, on or before the Cut Off Date, then:

- (a) Transport may, by giving notice to the Supplier, terminate this Agreement;
- (b) the Supplier must indemnify Transport against all costs, expenses, Losses, damages, claims or liabilities suffered or incurred by Transport arising out of or in connection with the failure of the Conditions Precedent to be so satisfied; and
- (c) the Supplier will not be entitled to bring any claim against Transport arising out of or in connection with the failure of the Conditions Precedent to be satisfied.

4 Term

4.1 Term

This Agreement commences in accordance with clause 3.1 and continues until the later of:

- (a) the date which is five years from the Execution Date (the **Initial Term**);
- (b) if renewed under clause 4.2, the expiry of the Renewal Term(s); and

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- (c) if Transport requires a Termination Assistance Period under clause 36.2, the expiry of the Termination Assistance Period,

unless terminated earlier pursuant to its terms (the **Term**).

4.2 Renewal

Transport may renew this Agreement for two successive two year terms by delivering written notice of such renewal to the Supplier at least 90 days before the expiration of the Initial Term or, if applicable, at least 90 days before the expiration of the first two year renewal term (**Renewal Term**). Any Renewal Term has the effect of extending the Term on the then current terms and conditions (including as to Charges) of this Agreement.

4.3 Service Commencement

The Supplier must:

- (a) commence performing the Transition Services on the Effective Date;
- (b) commence performing the Transformation Services on the relevant date set out in each Transformation Plan;
- (c) commence performing all other Services on the relevant Service Commencement Date, or such other date as set out in the Transition Plan; and
- (d) commence providing Termination Assistance in accordance with clause 36.

4.4 Term of Project Statements of Work

Each Project Statement of Work commences on the date set out in the Project Statement of Work or if not specified, on the date that the Project Statement of Work is executed by both Parties (and if executed on different dates, that later date) and continues until the end of the term specified in that Project Statement of Work, unless terminated earlier pursuant to its terms or the terms of this Agreement (the **Project Statement of Work Term**).

5 Services

5.1 Services to be provided

The Supplier must, during the Term, provide:

- (a) the services, functions and tasks described in this Agreement including:
 - (i) the Transition Services;
 - (ii) the Transformation Services;
 - (iii) the Initial Services;
 - (iv) any Projects; and
 - (v) Termination Assistance;
- (b) [Omitted];
- (c) at its own cost, proposals for other information technology goods and services as reasonably requested by Transport from time to time;
- (d) any services, functions, tasks and responsibilities which are necessary for or incidental or ancillary to, or customary for, the proper performance and provision of the Services;
- (e) [Omitted];

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- (f) all Personnel, hardware, software, Technology and other resources needed to provide, or which are incidental to the provision of, any of the above, except to the extent this Agreement expressly requires Transport or a Third Party Supplier to supply them, (collectively, the **Services**) in accordance with this Agreement.

5.2 No exclusivity and no minimum volume

- (a) Nothing in this Agreement shall be construed so as to imply that the Supplier has the right to be the sole Supplier to Transport of services in the nature of the Services or information technology related services generally.
- (b) Nothing in this Agreement requires Transport to purchase any minimum quantity or value of services from the Supplier.
- (c) Transport may request information, proposals, or competitive bids from third parties on the same or different terms than as provided in this Agreement (including for services in the nature of the Services or information technology related services generally) and may do so at any time without the Supplier's consent and without notice to the Supplier.

5.3 Changes in volumes

The Supplier must increase or decrease the volume of the whole or any part of the Services in accordance with Transport's and the Eligible Recipients' business requirements from time to time.

5.4 Supply of Services to and for benefit of Eligible Recipients

The Supplier agrees and acknowledges that:

- (a) the Services supplied under this Agreement are to be provided to and for the benefit of Transport and the Eligible Recipients, as required by Transport from time to time, and that each of Transport and any Eligible Beneficiary may make use of the Services under and in accordance with this Agreement;
- (b) any obligation on the Supplier under this Agreement to perform an act or supply any Service is an obligation to perform that act or supply that Service for the benefit of Transport and/or an Eligible Recipient as required by Transport from time to time;
- (c) notwithstanding the foregoing, it must only accept instructions to perform the Services or to vary any of the Services from Transport, and not from any Eligible Recipient;
- (d) a breach of this Agreement or negligence by the Supplier in relation to performance or failure to perform this Agreement may result in a Loss being suffered by an Eligible Recipient;
- (e) in addition to entering into this Agreement in its own right, Transport also enters into this Agreement as agent for each Eligible Recipient for the sole purpose of:
- (i) each Eligible Recipient obtaining (and being able to enforce through Transport) any rights granted to Transport;
 - (ii) each Eligible Recipient obtaining (and being able to enforce through Transport) the benefit of the indemnities in clause **Error! Reference source not found.**;
- (f) for the purpose of this Agreement, Transport shall be deemed to be acting as the trustee of the benefits expressed to be given to each Eligible Recipient under this Agreement and with their respective authority; and
- (g) any obligation of Transport under this Agreement may be performed by Transport or any of the Eligible Recipients.

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5.5 Standard of care and compliance

The Supplier must:

- (a) perform all of its obligations under this Agreement (including providing the Services to Transport and the Eligible Recipients):
 - (i) in a timely, diligent and competent manner;
 - (ii) with due care and skill required of a competent professional supplier experienced in carrying out services similar to the Services) and in a timely and professional manner;
 - (iii) in accordance with, and in compliance with:
 - (A) this Agreement;
 - (B) all Laws;
 - (C) all regulatory obligations applying to Transport;
 - (D) [Omitted];
 - (E) the standards set out in the Information Technology Infrastructure Library (ITIL) v3 and any subsequent or successor standard;
 - (F) all Transport policies and procedures notified to the Supplier by Transport from time to time; and
 - (G) any reasonable instructions of Transport;
- (b) comply with Transport's and the Eligible Recipients':
 - (i) information management and information retention policies and practices;
 - (ii) technical architecture;
 - (iii) policies or standards specified in Exhibit 19 (Policies and Procedures) or a Project Statement of Work; and
 - (iv) internal information technology processes,
which are in force from time to time during the Term and communicated to the Supplier;
- (c) provide all services, functions and tasks necessary to ensure that the Service Levels and all other outcomes that the Supplier is required to achieve under this Agreement are achieved or exceeded;
- (d) [Omitted] ; and
- (e) co-operate in a timely manner in meeting the Objectives.

5.6 Specialised services or products

- (a) From time to time Transport may request that the Supplier use its Best Endeavours to:
 - (i) obtain goods or services that may be available from a Third Party Supplier at prices more favourable than may otherwise be available to Transport directly; and
 - (ii) make such goods or services available to Transport under this Agreement.
- (b) The Supplier must notify Transport from time to time of any relationships that the Supplier has with such Third Party Suppliers that may be of benefit or interest to Transport in this respect.

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5.7 Technical Architecture Standards

The standards must be followed, and the Services must be provided in accordance with, the technical and architectural standards set out in Exhibit 2 (Statements of Work Introduction), Exhibit 8 (Technical Architecture and Product Standards) and their respective Attachments.

5.8 Resources and efficiency

Except as otherwise expressly provided in clause 21:

- (a) the Supplier must provide, at its expense, all of the Resources necessary for the Supplier to provide the Services; and
- (b) the Supplier must not implement any action or decision regarding such resources that would have an adverse effect on the Services, Service Levels, Charges or other Transport costs and expenses without Transport's prior written consent.

5.9 Further assurances

As part of the Services, the Supplier agrees at all times to comply with Transport's requests for co-operation and assistance for Transport, the Eligible Recipients and their respective contractors.

5.10 Changes in law and regulations

- (a) Each Party must notify the other of any changes in any Laws that it becomes aware of in the ordinary course of its business. The Parties must work with each other to identify the impact, if any, of changes in applicable Laws on the Services. The Supplier must promptly make any resulting modifications to the Services, as reasonably necessary, as a result of such changes through the Service Variation Procedures.
- (b) The Supplier is responsible for, and must pay for, the cost of any such changes relating solely to the Supplier's business.
- (c) Transport is responsible for the cost of any such changes relating solely to Transport's business.

5.11 Licences and permits

As part of the Services, the Supplier must:

- (a) obtain all applicable licences, authorisations, and permits required in connection with the performance of the Services and its obligations under this Agreement; and
- (b) [Omitted].

5.12 Correction of errors

The Supplier must promptly notify Transport of any errors or inaccuracies in any Materials or Reports which come to its attention. The Supplier must promptly correct any errors or inaccuracies in any Materials or Reports if requested by Transport. ...[Remainder omitted].

5.13 Business Continuity Plan

The Supplier must comply with the Business Continuity Plan and make such reasonable amendments to the Business Continuity Plan as may be requested by Transport from time to time.

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6 Ownership and Transfer of Existing Assets and New Assets

6.1 Treatment of Existing Assets and New Assets

Subject to clause 6.2:

- (a) property in, title to, ownership of and risk associated with:
 - (i) any Existing (Category A) Assets is transferred from Transport to the Supplier on and from the Effective Date (or such other date set out in the Transition Plan or a Project Statement of Work); and
 - (ii) any Existing (Category B) Assets remains with Transport.
- (b) [Omitted];
- (c) Transport has no responsibility for the condition, maintenance, operation, or security of:
 - (i) the Existing (Category A) Assets (which are transferred from Transport to Supplier on an 'as is' basis); or
 - (ii) the New (Category A) Assets;
- (d) except as expressly provided under this clause 6, the Supplier must not (and must not agree to) sell, assign, dispose, lease or make any of the Existing Assets or New Assets subject to any allowance, charge, mortgage, encumbrance, lien or other PPSA Security Interest, without Transport's prior written consent; and
- (e) the Supplier's rights in respect of the Existing Assets and New Assets are only as expressly set out in this Agreement.

6.2 [Omitted]

6.3 [Omitted]

6.4 Return of Residual Supplier Assets to Supplier

If Transport elects not to require the Supplier to transfer property in, title to, ownership of and risk associated with any Existing (Category A) Assets and/or any New (Category A) Assets to Transport under clause 6.2, then Transport shall use its Best Endeavours to return those Existing (Category A) Assets and/or New (Category A) Assets not being transferred to Transport (the **Residual Supplier Assets**) to the Supplier in accordance with the timeframes and other applicable terms set out in the Termination Assistance Plan.

