

Deed of Extension

This Deed is made on

16th December 2011

Parties

Fujitsu Australia Limited (ABN 19 001 011 427) of 15 Blue Street, North Sydney, NSW
(Service Provider);

and

Rail Corporation New South Wales (ABN 59 325 778 353) of Level 20, 477 Pitt Street,
Sydney, NSW 2000 (RailCorp).

Background

- A. Service Provider and RailCorp are parties to the Master Services Agreement.
- B. Following negotiations between the parties to this Deed, the parties have agreed to extend the Term of the MSA in accordance with the terms of this Deed.

1. Interpretation

- (a) Unless otherwise defined in this Deed, terms that have been defined in the MSA have a corresponding meaning when used in this Deed.
- (b) In this Deed:

"Master Services Agreement" or "MSA" means the Master Services Agreement for Information Technology Goods and Services between RailCorp, Rail Infrastructure Corporation and Fujitsu Australia Limited dated 8 August 2006 being Contract/Agreement No. C06138 as amended from time to time and including all ancillary contracts entered into under it, in whatever form, including all variations, change requests, statements of work or service schedules.

2. Extension of MSA

- (a) With effect from the Date of Extension, the parties acknowledge and agree that notwithstanding:
 - (i) any requirement for notice under clause 3.3(a) of the MSA, or
 - (ii) the date of execution of this Deed,
the Term of the MSA is extended from 8 January 2012 ("Date of Extension") for a period of 24 months ("Extension Period").
 - (iii) The following definitions are added to clause 1.1 of the MSA:
"Project Services" means any services from time to time of a project nature which are outlined in a statement of work agreed by the parties.
"Eligible Customer" means a Department or an Agency under Transport for NSW which has requested Services or Project Services under the MSA and which has been approved in writing by RailCorp for those specific Services or Project Services under the MSA.
 - (iv) For the purposes of any Services or Project Services ordered by an Eligible Customer(s):
 - a. references in the MSA to RailCorp includes such Eligible Customer(s); and

GIPA Act s 14 - Table 3(a)

GIPA Act s 14 - Table 3(a)

- b. Services or Project Services provided to such Eligible Customers, subject to agreement of the Parties, may incur additional Services Charges.
 - c. the Service Provider shall supply the Services or Project Services and perform the obligations under the MSA as if the Eligible Customer was RailCorp; and
 - d. RailCorp may recover from the Service Provider any Loss or Losses suffered by an Eligible Customer subject to the limitations and exclusions of liability in the MSA.
- (v) The Service Provider will invoice Rail Corporation New South Wales for all Services or Project Services under the MSA, whether for RailCorp or an Eligible Customer, providing details sufficient for RailCorp to be able to differentiate whether the Services are provided directly to RailCorp or by each Eligible Customer. Rail Corporation New South Wales will be responsible for payment of such invoices to the Service Provider in accordance with the terms of the MSA.

3 Effect of Renewal

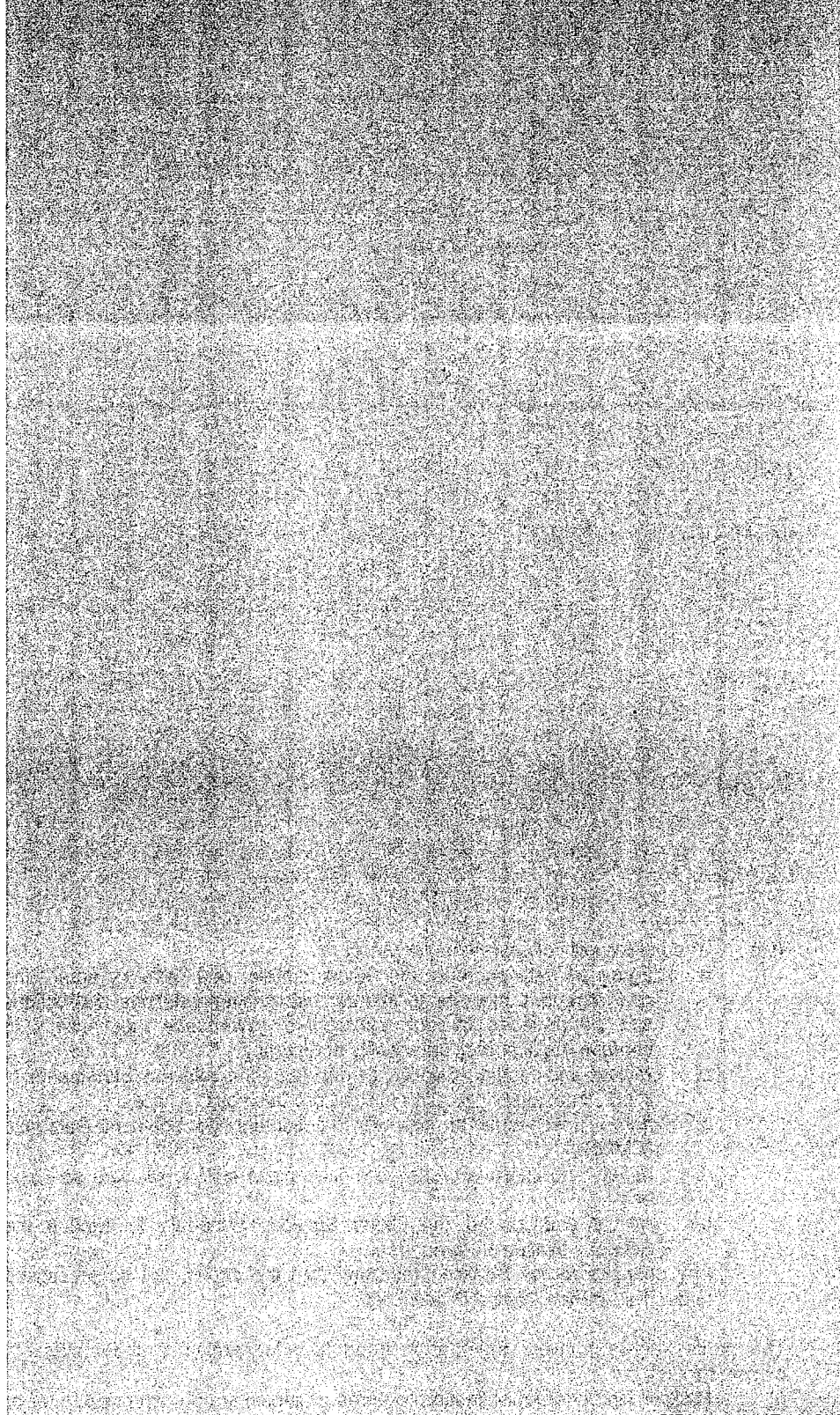
- (a) The Parties agree that terms and conditions of the MSA immediately prior to the Date of Extension shall continue to apply in accordance with their terms during the Extension Period, subject to clause 3(b). For clarity:
- (i) all ancillary contracts entered into under the MSA, in whatever form, including all variations, change requests, statements of work or service schedules immediately prior to the Date of Extension also continue unchanged in accordance with their terms after the Date of Extension, subject to clause 3(b);
 - (ii) all Charges payable by RailCorp immediately prior to the Date of Extension in respect of the MSA will remain the same after the Date of Extension, subject to the application of clause 16.3 of the MSA (to the extent they apply) and clause 3(b)(ii) of this Deed.
- (b) The MSA shall be deemed amended from 8 January 2012 to the extent necessary to effect the following:

GIPA Act s 14 - Table 4(b)

GIPA Act s 14 - Table 3(a)

GIPA Act s 14 - Table 3(a)