6.5 Dispute resolution procedures

- (a) Following the date of commencement of the Termination Assistance Plan, if the Supplier reasonably considers that:
 - (i) in the case of any Residual Supplier Assets, Transport has failed to comply with its obligations to return the Residual Supplier Assets to the Supplier in accordance with the terms of the Termination Assistance Plan; and/or
 - (ii) [Omitted];then the Supplier may (..[Omitted]..) refer such matter(s) to be resolved in accordance with the procedures set out in clause 38 (Dispute Resolution).
- (b) If and to the extent that any matter(s) referred to dispute resolution under clause 6.5(a) are not settled or otherwise resolved (including as a result of a determination or award made under clause 38) in favour of Transport, then subject to the terms of any awards or

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determinations made under clause 38 or any court orders obtained by Transport for injunctive or other relief:

- (i) in the case of any Residual Supplier Assets:
 - (A) Supplier may take such steps as are reasonable in the circumstances to recover those Residual Supplier Assets from Transport:
 - (1) subject to and in accordance with the terms of this Agreement and any relevant Transport policies, protocols or procedures relating to the security of, and access to, Transport Sites; and
 - (2) in a manner that causes minimal disruption to Transport's Sites, Personnel and operations; and
 - (B) [Omitted];
- (ii) [Omitted].

6.6 [Omitted]

6.7 Personal Property Securities Act

If a Party determines, acting reasonably, that this Agreement (or any transfer or transaction in connection with it) is or contains a PPSA Security Interest, then the other Party agrees to do such things (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying necessary information) which the first Party requests and which are reasonably necessary for the purposes of:

- (a) ensuring that the PPSA Security Interest is enforceable and otherwise effective;
- (b) enabling the first Party to apply for any registration, or give any notification, in connection with the PPSA Security Interest so that the PPSA Security Interest has the priority required by the first Party; and
- (c) enabling the first Party to exercise rights in connection with the PPSA Security Interest (subject to, and in accordance with, the terms of this Agreement),

in each case, at the first Party's cost. The parties agree that:

- (d) sections 142 and 143 of the PPSA are excluded;
- (e) a party need not comply with the following provisions of the PPSA: sections 95, 118, 121(4), 125, 130, 132(3)(d) and 132(4);
- (f) no Party need give any notice required under any provision of the PPSA (except section 135);
- (g) except in the case of the exercise of any enforcement power which can only be exercised under the PPSA, where a party exercises an enforcement power under or in connection with PPSA Security Interest connected with this Agreement, that exercise is taken not to be an exercise of an enforcement power under the PPSA unless the relevant Party states otherwise at the time of exercise; and
- (h) if any dispute which is referred to dispute resolution under clause 6.5 relates to obligations of which the payment or performance is secured by a PPSA Security Interest referred to in clause **Error! Reference source not found.**, the Party who is the secured party under that PPSA Security Interest:
 - (i) shall not exercise any enforcement powers, whether under the PPSA or otherwise, in respect of that PPSA Security Interest (including without limitation

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any power to seize, dispose of, purchase or retain any property which is collateral under that PPSA Security Interest) without first completing the dispute resolution procedures set out in clause 38 (Dispute Resolution) in respect of that dispute; and

- (ii) in exercising those enforcement powers, may only do so:
 - (A) subject to and in accordance with the terms of this Agreement and any relevant Transport policies, protocols or procedures relating to the security of, and access to, Transport Sites; and
 - (B) in a manner that causes minimal disruption to Transport's Sites, Personnel and operations.

7 Transition

7.1 Transition Services

The Supplier must provide Transition Services in accordance with the relevant Transition Plan. In providing Transition Services, the Supplier must:

- (a) comply with Transport's directions, policies and procedures;
- (b) cooperate with Transport, the Eligible Recipients and their respective contractors;
- (c) ensure that there is no degradation to or interruption in the provision of the Services or any adverse impact on Transport or any of the Eligible Recipients;
- (d) ensure that the provision of Transition Services does not adversely impact the provision of services which are to be replaced by the Initial Services and which are being provided by Transport or Eligible Recipients or contractors during the Transition Period;
- (e) not disrupt the business or functions of Transport, the Eligible Recipients or its contractors;
- (f) [Omitted];
- (g) perform all other services, functions and tasks (other than those assigned to Transport in the Transition Plan) necessary to ensure there is a timely and orderly transfer of responsibility for the provision of the Initial Services from Transport and the Eligible Recipients and contractors to the Supplier; and
- (h) otherwise comply with this Agreement.

7.2 Transition Plan

The Parties acknowledge that amendments to any Transition Plan may be required at any time during the relevant Transition Period. Any such amendment will be discussed and agreed as contemplated by section 3 of Exhibit 16 (Transition) and in accordance with any specific additional governance forum contemplated in section 4.2 of Exhibit 6A... [Remainder omitted].

7.3 Reports and information

- (a) During performance of the Transition Services, the Supplier must provide to Transport on the Monday of each week, a report in relation to the Transition Services setting out the following matters:
 - (i) progress of the Transition Services against the Transition Plan;
 - (ii) Transition Services completed in the reporting period;

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- (iii) Transition Services scheduled for the next reporting period;
 - (iv) progress report on resource on-boarding;
 - (v) proposed changes to Supplier Personnel;
 - (vi) any update required to the Transition Plan;
 - (vii) results of any testing;
 - (viii) any delays in achieving the Transition Plan;
 - (ix) any outstanding claims or disputes; and
 - (x) such other information as Transport requests.
- (b) The Supplier must, within a reasonable time, provide to Transport any other information relating to the Transition Services (including access to and copies of documents) requested by Transport from time to time.

7.4 Service Integration and Procedures Manual

- (a) The Supplier agrees and acknowledges that it must, prior to the Effective Date, have provided draft documentation in such format as Transport may reasonably require incorporating information and describing the processes and procedures in accordance with which the Supplier will provide the Services (***Service Integration and Procedures Manual***).
- (b) The Supplier must, by the Handover Date under a Transition Plan and as part of the relevant Transition Services, submit a further draft of the Service Integration and Procedures Manual to Transport for its approval.
- (c) The revised draft of the Service Integration and Procedures Manual must at a minimum:
- (i) be in detail sufficient to enable Transport and/or any supplier to Transport or an Eligible Recipient to understand the processes and procedures the subject of such documentation;
 - (ii) comply with all policies and procedures of Transport that have been notified to the Supplier;
 - (iii) [Omitted]; and
 - (iv) meet such other requirements as Transport may specify.
- (d) Transport must, following receipt of the revised draft of the Service Integration and Procedures Manual from the Supplier:
- (i) inform the Supplier of all amendments that it requires to be made to the revised draft Service Integration and Procedures Manual and/or inform the Supplier of any additional areas or processes that the Supplier must cover and draft for inclusion in the revised draft Service Integration and Procedures Manual; or
 - (ii) confirm its acceptance of the revised draft Service Integration and Procedures Manual.
- (e) Where Transport has informed the Supplier of amendments that it requires to be made to the revised draft Service Integration and Procedures Manual or additional areas or processes that the Supplier must cover and draft for inclusion in the revised draft Service Integration and Procedures Manual pursuant to clause 7.4(d)(i), the Supplier must make all such changes and resubmit a revised draft Service Integration and Procedures Manual to Transport for approval within 15 days (or such other timeframe as may be agreed

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between the Parties) of receipt of Transport's requirements. The process set out in clause 7.4(d) and this clause 7.4(e) shall be repeated until such time as Transport has approved the draft Service Integration and Procedures Manual.

- (f) [Omitted].
- (g) The Supplier must provide the Services in accordance with the agreed Service Integration and Procedures Manual.
- (h) The Supplier must not make any changes to the operations and procedures referred to in the Service Integration and Procedures Manual without Transport's written approval.
- (i) The Supplier must update the Service Integration and Procedures Manual as often as necessary to incorporate all changes in the operations or procedures approved by Transport and must, without prejudice to the foregoing, update the Service Integration and Procedures Manual at least once per year during the Term. The Supplier must provide Transport with each such updated version of the Service Integration and Procedures Manual.

7.5 Transport Assigned Contracts

- (a) Transport will use reasonable endeavours to novate each of the Transport Assigned Contracts so as to substitute the Supplier for Transport or an Eligible Recipient under those Transport Assigned Contracts.
- (b) If Transport is unable to procure the novation of any particular Transport Assigned Contract, Transport may at its option assign to the Supplier the benefit of the contract, subject to the other party's consent where required and provided that the benefit of the contract is assignable or to the extent permissible subcontract or sub-license its rights to the Supplier. If Transport notifies the Supplier that it will not, or is not able to, assign to the Supplier the benefit of the contract and is unable to procure the novation of such contract, then that contract will be deemed to be a Managed Contract for the purposes of this Agreement and the parties will update and reissue Exhibit 12 to reflect the status of that contract.
- (c) The Supplier must co-operate with Transport in relation to any novation, assignment, subcontracting or sublicensing of any Transport Assigned Contracts and must accept a novation to the Supplier of any of Transport Assigned Contracts, if requested by Transport at any time during the Term ...[Remainder omitted].
- (d) [Omitted].

7.6 [Omitted]

8 Transformation

8.1 Transformation Projects

- (a) On and from each relevant date in a Transformation Plan, the Supplier must perform the Transformation Services until such time as Transformation Completion occurs.
- (b) Without limiting the provisions of Exhibit 18 (Transformation), the Supplier must ensure that there is no degradation to or interruption in the provision of the Services or any adverse impact on Transport during the provision of the Transformation Services.
- (c) [Omitted].
- (d) [Omitted].

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- (e) When Transport is satisfied that the Transformation Acceptance Criteria for a Transformation Milestone have been met, Transport must notify the Supplier.
- (f) [Omitted].

8.2 Transformation Plan

The Parties acknowledge that amendments to any Transformation Plan may be required at any time during Transformation. Any such amendment will be discussed and agreed as contemplated by section 3 of Exhibit 18 (Transformation) and in accordance with any specific additional governance forum contemplated in section 4.2 of Exhibit 6A. [Omitted].

8.3 Reports and Information

The Supplier must prepare and provide to Transport such reports or information that are referred to in the Transformation Plan or as Transport may reasonably require from time to time in relation to the performance of the Transformation Services.

9 Milestones, liquidated damages, Suspension Events and Supplier relief events

9.1 Milestones

- (a) The Supplier must meet all Milestones set out in this Agreement.
- (b) Each Party must notify the other if at any time it reasonably anticipates that a Milestone may not be met.
- (c) Upon receipt of such notification, or if a Milestone is not met:
 - (i) the Parties must promptly meet to determine the cause of such anticipated or actual delay;
 - (ii) the Supplier must take all reasonable steps to minimise or avoid the delay and its effects, including by way of alternate sources, additional resources, workaround or other means; and
 - (iii) the Supplier must develop a rectification plan which addresses the delay to ensure that it does not impact other Milestones and the Services generally, and the Parties must comply with such plan once agreed.
- (d) The dates for compliance with a relevant Milestone will be extended by the length of delay:
 - (i) caused by any failure by Transport to perform its obligations under this Agreement within the timeframe required by this Agreement or a wilful or negligent act or omission of Transport, any Eligible Recipient, a Dependent Third Party Supplier or their respective Personnel; or
 - (ii) [Omitted],provided that in each case the Supplier:
 - (iii) complies with its obligations under clause 9.1(c); and
 - (iv) advises Transport as soon as practicable ...[Reminder Omitted].
- (e) If the Milestones are delayed:
 - (i) as a result of a failure by Transport to perform its obligations under this Agreement within the timeframe required by this Agreement or a wilful or

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negligent act or omission of Transport, any Eligible Recipient, a Dependent Third Party Supplier or their respective Personnel...[Remainder omitted]...