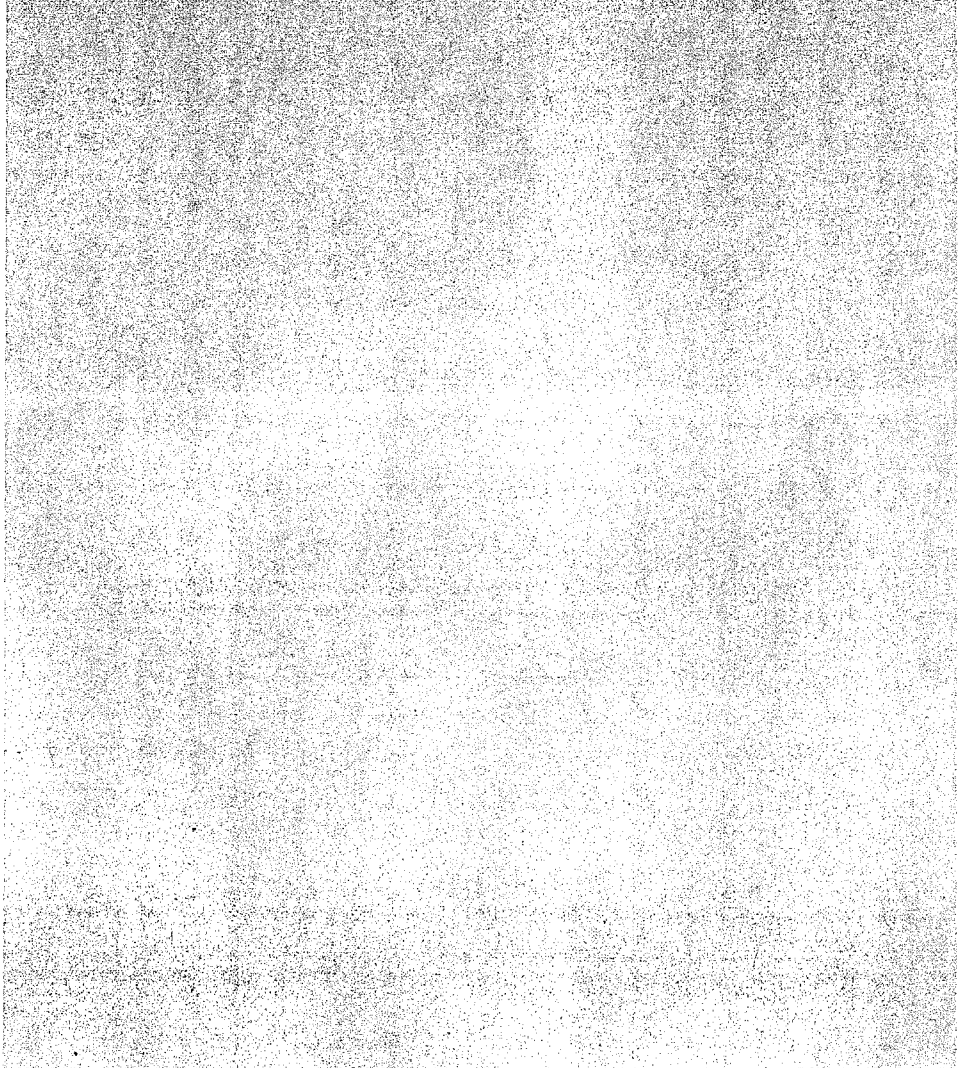
GIPA Act s 14 - Table 4(b)



GIPA Act s 14 - Table 3(a)

GIPA Act s 14 - Table 3(a)

GIPA Act s 14 - Table 4(b)



- (vii) The parties will collaborate in good faith to:
 - a. agree all data sources and report formats, and develop, agree and review reports in order to ensure that recommendations and actions can be provided through appropriate governance mechanisms to improve the accuracy and quality of reporting;
 - b. review and rework, Service Levels (and the relevant Statements of Work, if necessary) to align to RailCorp Business Services;
 - c. agree a schedule to improve the Content Management Database (CMDB);
 - d. review and improve proactive monitoring of critical RailCorp services; and
 - e. review and amend the Cloud Services Schedule to expand the Services available thereunder.
- Any changes to the Services resulting from the above, will be processed under the Change Control Procedures.

GIPA Act s 14 - Table 3(a)

- (c) The parties agree to work together in good faith in relation to the matters in clause 3(b)(vii), but:
 - (i) RailCorp is under no obligation to agree or implement any proposal, offer or amendment produced by the Service Provider as a result of that clause; and

GIPA Act s 14 - Table 3(a)

- (ii) to the extent the RailCorp agrees to implement any matter arising out of clause 3(b)(vii), the parties will do so in accordance with the Change Control Procedures, or through other appropriate variation documentation in accordance with the terms of the MSA.

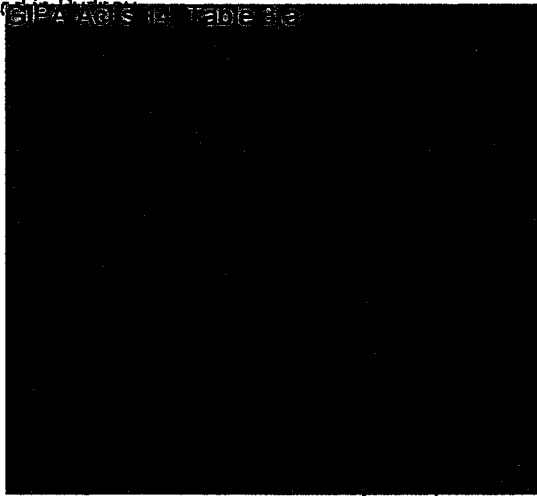
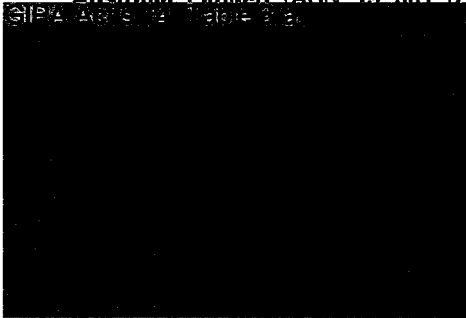
4. General

Except as specifically amended by this Deed, all other rights and obligations of the Parties pursuant to the MSA remain unaffected.

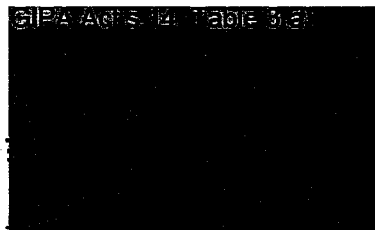
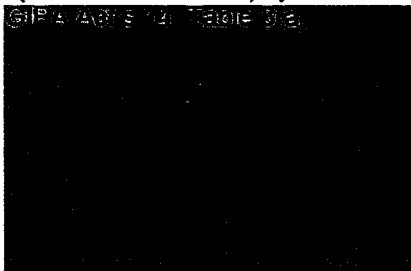
- (a) This Deed has full force and effect from the date that the last party executes this Deed.
- (b) This Deed is governed by the laws of New South Wales, Australia and each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, Australia.
- (c) This Deed may be executed in counterparts, which taken together constitute one instrument.

Executed and delivered by the parties as a deed in duplicate

Executed as a deed by Fujitsu
Australia Limited (ABN 19 001 011
of

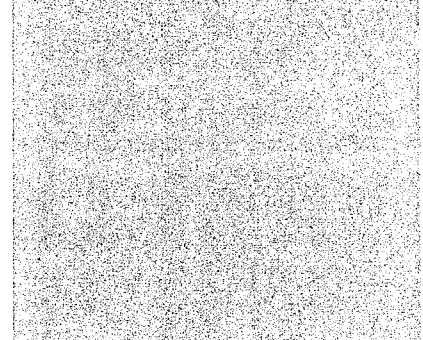


Executed as a deed for and on behalf of
Rail Corporation New South Wales
(ABN 59 325 778 353) by its authorised



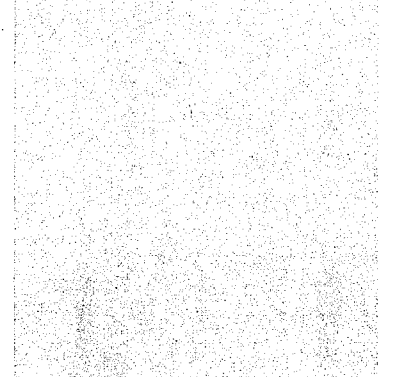
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GIPA Act s 14 - Table 3(a)



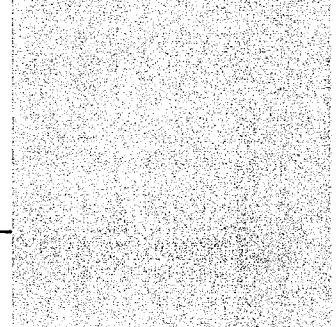
Attachment 1
Schedule 24 (Technology Refresh)

GIPA Act s 14 - Table 3(a)



Schedule 24 – Technical Refresh

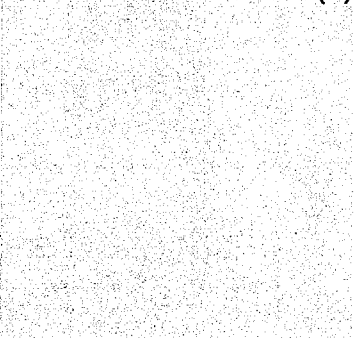
GIPA Act s 14 - Table 3(a)



GIPA Act s 14 - Table 3(b)



GIPA Act s 14 - Table 3(a)