- (f) The Supplier acknowledges that:
 - (i) it is responsible for the Services and for ensuring that each Milestone is completed by the time required for the relevant Milestone;
 - (ii) [Omitted].
 - (iii) [Omitted].

9.2 Liquidated damages

- (a) If any Milestone is not achieved by the relevant date required to complete the Milestone (as extended, if applicable, pursuant to clause 9.1(d)), then the Supplier must pay liquidated damages to Transport...[Remainder omitted].
- (b) If Transport becomes entitled to payment of liquidated damages by the Supplier it must notify the Supplier in writing of such entitlement and will specify in such notice:
 - (i) the Milestone to which the liquidated damages relate;
 - (ii) the amount of the applicable liquidated damages; and
 - (iii) the period of delay to which the liquidated damages apply.
- (c) [Omitted]
- (d) The payment of liquidated damages does not relieve the Supplier from any of its obligations and liabilities under this Agreement and, in particular, the Supplier must remedy the failure to meet the particular Milestone as soon as reasonably possible.
- (e) The Supplier agrees that all amounts payable by the Supplier to Transport under this clause 9.2 have been calculated by Transport in good faith and are Transport's genuine pre-estimate of the losses likely to be suffered by it if a Milestone is not achieved by the relevant date.
- (f) [Omitted].
- (g) [Omitted].

9.3 Acknowledgment in relation to liquidated damages

- (a) [Omitted]
- (b) The acknowledgment in clause 9.3(a) does not in any way limit:
 - (i) [Omitted];
 - (ii) [Omitted]; and
 - (iii) all of Transport's rights and remedies under this Agreement in respect of any liquidated damages which it is entitled to receive but has not received from the Supplier.

9.4 General rights unaffected

If clause 9.2 is found for any reason to be void, invalid, or otherwise inoperative, so as to disentitle Transport from recovering liquidated damages from the Supplier's failure to achieve a Milestone by the relevant date required to complete the Milestone (as extended, if applicable, pursuant to clause 9.1(d)), Transport will be entitled to recover damages from the Supplier for such failure under general law.

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9.5 [Omitted]

9.6 Supplier relief events

- (a) Notwithstanding any obligation of, or allocation of responsibility to, Transport or a Third Party Supplier the Supplier is, subject only to clause 9.6(b), responsible for ensuring that the Services are provided to Transport.
- (b) Except in the case of a failure by the Supplier to meet a Milestone (which will be dealt with in accordance with clauses 9.1 to 9.4) or in the case of Service Levels (which will be dealt with under clause 15.4), for those obligations under this Agreement and those Services where Transport, an Eligible Recipient or a Third Party Supplier:
- (i) has reserved a right-of-approval, consent or agreement;
 - (ii) is required to provide notification; or
 - (iii) is to perform a responsibility set out in this Agreement,
- and such approval, consent, notification or performance is delayed or withheld beyond the period required in this Agreement (or if no period is specified, a reasonable period), then subject to clause 9.6(c), the Supplier will be excused from any failure to comply with the affected obligation, to provide the affected Services, meet the affected Service Levels or to supply an invoice for any affected portion of the Services, in each case to the extent such failure is directly and unavoidably caused by such delay or withholding and to the extent not caused or contributed to by the Supplier or Supplier Personnel.
- (c) The Supplier's right to relief pursuant to clause 9.6(b) will be conditioned on the Supplier:
- (i) having used Best Endeavours to procure the approval, consent, notification or performance from the Third Party Supplier, Eligible Recipient or Transport (as applicable);
 - (ii) providing to Transport a written notice (with sufficient detail to permit Transport or the applicable Eligible Recipient or Third Party Supplier to provide such approval, consent, notification or performance), and
 - (iii) providing to Transport written evidence of its compliance with its Best Endeavours obligation pursuant to clause 9.6(c)(i),
- ...[Omitted]...after the Supplier has knowledge of the occurrence or condition giving rise to the claim for relief.

10 [Omitted]

11 Not Used

12 [Omitted]

13 Third Party Suppliers

13.1 Co-operation with Third Party Suppliers

- (a) The Supplier acknowledges that Transport or the Eligible Recipients may have engaged, or may at any time engage, a third party to perform any services or supply any goods which are in addition to, related to, affected by or impacted by the Services (a **Third Party Supplier**). The Supplier must co-operate with Transport, the Eligible Recipients (as relevant) and the Third Party Suppliers to the extent reasonably required by Transport or

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any Eligible Recipient, including without limitation by providing, if required by Transport or any Eligible Recipient:

- (i) written requirements, standards, and procedures for any Transport or Eligible Recipient systems maintained or other services provided by the Supplier, so that the enhancements or developments of a Third Party Supplier may be operated or maintained by Transport or the Eligible Recipients or the Supplier as determined by Transport;
 - (ii) assistance and support services to a Third Party Supplier ...[Omitted](a); and
 - (iii) access to the Supplier Environment and any services as necessary for a Third Party Supplier to perform its work, including the necessary information to enable a Third Party Supplier to effect an interface between its systems, Transport or Eligible Recipient systems and the Supplier Environment.
- (b) Where required by Transport to do so, the Supplier must enter into and operate in accordance with an Operating Level Agreement with any Third Party Supplier nominated by Transport (provided that any such Third Party Supplier agrees to enter into the Operating Level Agreement) and must work with the nominated Third Party Supplier to assist the nominated Third Party Supplier to operate in accordance with the relevant Operating Level Agreement in providing Services to, or for the benefit of, Transport and the Eligible Recipients.

13.2 Management of Third Party Suppliers

- (a) Unless otherwise required by written notice from Transport, the Supplier must in relation to each Third Party Supplier which is a party to a Managed Contract:
- (i) perform all services, tasks and functions necessary to ensure that Transport complies with its obligations to each such Third Party Supplier;
 - (ii) use its Best Endeavours to ensure that Transport obtains the best commercial benefit from its engagements with each such Third Party Supplier; and
 - (iii) subject to clauses 13.2(e) and 13.4, use its Best Endeavours to ensure that each such Third Party Supplier complies with its obligations under the relevant contractual arrangements (including, without limitation, all obligations in respect of service delivery, compliance with service levels, and the payment of any service credits or other form of compensation arising for service delivery failure under the relevant contractual arrangements),
- provided that, for clarity, Transport will retain responsibility for the exercise of all rights under, and the payment of all invoices which are due and payable in respect of, contractual arrangements with such Third Party Suppliers.
- (b) The Supplier must:
- (i) maintain complete records of its compliance with this clause 13.2 and provide those records to Transport on request;
 - (ii) prepare and provide to Transport such reports or information as Transport may require from time to time in relation to its performance of under this clause 13.2;
 - (iii) perform its obligations under this clause 13.2 in accordance with any directions from Transport from time to time; and
 - (iv) act in Transport's best interests at all times when performing its obligations relating to the Managed Contracts and Third Party Suppliers.

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- (c) [Omitted].
- (d) [Omitted].
- (e) The Supplier has no authority to:
 - (i) vary any contractual arrangement with any Third Party Supplier which is a party to a Managed Contract, waive any rights of Transport against such a Third Party Supplier or grant a consent or approval under any contractual arrangement with such a Third Party Supplier;
 - (ii) rescind, repudiate, terminate, extend, surrender rights under, exercise any option under or renew any contractual arrangement with a Third Party Supplier which is a party to a Managed Contract;
 - (iii) make any claim under, commence any proceedings under or issue any notices under, or allege any breach of, any contractual arrangement with a Third Party Supplier which is a party to a Managed Contract; or
 - (iv) exercise any rights of Transport against a Third Party Supplier or purport to act on Transport's behalf or bind Transport in contract,

without first obtaining Transport's express written approval.

13.3 [Omitted]

13.4 Disputes with Third Party Suppliers

In the event of any dispute between the Supplier and a Third Party Supplier:

- (a) the Supplier must notify Transport in writing of the nature of the dispute;
- (b) where directed to do so by Transport, the Supplier must use reasonable endeavours to promptly discuss and resolve in good faith the dispute with the Third Party Supplier, without involvement of Transport or any Eligible Recipient;
- (c) where the Supplier is unable to resolve a dispute with a Third Party Supplier in good faith despite using Best Endeavours then it must refer the dispute for attempted resolution by Transport;
- (d) Transport may attempt to resolve the dispute with the Third Party Supplier and the Supplier must provide reasonable co-operation to Transport and the Eligible Recipients in the attempted resolution of the dispute;
- (e) if Transport is unwilling to attempt to resolve the dispute, or is unable to resolve the dispute after a reasonable time, then Transport may require the Supplier to undergo a formal dispute resolution procedure with the Third Party Supplier; and
- (f) [Omitted].

14 Site Access

14.1 General process

- (a) Subject to the Supplier's compliance with this clause 14.1 and clauses 14.2, 14.3, 14.4, 14.5 and any other applicable provisions of this Agreement, Transport will permit the Supplier and its Personnel to enter each Site as may be reasonably necessary for, or in anticipation of, the performance of any of the Supplier's obligations under this Agreement.
- (b) Where the Supplier requires access to a Site for any purpose related to this Agreement, the Supplier must notify Transport in writing and provide:

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- (i) sufficient details of the:
 - (A) timing and duration;
 - (B) number of Personnel requiring the access; and
 - (C) reason for, and nature of, the access sought; and
 - (ii) sufficient evidence of the satisfaction of, or means of satisfying if access is granted, all relevant safety requirements.
- (c) All access to a Site for any purpose under this Agreement must only be undertaken as approved by Transport in writing or as expressly set out in this Agreement.

14.2 Risk and release

- (a) The Supplier or a contractor of the Supplier enters each Site and performs any other act or omission in connection with this Agreement at its own risk.
- (b) [Omitted].