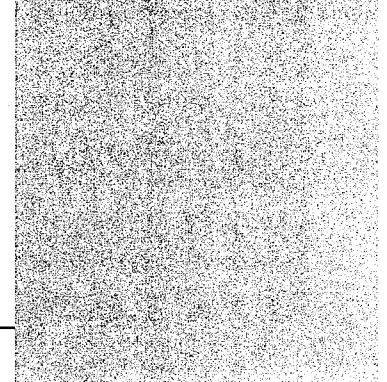


1 Introduction

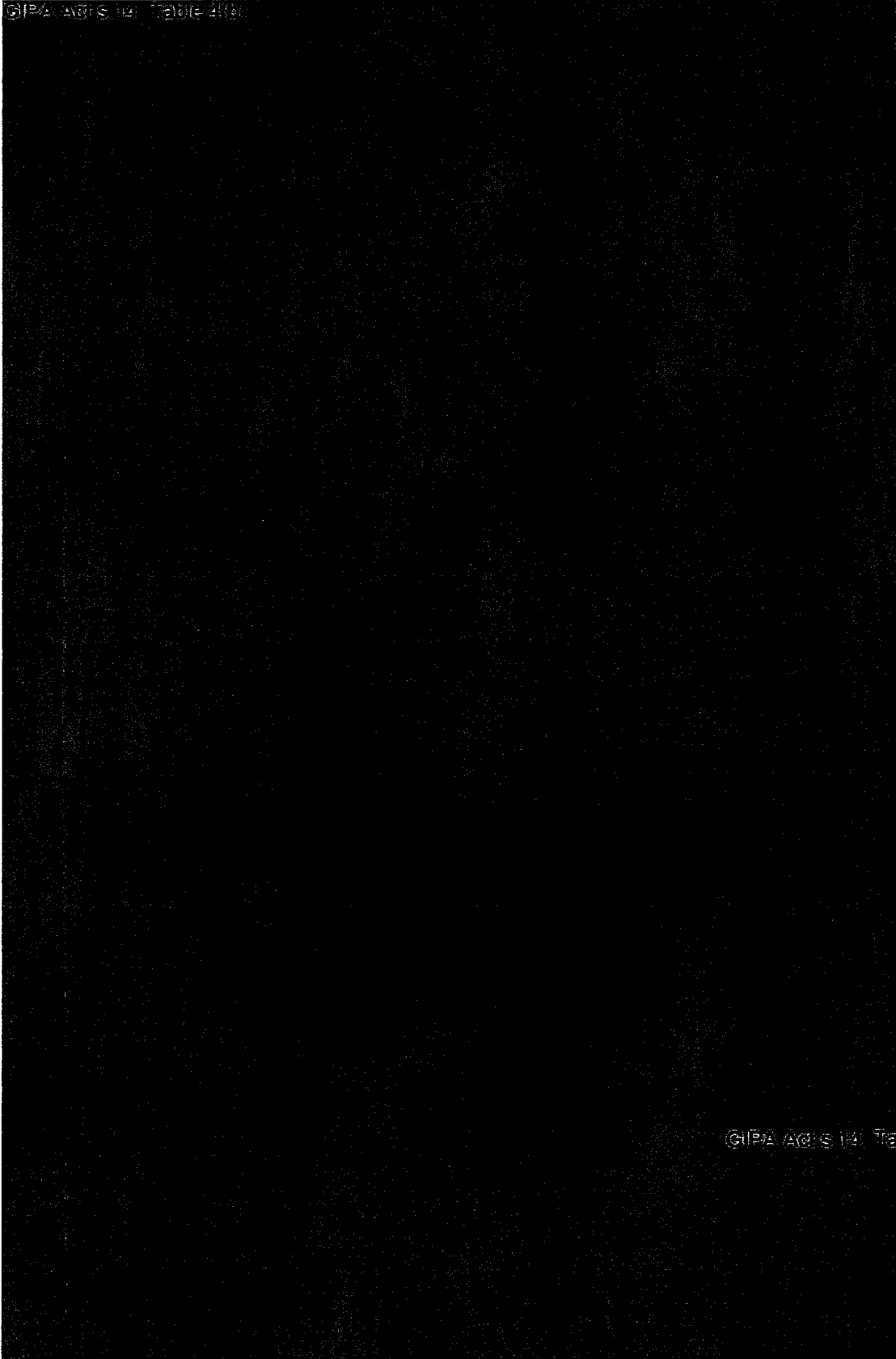
This schedule to the Master Services Agreement between RailCorp and the Service Providers describes the required technical refresh approach.



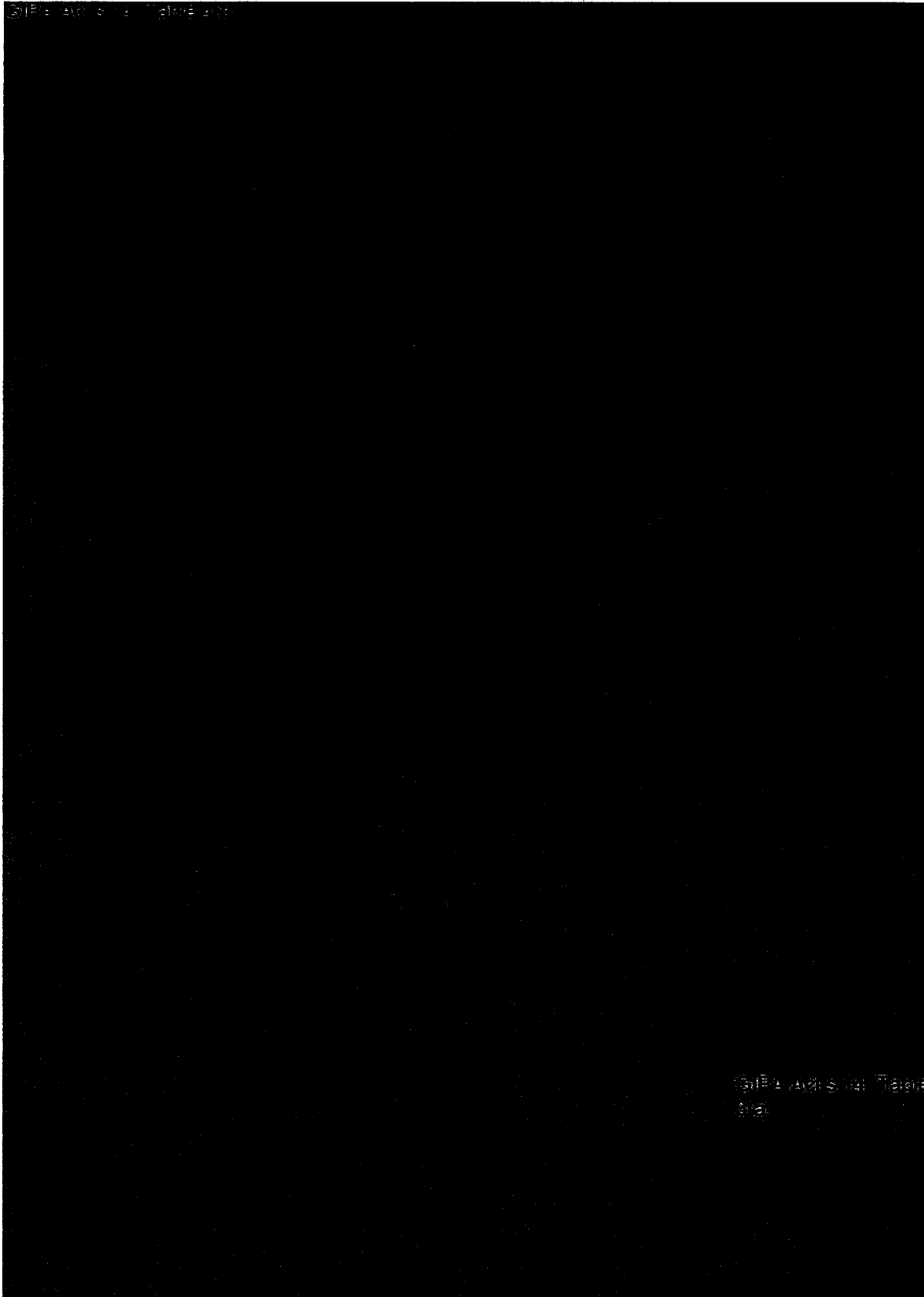
GIPA Act s 14 - Table 3(a)



GIPA Add'l Table 3(a)



GIPA Add'l Table 3(a)



GIPA Act s 14 - Table 4(b)

GIPA Act s 14 - Table 3(a)

GIPA Act s 14 - Table 4(b)