14.3 Workplace health and safety obligations

The Supplier must:

- (a) comply with all obligations under any applicable Laws relating to safety including the WHS Act, and as set out in this clause 14;
- (b) ensure that all Supplier Personnel:
 - (i) comply with the requirements of the WHS Act and WHS Regulation, including as set out in this clause 14; and
 - (ii) are suitably trained and equipped to undertake the Services for the Supplier;
- (c) on and from the Execution Date, be responsible for and assume liability for its obligations assigned to it by the WHS Act and WHS Regulation;
- (d) ensure the health, welfare and safety of the Supplier Personnel;
- (e) ensure that the Supplier Personnel are not exposed to risks to their health or safety arising from the provision of any services under this Agreement;
- (f) promptly inform Transport 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 Services or any event which would create a risk for Transport, the Eligible Recipients and/or the Supplier Personnel;
- (g) prepare and submit to Transport for its review and comment within 15 Business Days of the Execution Date or as otherwise as required by Transport, a draft project safety management plan documenting how the Supplier will comply with its various obligations under this clause 14. The final project safety management plan must be submitted to Transport for its approval no later than 15 Business Days after receiving Transport comments on the Supplier's draft project safety management plan;
- (h) [Omitted];
- (i) prepare in conjunction with the relevant Station Manager and submit to Transport within one month of the Execution Date a site specific Safe Work Method Statement (**SWMS**) that meets the requirements of Exhibit 19 (Policies and Procedures (Including OH&S)) to this Agreement, with respect to the Services, which complies with the requirements of Part 6.3 of the WHS Regulation (as amended from time to time);

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- (j) prepare in conjunction with the relevant Station Manager, a site specific SWMS that meets the requirements of Exhibit 19 (Policies and Procedures (Including Work, Health & Safety)) to this Agreement;
- (k) undertake an assessment of the risks associated with the provision of the Services and prepare a SWMS consistent with the project safety management plan referred to in clause 14.3(g);
- (l) maintain and keep up to date the SWMS; and
- (m) ensure that the Services are carried out in accordance with the SWMS, and if a risk to the health or safety of a person arises because of non-compliance with SWMS, ensure that work is stopped immediately and not resumed until the SWMS is complied with (unless an immediate cessation of work is likely to increase the risk to health and safety, in which event the Supplier must stop the work as soon as it is safe to do so).

14.4 Conduct on Transport Sites

- (a) Transport will provide the Supplier Personnel with such access to the Sites as is reasonably necessary for the performance of the Services in accordance with the process set out in clause 14.1. In providing such access, the Parties agree that the Supplier is not granted a sub-lease, sub-licence or proprietary right in respect of the Sites.
- (b) The Supplier must, in accessing any Site and performing the Services at that Site:
 - (i) not damage, move, interfere with or adversely affect the operation of, the Site, or any facilities or equipment located at that Site belonging to Transport, the Eligible Recipients or any third party;
 - (ii) comply with the terms of the relevant Site Lease(s) as notified by Transport from time to time;
 - (iii) comply with any site access requirements or security protocols imposed by Transport, the Eligible Recipients or the lessor or owner of the relevant Site; and
 - (iv) not cause, through act or omission, Loss, damage, death or injury to the owner or occupiers of any adjoining or neighbouring land to a Site, or interference with the access to or use or enjoyment of the Site by Transport, the Eligible Recipients or any third party.
- (c) The Supplier must not:
 - (i) do anything in or around any Site which is noxious, offensive, a nuisance or trespass or likely to bring Transport's or the Eligible Recipients' reputation into disrepute;
 - (ii) use any Site for any purpose other than performing the Services; or
 - (iii) permit any third party to access or use any Site or grant access to any third party other than an Approved Subcontractor.
- (d) Transport may refuse access to a Site to, or require removal from a Site of, any Supplier Personnel who breaches the requirements of this clause 14.4.
- (e) Irrespective of anything else contained in this Agreement where on reasonable grounds (and whether or not drug or alcohol testing has been performed) Transport or an Eligible Recipient suspects any Supplier Personnel to be affected by drugs or alcohol, Transport may require that person to cease any work and vacate the relevant Site, and the Supplier must ensure this occurs.

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- (f) Transport makes no warranty in respect of, and the Supplier accepts the conditions of, the Sites, their facilities and their surroundings for purposes of the Services.

14.5 Work in the vicinity of rail track

- (a) If and to the extent that work is to be performed in the vicinity of rail tracks, the Supplier shall take all necessary precautions to ensure the protection of rail operations, the safety of all Personnel, the protection of property of Transport, its employees and other persons and the avoidance of inconvenience or delay to Transport and Transport's customers. Without limiting the obligations of the Supplier as set out in this clause 14, the Supplier shall adhere to all statutory safety requirements.
- (b) The Supplier shall ensure that no Supplier Personnel shall carry out work on or about the railway line unless such Supplier Personnel have, at the Supplier's expense, attained such track safety awareness certification (including, if necessary, electrical safety awareness certification), as Transport may require, and are properly protected and properly supervised by a qualified person.
- (c) The Supplier shall ensure that all Supplier Personnel shall fully comply with all Transport's safety procedures with respect to the protection and supervision of persons working on or about the railway line and with any direction of the person supervising such Supplier Personnel.
- (d) In addition to the other terms of this clause 14.5, the following shall also apply in respect of any work by or on behalf of the Supplier:
 - (i) the Supplier shall at all times during the Term comply with any or all directions of the General Manager ICT Operations Delivery, and to the satisfaction of the General Manager ICT Operations Delivery, arrange for the Services to be carried out in a manner which will fully comply with the Supplier's obligation under this clause;
 - (ii) the Supplier shall arrange for the Services to be carried out in a manner which will not delay, obstruct or stop rail traffic, except as approved by the General Manager ICT Operations Delivery; and
 - (iii) the Supplier shall not in any way interfere with any rail track, formation, equipment or installation owned or operated by Transport, except with the permission of and under conditions approved beforehand by the General Manager ICT Operations Delivery.

14.6 Drugs and alcohol

Irrespective of anything else contained in this Agreement:

- (a) where on reasonable grounds (and whether or not drug or alcohol testing has been performed) Transport suspects any Supplier Personnel to be affected by drugs or alcohol, Transport may require that person to cease any work and vacate the relevant Transport property, and the Supplier will ensure this occurs; and
- (b) the Supplier:
 - (i) agrees that Transport may randomly perform drug and alcohol tests on any Supplier Personnel in accordance with Transport's requirements;
 - (ii) must ensure that Supplier Personnel submit to and comply with Transport's requirements and instructions in respect of and following any such tests;

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- (iii) must ensure that the Supplier Personnel are aware of this clause and of Transport's drug and alcohol policy,
- (iv) acknowledges that a key principle included in Transport's drug and alcohol policy is zero tolerance; and
- (v) acknowledges and agrees that any breach of Transport's drug and alcohol policy by any Supplier Personnel may result in Transport requiring that the relevant Supplier Personnel must no longer perform Services for Transport, and in such event the Supplier:
 - (A) will immediately comply with Transport's requirement; and
 - (B) [Omitted].

15 Service Levels and Continuous Improvement

15.1 Service Levels

- (a) Each Party will have the rights and will perform the obligations allocated to it in Exhibit 3 (Service Level Management).
- (b) The Supplier must provide each of the Services in accordance with this Agreement in a manner that meets or exceeds the Service Levels.
- (c) The Supplier must ensure that the Services continue to be performed in accordance with clause 15.1(b) above despite any variations to the volume of Services requested by Transport or otherwise required to be performed.

15.2 Review of Service Levels

- (a) The Parties must jointly review the Service Levels and adjust them in accordance with the mechanism described in section 8.1 of Exhibit 3 (Service Level Management).
- (b) Without limiting the provisions of section 8.1 of Exhibit 3 (Service Level Management), the Supplier must, at its own cost, regularly identify and notify Transport of any methods of improving the Service Levels...[Remainder omitted].

15.3 Measurement and monitoring tools

Measurement and monitoring tools and procedures necessary to measure the Supplier's performance of the Services against the Service Levels and to detect any failure by the Supplier to perform the Services must be nominated and implemented in accordance with the requirements described in Exhibit 3 (Service Level Management).

15.4 [Omitted]

15.5 [Omitted]

15.6 General

- (a) [Omitted].
- (b) Regardless of whether there exists an associated Service Level, the Supplier must:
 - (i) perform all Services and obligations promptly, diligently and in a workmanlike and professional manner, using appropriately qualified individuals;
 - (ii) [Omitted]; and
 - (iii) [Omitted]

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(c) [Omitted].

15.7 Transport satisfaction survey

The Supplier must conduct a survey of end-users of any of the Services in accordance with Attachment 2-6-B.

15.8 [Omitted]

16 Service Variation

16.1 Changes and New Services

(a) Transport may from time to time require that a Service be varied or that the Supplier provide a new service (**New Service**) and each will be considered a Service Variation. Subject ...[Omitted]..., all such changes must be implemented using the procedures set out in this clause 16 (the **Service Variation Procedures**)...[Remainder omitted].

(b) [Omitted].

16.2 Service Variation Proposal

(a) If required by Transport, the Supplier must submit to Transport a written proposal in the form set out in Exhibit 23 (Service Variation Forms) (**Service Variation Proposal**) relating to a proposed Service Variation within such reasonable period as Transport requests...[Remainder omitted].

(b) Each Service Variation Proposal must as a minimum:

(i) be reasonable;

(ii) contain a detailed description of the proposed variation to existing Services or the New Services to be performed;

(iii) contain a timeline for commencement of the Service Variation, including any significant interim milestones;

(iv) [Omitted];

(v) [Omitted];

(vi) detail the impact of the proposed Service Variation on other Services;

(vii) detail the impact to the Service Levels, including appropriate service levels for New Services;

(viii) detail any required amendments to the Service Integration and Procedures Manual; and

(ix) contain any other information required by Transport.

(c) [Omitted].

(d) [Omitted].

(e) [Omitted].

16.3 Acceptance of a Service Variation Proposal

(a) Transport may accept or reject any Service Variation Proposal submitted by the Supplier or require that the Parties negotiate in good faith to agree variations to the Service Variation Proposal.

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(b) If Transport wishes to accept a Service Variation Proposal, then the Parties must sign the Service Variation Proposal as if it were a variation to this Agreement. On and from the date it is signed by both Parties, this Agreement will be varied in accordance with the Service Variation Proposal and the parties will, unless agreed otherwise, prepare a conformed copy of this Agreement reflecting such variation.

(c) [Omitted].

16.4 [Omitted]

16.5 Periodic IT review

(a) The Supplier and Transport executives will meet for reviews of Transport information technology requirements as well as a review of the reports and recommendations of the Supplier as to the quality of Services and areas where they can be improved as reasonably required by Transport from time to time.

(b) [Omitted]

(c) Each Party must bear their own costs in connection with such reviews.

16.6 Projects

Transport may from time to time request that the Supplier perform a Project in accordance with Exhibit 9 (Projects). Each Project Statement of Work must be signed by the Parties, and once signed it must be read as part of, and will be deemed to be incorporated into, this Agreement.

17 Charges

17.1 Charges

(a) Subject to the provisions of this Agreement, Transport must pay to the Supplier for Services provided in accordance with this Agreement the amounts specified in or calculated in accordance with, as the case may be, Exhibit 4 (Pricing and Financial Provisions) and each Project Statement of Work (**Charges**).