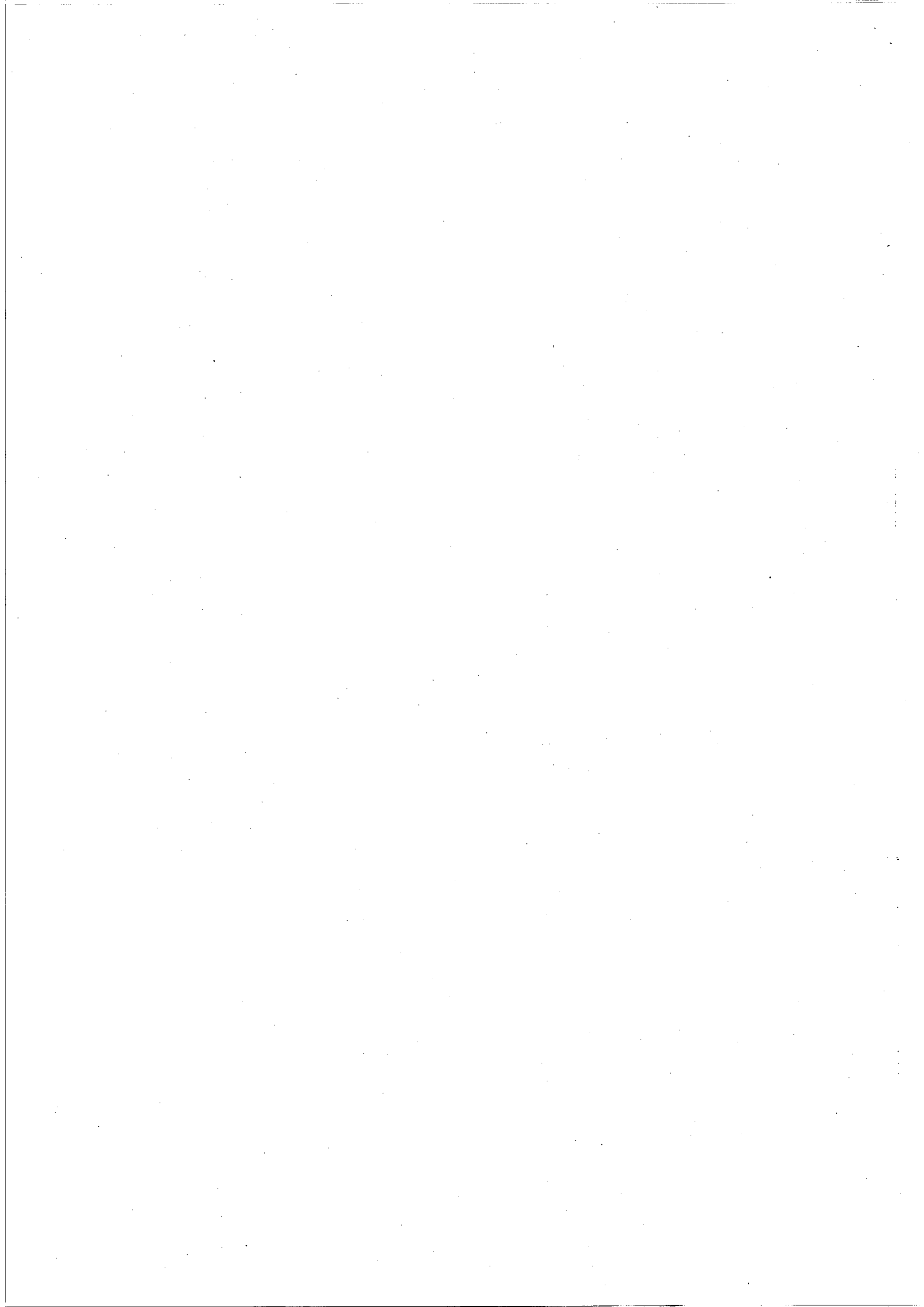
GIPA Act s 14 - Table 3(a)

GIPA Act s 14 - Table 4(b)

GIPA Act s 14 - Table 3(a)

GIPA Act s 14 - Table 4(b)

GIPA Act s 14 - Table 3(a)



Sydney Trains
Fujitsu Australia Limited

Amendment Agreement

Amendment to Master Services Agreement for Information Technology Goods and Services

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This Agreement is made on

Parties

- 1 **Sydney Trains** (ABN 38 284 779 682), a public subsidiary corporation of RailCorp constituted under the provisions of the Transport Administration (General) Amendment (Sydney Trains and NSW Trains) Regulation 2012 of 477 Pitt Street, Sydney, NSW 2000 (**Sydney Trains**)
- 2 **Fujitsu Australia Limited** (ABN.19 001 011 427) of 15 Blue Street, North Sydney NSW (**Fujitsu**).