(b) Transport is not liable to pay any amounts to the Supplier for its performance of the Services and its other obligations under this Agreement other than the Charges...[Remainder omitted].

17.2 Pass-Through Charges

(a) All Pass-Through Charges must be approved in advance and in writing by the General Manager ICT Operations Delivery.

(b) The Supplier must ensure the accuracy of each third party invoice for any Pass-Through Charges, and:

(i) if Transport has agreed to pay that third party directly, Transport must pay such amounts when due to that third party provided that the Supplier provides a valid tax invoice to Transport; or

(ii) if Transport has agreed to reimburse the Supplier, the Supplier must pay such amounts when due to that third party and may include such payment on its next invoice to Transport provided that it includes with that invoice a copy of the third party invoice and proof that the amount was paid with that invoice.

(c) [Omitted].

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- (d) [Omitted]... In relation to materials or services paid for on a Pass-Through Charges basis, Transport may at any time, by giving notice to the Supplier:
 - (i) obtain such materials or services directly from a third party;
 - (ii) designate a third party source for such materials or services;
 - (iii) designate particular materials or services the Supplier must obtain;
 - (iv) require the Supplier to identify and consider multiple sources for such materials or services; or
 - (v) [Omitted].

17.3 [Omitted]

17.4 [Omitted]

17.5 [Omitted]

17.6 [Omitted]

17.7 GST

- (a) Except where the context suggests otherwise, terms used in this clause 17.7 have the meanings given to those terms by the GST Act.
- (b) Unless otherwise stated, any amount, payment or consideration referred to under or in connection with this Agreement is exclusive of GST.
- (c) Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause.
- (d) If a Party is required under this Agreement to reimburse or pay another Party an amount calculated by reference to a cost, expense, or other amount paid or incurred by that Party, the amount of the reimbursement or payment will be limited to the total cost, expense or amount less the amount of any input tax credit to which that Party is entitled for the acquisition to which the cost, expense or amount relates.
- (e) If GST is payable in relation to a supply made under or in connection with this Agreement then any Party (**Recipient**) that is required to provide consideration to another Party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any consideration is to be first provided for that supply.
- (f) The Recipient is not required to pay the additional amount referred to in clause 17.7(e) unless a valid tax invoice has been issued for the relevant supply.
- (g) If the GST payable in relation to a supply made under or in connection with this Agreement varies from the additional amount paid by the Recipient under clause 17.7(e) in respect of that supply, then the Supplier must provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from the Recipient (as appropriate), subject to the issuance of a valid tax invoice or an adjustment note.

17.8 Record keeping

[Omitted] ...

- (a) the Supplier must maintain complete and accurate records of, and supporting documentation for, all amounts billed to and payments made by Transport under this

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Agreement. Such records must include data and documentation of third party charges invoiced to and paid by the Supplier. The Supplier must retain such records for seven years (or longer if required by Law) after the later of:

- (i) the expiration or termination of this Agreement; and
 - (ii) the day that the Supplier ceases to provide any requested Termination Assistance; and
- (b) the Supplier must provide Transport, at Transport's request, with paper and electronic copies of documents and information reasonably necessary to verify the Supplier's compliance with this Agreement. Transport and its authorised agents and representatives must have access to such records for audit purposes during normal business hours during the Term and for seven years thereafter (or any longer period specified in a Project Statement of Work or required by Law).

18 Invoicing and payment

18.1 Invoices

- (a) [Omitted]
- (b) Each invoice must:
 - (i) separately state Charges for each category of Service and any reimbursable expenses and Taxes;
 - (ii) be in a form which complies with all the requirements for a Tax Invoice (as that term is defined in the GST Act);
 - (iii) comply with the requirements of Exhibit 4 Attachment 4-G (Form of Invoice) (or such other requirements as Transport reasonably notifies the Supplier from time to time);
 - (iv) include all calculations used to establish the amounts referred to in clause 18.1(b)(i); and
 - (v) otherwise be in such detail as Transport may require for its internal accounting needs as specified by Transport from time to time.
- (c) The Supplier must deliver each invoice (one paper copy and one electronic version) to the General Manager ICT Operations Delivery.
- (d) [Omitted].

18.2 [Omitted]

18.3 [Omitted]

18.4 [Omitted]

18.5 [Omitted]

18.6 [Omitted]

18.7 [Omitted]

19 Benchmarking

From time to time and at any time during the Term, Transport may conduct, or engage a third party to conduct, a benchmarking exercise to measure the Charges and the Service Levels

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against the delivery of similar services in comparable circumstances, in accordance with the procedures set out in Exhibit 20 (Benchmarking).

20 Personnel requirements

20.1 Key Supplier Positions

- (a) Exhibit 5 (Key Supplier Positions and Dedicated Supplier Personnel) designates certain Supplier Personnel positions which are critical to providing the Services (**Key Supplier Positions**). Transport may in respect of a Service change or update the Key Supplier Positions from time to time during the Term.
- (b) Exhibit 5 (Key Supplier Positions and Dedicated Supplier Personnel) also designates certain individuals who will initially fill particular Key Supplier Positions.
- (c) [Omitted]
- (d) [Omitted].
- (e) [Omitted].
- (f) Prior to effecting any changes pursuant to clause 20.1(e), the Supplier must advise Transport of the likely impact of the proposed action on the Services.
- (g) Before assigning an individual to fill a Key Supplier Position (other than an individual designated to fill a particular Key Supplier Position in Exhibit 5 (Key Supplier Positions and Dedicated Supplier Personnel), the Supplier must:
 - (i) notify Transport of the proposed assignment;
 - (ii) introduce the individual to the appropriate Transport representatives as designated by Transport Service Delivery Manager or the General Manager IT;
 - (iii) provide Transport with:
 - (A) (if the individual is a replacement) a plan setting out the steps that will be undertaken to transfer knowledge and responsibility to the proposed replacement;
 - (B) a resumé and any other information about the proposed individual reasonably requested by Transport; and
 - (iv) allow Transport a reasonable opportunity to interview the proposed individual.

If Transport objects in good faith to the proposed assignment within 10 Business Days after receiving notice of the proposed assignment, the Supplier must discuss such objections with Transport and attempt to resolve them on a mutually agreeable basis. If Transport continues to object to the proposed assignment, the Supplier must not assign the individual to that position and must propose another individual to fill the Key Supplier Position in accordance with this clause 20.1(g).
- (h) The Supplier must promptly notify Transport in writing if any individual assigned to a Key Supplier Position tenders his or her resignation or indicates that he or she will be resigning or terminating his or her employment or contract.
- (i) The Supplier must take such steps as are necessary to ensure a smooth transition from the provision of the Services when an individual performing a Key Supplier Position is replaced (including by maintaining appropriate documentation to allow the replacement person to understand the role and functions of the Key Supplier Position and to permit effective knowledge transfer from the former employee to the replacement person).

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(j) [Omitted]

20.2 Employment of Personnel and Personnel requirements

- (a) The Supplier warrants that it has provided to Transport, prior to the date of this Agreement, a copy of its current protocol for determining whether or not to employ people for purposes associated with the supply of services which are similar to the Services (**Vetting Protocol**).
- (b) Transport may notify the Supplier from time to time of any particular requirements or questions that it considers, acting reasonably, are relevant to vetting persons who are to become Supplier Key Personnel (**Transport Approved Protocol Requirements**). Upon receipt of such notice, the Supplier must promptly modify the Vetting Protocol to include the Transport Approved Protocol Requirements for application to Supplier Key Personnel (such modified Vetting Protocol known as the **Supplier Key Personnel Vetting Protocol**).
- (c) The Supplier must:
- (i) in providing the Services only use Supplier Personnel (other than Supplier Key Personnel) who comply with the Vetting Protocol;
 - (ii) without limiting clause 20.1, in providing the Services only use Supplier Key Personnel who comply with the Supplier Key Personnel Vetting Protocol;
 - (iii) [Omitted];
 - (iv) [Omitted];
 - (v) [Omitted];
 - (vi) ensure that all the Supplier Personnel are equipped and able to communicate with Personnel of the Eligible Recipients in an effective manner;
 - (vii) comply with any statutory or regulatory requirements relating to the employment of the Supplier Personnel, including, but not limited to, superannuation requirements, registration requirements, conditions on payment of wages and requirements to maintain records; and
 - (viii) ensure:
 - (A) there are a sufficient number of appropriately trained and qualified Supplier Personnel to allow the Supplier to fulfil its obligations under this Agreement at all times;
 - (B) all Supplier Personnel are properly qualified for the tasks they are to perform;
 - (C) all Supplier Personnel act at all times in a professional, fit and proper manner and perform the Services to a high standard; and
 - (D) if required by Transport or a Government Agency, submit all or any of the Supplier Personnel to any security clearances as may be required by Transport or such Government Agency.

20.3 Removal and replacement of Supplier Personnel

If, during the course of this Agreement, Transport has any concerns with the competence, performance or attitude of any of the Supplier Personnel then it will discuss its concerns with the Supplier's Relationship Manager, or another person in senior management of the Supplier, and

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the Supplier must attempt to address these concerns. Where its concerns are not addressed to the reasonable satisfaction of Transport then Transport may request the Supplier to remove and replace the particular person or persons and the Supplier must promptly arrange for the removal of such person or persons from providing the Services to Transport and must promptly replace that person or those persons with another person or persons (as applicable) reasonably acceptable to Transport.

20.4 Status of Supplier Personnel

Nothing in this Agreement creates any employment, contractual or other like relationship between Transport and any of the Supplier Personnel and the Supplier remains responsible at all times under this Agreement and at Law for, and must indemnify Transport against any claim or liability for, the payment of salaries, wages, fees for services or any statutory entitlements of the Supplier Personnel arising in connection with their performance of the Services.

20.5 [Omitted]

21 Transport Supplied Items and Transport Materials

21.1 Use of Transport Supplied Items and Transport Materials by Supplier

- (a) Transport must make the Transport Supplied Items available to the Supplier.
- (b) The Supplier agrees that:
 - (i) it has had the opportunity to inspect Transport Supplied Items and confirm that they are suitable to enable the Supplier to carry out the Services; and
 - (ii) Transport will not be required to provide any facilities, Personnel, equipment, software, services or resources other than Transport Supplied Items to enable the Supplier to carry out the Services.
- (c) The Supplier must use Transport Supplied Items and Transport Materials for the sole purpose of providing the Services.
- (d) Where applicable, the Supplier must:
 - (i) comply with any leases, licences and other agreements applicable to Transport Supplied Items and Transport Materials;
 - (ii) comply with any policies and procedures governing access to and use of Transport Supplied Items and Transport Materials;
 - (iii) comply with any directions from Transport or the Eligible Recipients concerning Transport Supplied Items and Transport Materials;
 - (iv) not make any changes to Transport Supplied Items or Transport Materials without Transport prior written consent;
 - (v) not disclose, sell, assign, lease, encumber or otherwise provide to a third party Transport Supplied Items or Transport Materials;
 - (vi) not commercially exploit Transport Supplied Items or Transport Materials;
 - (vii) take all reasonable care in the accounting, preservation, installation and handling of Transport Supplied Items and Transport Materials;
 - (viii) maintain a register of the location of each Transport Supplied Item and each item of Transport Materials;

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- (ix) store and operate Transport Supplied Items and Transport Materials in accordance with the manufacturer's directions; and
 - (x) when no longer required, or at the end of the Term, return Transport Supplied Items and Transport Materials to Transport in the same condition they were in when they were originally provided to the Supplier, ordinary wear and tear excepted.
- (e) The Supplier agrees that:
- (i) title in Transport Supplied Items and Transport Materials remains with Transport or the Eligible Recipients, notwithstanding that a Transport Supplied Item or item of Transport Material may be affixed to the Supplier's property; and
 - (ii) [Omitted].
- (f) The Supplier must:
- (i) [Omitted];
 - (ii) promptly inform Transport of any loss or destruction of, or corruption of, or damage to, Transport Supplied Items or Transport Materials.

21.2 Return of Transport Materials and Transport Supplied Items

- (a) Without limiting clause 24.4, and at no cost to Transport, on request by Transport the Supplier must promptly:
- (i) return all or any part of Transport Materials and Transport Supplied Items to Transport or the Eligible Recipient, in the format and on the media in use at the time; or
 - (ii) destroy all copies of such Transport Materials and Transport Supplied Items that remain in its possession or control, and certify such destruction to Transport .
- (b) Archival tapes containing any Transport Materials and Transport Supplied Items must be used by the Supplier solely for back-up purposes and must be returned to Transport or the Eligible Recipients promptly following the termination or expiration of this Agreement or the termination or expiration in whole or part of the Project Statement of Work to which Transport Materials or Transport Supplied Items relate.

21.3 [Omitted]

21.4 [Omitted]

22 [Omitted]

23 [Omitted]

24 Confidentiality

24.1 Confidentiality

Each Party must keep the Confidential Information of the other Party confidential, and must not disclose any such Confidential Information to any person except:

- (a) subject to clause 24.2, to employees, legal advisers, auditors and other consultants of the recipient or its Related Companies, Affiliates, or an Eligible Recipient, who require the information for the purposes of this Agreement; or

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- (b) if the recipient is required to do so by Law or the rules of any stock exchange upon which the recipient's securities are listed, provided that:
 - (i) the recipient discloses only the minimum amount of Confidential Information required to satisfy the Law or rules; and
 - (ii) before disclosing any information, the recipient provides a reasonable amount of notice to the discloser and exhausts all reasonable steps (whether required by the discloser or not) to maintain such Confidential Information in confidence; and
 - (iii) where the entering into of this Agreement is deemed to be 'material information' (or any such analogous term) and is as a consequence required to be disclosed for the purposes of the rules of any stock exchange upon which the Supplier's securities are listed, the Supplier and Transport must agree the wording of any notice or press release which is given to such stock exchange prior to its release; or
- (c) if the recipient is required to do so in connection with legal proceedings relating to this Agreement.

The obligation of confidence in this clause 24.1 extends to Confidential Information provided to or obtained by a Party before entering into this Agreement.

24.2 Permitted disclosures

- (a) Each Party may disclose Confidential Information of the other Party only on a 'need to know' and confidential basis:
 - (i) with the prior written consent of the other Party; or
 - (ii) to its Personnel,
for the exercise of rights or the performance of obligations under this Agreement.
- (b) Each Party may disclose Confidential Information of the other Party only on a 'need to know' and confidential basis to its underwriters and accounting, tax, financial and legal advisors.
- (c) Each Party who discloses Confidential Information of the other Party pursuant to clause 24.2(a) must ensure that such information is kept confidential by the recipients.
- (d) Transport may require Supplier Personnel to sign a confidentiality deed for the purpose of meeting the requirements of any Law or complying with any undertaking given to any Government Agency or satisfying the conditions of any government approval.
- (e) Transport may disclose Confidential Information to any Government Agency or Minister for any legitimate government purpose or process including pursuant to the GIPA Act;
- (f) Transport may disclose Confidential Information to:
 - (i) any employee, and any non-employee officers, of Transport; or
 - (ii) any employee, and any non-employee officers of an Eligible Recipient,
that needs to know the Confidential Information for the purpose of Transport entering into, performing or complying with its obligations under this Agreement (including, obtaining business and management approvals that are applicable to Transport's performance of its obligations) and provided that any such employee or officer is bound by an obligation of confidentiality to Transport on terms similar to clauses 24.1 and 24.2 and is not

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permitted to further disclose that Confidential Information to any other party without the Supplier's prior written consent.

- (g) Transport may disclose Confidential Information to:
- (i) any third party in connection with any restructure of Transport or an Eligible Recipient;
 - (ii) any agency or other body which provides funds to Transport; or
 - (iii) [Omitted],

and after such party ...[Omitted]... has entered into a confidentiality agreement with Transport substantially in the form set out in Exhibit 25 (Transport Confidentiality Deed). If the Supplier reasonably considers that a recipient of the Supplier's Confidential Information under this clause 24.2(g) has breached the terms of its confidentiality agreement with Transport, the Supplier may, by written notice to Transport, request Transport to enforce the terms of the confidentiality agreement against that recipient, in which case Transport will use its Best Endeavours to enforce the terms of the confidentiality agreement in order to protect the relevant Confidential Information.

- (h) Transport may disclose, or require the Supplier to disclose, Confidential Information to any Third Party for the purposes of the Third Party Supplier or prospective supplier of goods or services to Transport or an Eligible Recipient performing its contractual obligations or prospective contractual obligations, provided that:
- (i) Transport obtains the Supplier's consent, such consent not to be unreasonably withheld or delayed...[Remainder omitted];
 - (ii) the Third Party has a need to know the Confidential Information in order to provide goods or services to Transport or the relevant Eligible Recipient; and
 - (iii) the Third Party has entered into a confidentiality agreement with the Supplier on the same or substantially similar terms to that set out in Exhibit 27 (Supplier Confidentiality Deed), and an executed copy of such confidentiality agreement has been provided to the Supplier.

24.3 Preventing disclosures

Each Party must take all steps and do all such things as may be reasonably necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other Party.

24.4 Return of Confidential Information

- (a) Except as expressly permitted under this Agreement, a Party who has received Confidential Information from the other Party under this Agreement must, on the request of the other Party, immediately:
- (i) deliver to that Party; or
 - (ii) if so requested, destroy and certify such destruction to that Party,
- all documents or other materials containing that Confidential Information which are in its possession, power or control or in the possession, power or control of persons who have received Confidential Information from it.
- (b) The provisions of clause 24.4(a) do not apply to copies of electronically exchanged Confidential Information made as a matter of routine information technology backup and to Confidential Information or copies which must be stored by the receiving Party, its

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Related Companies, an Eligible Recipient or their employees, secondees, agents and contractors (and their employees and contractors) according to the provisions of any mandatory Laws, pursuant to applicable standards or any applicable accounting standards or principles, provided that such Confidential Information or copies shall be subject to an indefinite confidentiality obligation according to the terms and conditions in this Agreement.

24.5 [Omitted]

24.6 Remedies for breach

- (a) Each Party acknowledges that the value of the other Party's Confidential Information is such that an award of damages or an account of profits may not adequately compensate if this clause 24 is breached.
- (b) Each Party acknowledges that, without in any way compromising its right to seek damages or any other form of relief in the event of a breach of this clause 24, a Party may seek and obtain an ex parte interlocutory or final injunction to prohibit or restrain the other Party or its employees, secondees, agents and contractors (and their employees and contractors) from any breach or threatened breach of this clause 24.

25 Privacy

25.1 Interpretation

The obligations of this clause 25 apply notwithstanding any permitted Processing of Confidential Information.

25.2 Permitted Processing of Protected Information

- (a) The Supplier must Process any Protected Information held in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement and in accordance with all relevant Privacy Legislation.
- (b) In addition to its obligations under clauses 5.5(a)(iii) and 25.2(a), the Supplier must comply with all provisions of all Privacy Legislation to the extent they apply to the performance of the Services by the Supplier.

25.3 Disclosure by the Supplier

- (a) Subject to clause 25.3(b) the Supplier may not disclose any Protected Information obtained in connection with this Agreement without the prior written consent of Transport.
- (b) The Supplier may disclose Protected Information which is required to be disclosed under any applicable Law or by a court or Government Agency, ...[Remainder omitted].

25.4 Contacting individuals

Before contacting subjects of Protected Information directly or collecting Protected Information about those subjects from third parties in connection with this Agreement, the Supplier must first obtain instructions from Transport as to any notifications, consents or other requirements Transport may have, and the Supplier must comply with any such reasonable instructions given by Transport.

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25.5 Awareness of privacy requirements and undertakings

- (a) Transport acknowledges that, in order for the Supplier to comply with its obligations under this Agreement, the Supplier from time to time will disclose Protected Information held in connection with this Agreement to Supplier Personnel.
- (b) The Supplier must not disclose Protected Information held in connection with this Agreement to Supplier Personnel unless those Personnel have been informed by the Supplier of the its obligations under this clause 25.
- (c) The Supplier is responsible for the compliance of Supplier Personnel with the Supplier's obligations under this clause 25.

25.6 Security of Protected Information

- (a) The Supplier must take all necessary steps to ensure that the Protected Information held in connection with this Agreement is protected against misuse and loss, and from unauthorised access, modification and disclosure, and that only authorised Supplier Personnel with a legitimate role in fulfilling the Supplier's obligations under this Agreement have access to the Protected Information.
- (b) [Omitted].
- (c) From time to time Transport may direct that the Supplier take specified steps or achieve specified types or levels of security, secrecy or privacy protection in respect of the Protected Information and the Supplier...[Omitted]... must comply with any such directions.

25.7 Reasonable requests, codes of conduct and advice

The Supplier must in respect of any Protected Information held in connection with this Agreement comply with any reasonable requests or directions issued by Transport from time to time arising directly from, or in connection with, the exercise of the functions of any officer exercising authority under any Privacy Legislation.

25.8 Accurate recording and storage of data

The Supplier must take all reasonable steps to ensure that Protected Information provided to it in connection with this Agreement is stored or recorded accurately, that each time such Protected Information is accessed by any person such access is recorded (together with the details of the person who has accessed such Protected Information) and is not altered or amended except as directed by Transport.

25.9 Access and amendment

- (a) The Parties acknowledge that from time to time an individual:
 - (i) may seek access to Protected Information about that individual and may seek to have such information altered, corrected or deleted from the Protected Information; and
 - (ii) may have the right to seek such access, alteration, correction or deletion by virtue of contractual arrangements with Transport or under Privacy Legislation or other statutory authority, but that such requests for access may not be limited to statutory or contractual rights.

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- (b) The Supplier must, if it receives a request from an individual for access to, alteration, correction or deletion of Protected Information about the individual held by it in connection with this Agreement, promptly inform Transport in writing of the request.
- (c) The Supplier must comply with any reasonable and lawful direction issued by Transport in respect of any such request.

25.10 Complaint handling

A complaint alleging an Interference with Privacy of an individual in respect of any services performed under this Agreement will be handled by the Supplier and in accordance with the following procedures:

- (a) where the Supplier receives a complaint alleging an Interference with Privacy by the Supplier, it must immediately notify Transport of the nature of the complaint;
- (b) after Transport has been given notice in accordance with clause 25.10(a), the Supplier must keep Transport informed of the overall progress in dealing with the complaint insofar as it relates to the actions or duties of the Supplier; and
- (c) the Supplier must comply with any direction issued by Transport in respect of a complaint (whether or not the complaint was received by the Supplier).

25.11 Agent or sub-contractor

The Supplier must ensure that any person to whom the Supplier discloses Protected Information complies with the obligations of the Supplier under this clause 25.

25.12 No disclosure or transfer of Protected Information outside jurisdiction

Without the prior written approval of Transport, the Supplier must not:

- (a) transfer, disclose or allow access by a person, or permit the transfer, disclosure or access by a person, outside of Australia of Protected Information held in connection with this Agreement; or
- (b) transfer, disclose or allow access by a person, or permit the transfer, disclosure or access by a person, outside of a jurisdiction of Protected Information held in connection with this Agreement, where Privacy Legislation specifically imposes limitations on such transfers to or access by, persons outside that jurisdiction.

25.13 Return of Protected Information

Except as otherwise required by any applicable Law or as otherwise agreed between the Parties, the Supplier must return to Transport all materials in the Supplier's possession, custody or control containing Protected Information handled in connection with this Agreement in the following circumstances:

- (a) when the Protected Information is no longer required by the Supplier for the purposes of this Agreement;
- (b) upon termination or expiry of this Agreement;
- (c) upon demand by Transport; or
- (d) if required by Law.

25.14 Unauthorised acts

- (a) An unauthorised act in relation to Protected Information occurs if there is any:

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- (i) breach of this clause 25 by the Supplier;
 - (ii) unauthorised disclosure, use, modification or access, or attempted unauthorised disclosure, use modification or access, or misuse or loss of such Protected Information; or
 - (iii) act or practice of the Supplier or Supplier Personnel which constitutes an Interference with Privacy of any individual.
- (b) The Supplier must not do, or fail to do, anything which is an unauthorised act in relation to Protected Information.
- (c) If the Supplier becomes aware of any unauthorised act in relation to Protected Information it must:
- (i) notify Transport as soon as it becomes aware of such unauthorised act;
 - (ii) promptly provide Transport with full details of, and assist Transport in investigating, such unauthorised act;
 - (iii) co-operate with Transport in any investigation in relation to Protected Information; and
 - (iv) use all reasonable efforts to prevent a recurrence of such unauthorised act.

25.15 Remedies

The Supplier acknowledges that:

- (a) Transport and the Eligible Recipients may suffer financial and other loss and damage if any unauthorised act occurs in relation to Protected Information and that monetary damages may be an insufficient remedy; and
- (b) in addition to any other remedy available at law or in equity, Transport and the Eligible Recipients are entitled to relief by way of injunction or otherwise to prevent a breach of, and to compel the specific performance of, this clause 25.

26 Governance and Reporting

26.1 Reports

- (a) The Supplier must at no cost additional to the Charges prepare and deliver to Transport the reports described in Exhibit 24 (Eligible Recipients) and each Project Statement of Work by the times specified in Exhibit 13 (Service Reports) or the relevant Project Statement of Work (**Reports**).
- (b) [Omitted].

26.2 Service Managers

- (a) On or before the Execution Date, Transport and the Supplier have each designated an individual as their relationship executive who is to be authorised to act as the primary contact for such Party with respect to all matters relating to this Agreement. For the purposes of Transport such individual will be known as the General Manager ICT Operations Delivery and for the purposes of the Supplier such individual will be known as the **Relationship Manager**.
- (b) On or before the Service Commencement Date, each Party must designate individuals who will be directly responsible for the performance of each of the Services (each a

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Service Delivery Manager). All Service Delivery Managers must be approved in writing by Transport.

- (c) From time to time the Parties may appoint project managers to be responsible for the day to day management of individual Service initiatives, including Projects (each a **Project Manager**). All Supplier Project Managers must be approved in writing by Transport.
- (d) The Supplier must ensure that the Supplier's Relationship Manager and each of its Service Delivery Managers has the authority necessary to allow such Relationship Managers or Service Delivery Managers to make prompt decisions with respect to this Agreement or the Services as the case may be.
- (e) The Supplier's Relationship Manager and each of its Service Delivery Managers and Project Managers must attend the premises of Transport on Transport's reasonable request.

26.3 Governance

The parties' rights and obligations relating to the governance of this Agreement are set out in Exhibit 6 (Governance Model).

27 Subcontractors and Approved Agents

27.1 Subcontractors

- (a) [Omitted]
- (b) Transport consents to the Supplier delegating or subcontracting those obligations to those Approved Subcontractors specified in Exhibit 24 (Eligible Recipients).
- (c) Notwithstanding any other provision in this clause 27, if requested by Transport all subcontractors must:
 - (i) execute a binding confidentiality deed with Transport in the form set out in Exhibit 25 (Transport Confidentiality Deed);
 - (ii) procure that a senior officer of the subcontractor (nominated by Transport) executes a copy of the form of statutory declaration set out in Exhibit 26 (Subcontractor Statutory Declaration),

before performing any work or other duties in connection with this Agreement or receiving access to any Transport Confidential Information. The Supplier must provide Transport with an original of each Subcontractor Confidentiality Deed and Subcontractor Statutory Declaration (if applicable).

- (d) [Omitted]
- (e) Any notice of and information relating to a subcontract must be given to Transport in sufficient time to allow Transport to give adequate consideration to the matters referred to in clause 27.1(d) prior to the Supplier entering into the subcontract.
- (f) Transport may revoke the approval of a subcontractor at any time if:
 - (i) the subcontractor causes or, in Transport's reasonable opinion, is likely to cause the Supplier to breach this Agreement;
 - (ii) the subcontractor's performance is materially deficient;
 - (iii) Transport reasonably believes the subcontractor is not capable of rendering future performance; or

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(iv) there have been material misrepresentations by or concerning the subcontractor.

The Supplier must notify Transport promptly after becoming aware of any of the matters referred to in this clause 27.1(f).

- (g) Upon revocation of approval under clause 27.1(f), the Supplier must remove such subcontractor from performing the Services and ...[Remainder omitted].
- (h) The Supplier remains liable for obligations performed by subcontractors and, for the purposes of this Agreement, any work performed by a subcontractor is deemed to be work performed by the Supplier.
- (i) The Supplier is responsible for ensuring the suitability of each subcontractor and its Personnel for the Services to be performed. The Supplier must ensure that the Services performed by each subcontractor meet the requirements of this Agreement and that the subcontractor complies with all relevant Laws, including workplace health and safety requirements, and all policies and procedures of Transport.
- (j) The Supplier agrees that a subcontractor's failure to perform does not constitute a Force Majeure Event, unless the subcontractor's failure to perform is caused or contributed to by a Force Majeure Event.
- (k) [Omitted].

28 [Omitted]

29 Insurance and risk

29.1 Required insurance

- (a) Throughout the Term (and for a period of seven years thereafter in the case of policies written on a 'claims made' basis) the Supplier must maintain in force at a minimum those insurance policies described in Exhibit 21 (**Required Insurance**).
- (b) The Supplier must provide to Transport evidence of the currency of the Required Insurance prior to the Execution Date, on each anniversary of the Execution Date and whenever requested by Transport.
- (c) [Omitted].
- (d) [Omitted].
- (e) Upon Transport's request, the Supplier must promptly provide Transport with written evidence to substantiate the Supplier's compliance with this clause 29.1.

29.2 [Omitted]

30 Representations and warranties

30.1 Transport representations and warranties

Each Party represents and warrants that, as of the Execution Date and (where applicable) continuing throughout the Term:

- (a) it has all necessary power and authority to enter into this Agreement and to perform its obligations thereunder, and the execution and delivery of this Agreement and the consummation of the transactions contemplated thereby have been duly authorised by all necessary actions on its part; and

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- (b) this Agreement constitutes a legal, valid and binding obligation of Transport, enforceable against it in connection with its terms.

30.2 [Omitted]

30.3 [Omitted]

30.4 [Omitted]

30.5 [Omitted]

30.6 Reliance

The Supplier acknowledges that Transport has relied on the warranties contained in this Agreement in entering into this Agreement.

31 [Omitted]

32 [Omitted]

33 Disruption and Disaster Recovery

33.1 Disaster Recovery

- (a) The Supplier is responsible for IT Service Continuity Management, testing, implementation and execution in so far as they relate to Supplier Materials and other resources used by the Supplier in the provision of the Services.
- (b) Within 90 days of the Execution Date, the Supplier must develop a Disaster Recovery Plan and submit it to Transport for its approval...[Remainder Omitted].
- (c) The Disaster Recovery Plan must:
 - (i) comply with Transport standards;
 - (ii) [Omitted]; and
 - (iii) meet such other requirements as Transport may specify.
- (d) Submission of the Disaster Recovery Plan will constitute a Transition Milestone in the Transition Plan and clause 9.1 will apply to any failure or delay by the Supplier to deliver the Disaster Recovery Plan.
- (e) The Supplier must make any changes to the draft Disaster Recovery Plan required by Transport until such time as it is approved by Transport.

33.2 Disaster Recovery Plan

- (a) The Supplier must on each anniversary of the Execution Date or more frequently if Transport so requires:
 - (i) review and update the then current Disaster Recovery Plan(s) so as to ensure that it remains operational... [Remainder omitted]; and
 - (ii) test the Disaster Recovery Plan(s) in Transport's presence.
- (b) The Disaster Recovery Plan(s) must be documented in a form acceptable to Transport.
- (c) The Supplier must provide Transport a copy of the then current Disaster Recovery Plan(s) if so requested by Transport.

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33.3 Disruptions

- (a) If a Disruption affects the provision or receipt of the whole or any part of the Services, the Supplier must:
 - (i) immediately notify Transport;
 - (ii) provide Recovery Services in accordance with the then current Disaster Recovery Plan(s);
 - (iii) [Omitted]; and
 - (iv) continue to provide the Services which are not affected by the Disruption in accordance with this Agreement.
- (b) The Supplier's obligations in clause 33.3(a) apply regardless of what caused or contributed to the Disruption, including if it was caused or contributed to by a Force Majeure Event.
- (c) [Omitted].
- (d) [Omitted].

33.4 [Omitted]

34 Force Majeure

34.1 Force Majeure

- (a) ...[Omitted]... upon the occurrence of a Force Majeure Event, the non-performing Party is excused from any further performance or observance of the affected obligation(s) for as long as such circumstances prevail and such Party continues to attempt, without delay, to recommence performance or observance whenever and to whatever extent possible, including by means of alternative sources, work-arounds or other means. Any Party so delayed in its performance must immediately notify the other by telephone or by the most timely means otherwise available (to be confirmed in writing as soon as practicable thereafter) and describe in reasonable detail the circumstances causing such delay and the steps being taken to address it.
- (b) [Omitted].
- (c) [Omitted].
- (d) [Omitted].
- (e) [Omitted].

35 Termination

35.1 [Omitted]

35.2 [Omitted]

35.3 Termination for insolvency

- (a) Transport may, by notice, immediately terminate this Agreement if the Supplier, the Supplier Parent or the Supplier's Guarantor becomes Insolvent.
- (b) The Supplier may, by notice, immediately terminate this Agreement if Transport becomes Insolvent.

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35.4 [Omitted]

35.5 Effect of termination

Termination of this Agreement or a Project Statement of Work in whole or part does not affect:

- (a) any liabilities or obligations of either Party arising:
 - (i) before such termination; or
 - (ii) out of the events causing such termination; or
- (b) any damages or other remedies to which a Party may be entitled under this Agreement, at Law, in equity or otherwise.

36 Termination Assistance

36.1 Termination Assistance Plan

- (a) Within 30 days following the Execution Date, the Supplier must submit to Transport a further, detailed version of the Termination Assistance Plan for approval by Transport. The Supplier must make such changes to that draft as are requested by Transport and resubmit the draft to Transport for approval.
- (b) The Supplier must ensure that the Termination Assistance Plan is continuously updated to accurately reflect changes in:
 - (i) the Services; and
 - (ii) other matters within the scope of the Termination Assistance Plan.
- (c) The Supplier must, within 30 days after each anniversary of the Effective Date, present a current copy of the Termination Assistance Plan to Transport for approval by Transport.

36.2 Termination Assistance

- (a) Upon expiry or termination of this Agreement, Transport may, by giving notice prior to the expiry or termination, extend the Term or the provision of Services for a period of up to...[Remainder omitted] (**Termination Assistance Period**).
- (b) During the Termination Assistance Period, the Supplier must:
 - (i) immediately make available to Transport any termination assistance for the relevant Service(s);
 - (ii) comply with all obligations set out in the Termination Assistance Plan;
 - (iii) immediately make available to Transport and the Eligible Recipients all assistance reasonably requested by Transport to facilitate the orderly transfer of the relevant Service(s) to Transport, the Eligible Recipients or Transport's nominee; and
 - (iv) not do anything which may be obstructive and/or disruptive, (together **Termination Assistance**).
- (c) [Omitted].
- (d) [Omitted].
- (e) [Omitted].

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36.3 Maintenance of Services during Termination Assistance Period

During the Termination Assistance Period, for so long as Transport requires, the Supplier must:

- (a) continue to provide the Services in accordance with the terms of this Agreement (including the Service Levels);
- (b) not make any material changes to the level of Service or number of Supplier Personnel assigned to perform functions for Transport under this Agreement; and
- (c) not change the level of Service or reassign the Supplier's Personnel away from performance of functions under this Agreement.

36.4 Termination Assistance to be provided in all circumstances

The Supplier must provide Termination Assistance regardless of:

- (a) the reason for termination or expiration; and
- (b) whether the termination is of the whole of or part of the Services,
...[Remainder omitted].

36.5 Provision of information and access to staff

During the Termination Assistance Period, the Supplier must:

- (a) [Omitted]
- (b) to the extent possible, transfer or make available any relevant knowledge, documents and information to any potential successors suppliers as designated by Transport;
- (c) [Omitted]
- (d) permit Transport to make offers of employment to any Supplier Personnel engaged in the provision of the Services prior to the Termination Assistance Period... [Remainder omitted] .

36.6 [Omitted]

36.7 [Omitted]

36.8 [Omitted]

36.9 [Omitted]

36.10 Request for proposal assistance

- (a) At Transport's request... [Omitted] ...during the Term or after termination or expiry of this Agreement, the Supplier must provide assistance in collecting the data required for a request for proposal or similar request, and developing the information necessary for the tender including providing to Transport all information necessary to fully and accurately describe to bidders Transport's network access and transmission environment and the services required.
- (b) The Supplier must not interfere to Transport's detriment in any tender process.

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37 [Omitted]

38 Dispute Resolution

38.1 General

The Parties agree to resolve any conflicts, disputes, controversy, claim or issues between them that arise during the Term out of, or in connection with, this Agreement (**Dispute**) in accordance with this clause 38.

38.2 Notification

If a Dispute arises out of, or in connection with the Agreement during the Term, then, ...[Omitted]..., the aggrieved Party must submit a notice in writing to the other Party of the issue, and if the issue relates to an allegation of breach of contract or any damages the notice must include details of the breach, including the relevant clauses of the Agreement which are alleged to have been breached, and (if applicable) the damages claimed and how the damages are calculated (**Issue Notice**). The Issue Notice must be submitted within a reasonable time of the Party becoming aware of the issue.

38.3 Informal dispute resolution

- (a) If a Party submits an Issue Notice under clause 38.2, each Party must nominate in writing, within 7 days, a senior executive who will attempt to resolve the Dispute. The nominated senior executives will promptly meet at a time and place that is mutually convenient with the objective of resolving the issue. The nominated senior executives may invite other personnel to attend the mutually convenient conference subject to a list of additional invited personnel being provided to the other nominated senior executive at least 24 hours prior to the conference.
- (b) If the Parties are able to agree upon a resolution to the Dispute, the terms of the agreement are to be documented and signed by both nominated senior executives. Such an agreement will be binding on both Parties.
- (c) Each Party will bear its own costs under this clause 38.3.
- (d) [Omitted].

38.4 [Omitted]

38.5 [Omitted]

38.6 Interlocutory Relief

The provisions of clauses 38.2 to 38.5 do not apply where a party seeks urgent interlocutory relief, where a Party seeks to preserve its position against creditors or where a Party has terminated the Agreement for cause under clause 35.1.

38.7 Continued Performance

...[Omitted]..., both Parties must continue performing their respective obligations and responsibilities under this Agreement while any Dispute is being resolved in accordance with this clause 38, unless and until such obligations are terminated or expire in accordance with the provisions of this Agreement.

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39 [Omitted]

40 General

40.1 Not Used

40.2 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 Agreement.

40.3 Governing law

This Agreement is governed by and must be construed according to the law applying in New South Wales.

40.4 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 that may be brought at any time relating to this Agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 40.4(a).

40.5 Equitable remedies

The Parties agree that monetary damages would be an inadequate remedy for any breach or threatened breach of any provision of this Agreement concerning Confidential Information, Intellectual Property Rights or other matters for which equitable rights may be granted. Accordingly, such provision may be enforced by injunction or other order of a court of competent jurisdiction.

40.6 Entire agreement

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

- (a) embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.

40.7 [Omitted]

40.8 Waiver

No waiver of any breach of this Agreement will be held or construed to be a waiver of any other subsequent or antecedent breach of this Agreement.

40.9 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

- (a) must be in writing;

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- (b) must be addressed as follows (or as otherwise notified by that Party to each other Party from time to time):

Transport

Name: [Omitted]

Address: [Omitted]

For the attention of: [Omitted]

Supplier

Name: [Omitted]

Address: [Omitted]

Fax: [Omitted] For the attention of: [Omitted]

- (c) must be signed by the Party making it or (on that Party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that Party;

- (d) must be:

(i) delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 40.9(b); and

(ii) in each case, also sent by email to [Omitted], or such other email address as is notified to the Supplier from time to time; and

- (e) is taken to be received by the addressee:

(i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;

(ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;

(iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and

(iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ('working day' meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

40.10 Public announcements and confidentiality

Each of the Parties must procure that neither it nor any of its Related Companies, Affiliates or an Eligible Recipient, will make any public announcement or disclosure to any person in relation to this Agreement or information of which it has become aware in connection with this Agreement unless it first consults with and obtains the agreement in writing of the other Parties, which agreement must not be unreasonably withheld, provided however that:

- (a) following such consultation, no Party will be entitled to withhold agreement in the case of a public announcement or notification where and to the extent that the same is required by Law or the listing requirements of any stock exchange; and

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- (b) a Party will be entitled to make such disclosures to the directors, secretary, professional advisers and bankers of that Party and its Related Companies, Affiliates and Eligible Recipients so long as the Party uses its Best Endeavours to ensure that the matters disclosed are kept confidential.

40.11 Counterparts

This Agreement may be signed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same document.

40.12 Variations

This Agreement may not be modified, amended, added to or otherwise varied except by a document in writing signed by each of the Parties or signed on behalf of each Party by a director under hand.

40.13 Legal costs

Each Party must bear their own legal costs in relation to this Agreement.

40.14 Survival

Without limiting any other provision of this Agreement relating to survival, any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement or of the provision of any Service, and any other clause which by its nature survives termination of this Agreement, survives termination of this Agreement.

40.15 Independent contractors

The Supplier performs its obligations under this Agreement as an independent contractor of Transport. Nothing in this Agreement constitutes the Supplier and Transport as partners, joint venturers, or principal and agent. The Supplier has no authority to represent Transport in any matter other than those expressly authorised by this Agreement.

40.16 Invalidity

- (a) If a provision of this Agreement, or a right or remedy of a Party under this Agreement is invalid or unenforceable in a particular jurisdiction:
 - (i) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability;
 - (ii) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.
- (b) This clause is not limited by any other provision of this Agreement in relation to severability, invalidity or unenforceability.

40.17 Cumulative rights

The rights and remedies of a Party under this Agreement do not exclude any other right or remedy provided by Law.

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Executed as an agreement in Sydney, New South Wales.

Executed as an agreement for and on behalf of Transport for NSW (ABN 18 804 239 602) by its authorised delegate in the presence of:

Signature of Witness

Signature of authorised delegate

Name of Witness (Print)

Name of authorised delegate

Date

Date

Executed in accordance with section 127 of the *Corporations Act 2001* by **NEC IT Services Australia Pty Ltd** ABN 27 096 278 198:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Date

Date