Recitals

- A Rail Corporation New South Wales (ABN 59 325 778 353) (**RailCorp**), Rail Infrastructure Corporation (ABN 21 298 300 693) (**RIC**) and Fujitsu are parties to a Master Services Agreement dated 8 August 2006 as amended (**the Principal Agreement**) under which Fujitsu provides information technology goods and services on the terms set out in the Principal Agreement.
- B On 17 June 2013, the Minister for Transport made an Order under the Transport Administration Act 1988 Section 94, vesting the assets, rights and liabilities of RailCorp arising out of information technology contracts, including the Principal Agreement, in Sydney Trains and accordingly references to RailCorp are to be construed as references to Sydney Trains.
- C The parties wish to amend the Principal Agreement in the manner set out in this Amendment Agreement.

It is agreed as follows.

1 Definitions and Interpretation

- (a) Words which are defined in the Principal Agreement and which are used in this Amendment Agreement have the same meaning in this Agreement as in the Principal Agreement, unless the context requires otherwise.
- (b) The provisions of clauses 1.2 and 1.3 of the Principal Agreement form part of this Amendment Agreement as if set out at length in this Amendment Agreement.

2 Amendments

In consideration for the mutual promises contained herein (including the payment of certain fees by Sydney Trains to Fujitsu and the provision by Fujitsu of certain services to Sydney Trains), the Principal Agreement is amended, on and from the Effective Date, as set out in:

- (a) Schedule 1 (Amendments to Disengagement Provisions), which replaces clause 22 to the Principal Agreement and makes consequential amendments;
- (b) Schedule 2 (Amendments to Charges), which replaces Schedule 4 to Principal Agreement and makes consequential amendments; and
- (c) Schedule 3 (Confidentiality Deed), which adds a new Schedule 26 to the Principal Agreement.

3 Effective Date

This Amendment Agreement takes effect, and the parties agree to be bound by the Principal Agreement as amended by this Amendment Agreement, from 1 January 2014 (the *Effective Date*).

4 Remaining Provisions Unaffected

Except as specifically amended by this Amendment Agreement, all terms and conditions of the Principal Agreement remain in full force and effect. With effect from the *Effective Date* (as defined in clause 3), the Principal Agreement as amended by this Amendment Agreement is to be read as a single integrated document incorporating the amendments effected by this Amendment Agreement.

5 Governing Law and Jurisdiction

This Amendment Agreement is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

6 Counterparts

This Amendment Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Schedule 1 – Amendments to Disengagement Provisions

1 Definitions

1.1 Definitions deleted

- (a) The definition of Termination Assistance is deleted.
- (b) The definition of Transition Out Plan is deleted.

1.2 Definitions added

- (a) A new definition of Developed Work is added as follows:
Developed Work means work product or any work or other thing in which Intellectual Property Rights may reside (including derivative works) which is developed as a result of work done under or in connection with this Master Services Agreement or as a result of information supplied, directly or indirectly, by RailCorp to the Service Provider.
- (b) A new definition of Disaster Recovery Site Services is added as follows:
Disaster Recovery Site Services means the Services for provision of a Disaster Recovery Site, connected to the Global Switch Co-Location Agreement.
- (c) A new definition of Disengagement Assistance is added as follows:
Disengagement Assistance has the meaning given in clause 22.2(b).
- (d) A new definition of Disengagement Period is added as follows:
Disengagement Period has the meaning given in clause 22.1.
- (e) A new definition of Excepted Information is added as follows:
Excepted Information means correspondence between RailCorp and the Service Provider; correspondence between the Service Provider and Third Parties relating to this Master Services Agreement; invoices to RailCorp and invoices from Third Parties and related financial records relating to this Master Services Agreement; this Master Services Agreement and all related Change Control Documents; Service Provider Third Party agreements; any request for proposal occurring after the Execution Date and related correspondence; proposals, clarifications relating to proposals and quotations relating to this Master Services Agreement; help desk call records and incidence reports relating to this Master Services Agreement; service level reports relating to this Master Services Agreement, outage reports relating to this Master Services Agreement, performance reports and capacity reports relating to this Master Services Agreement; and any information which the Service Provider is required to retain by Law relating to this Master Services Agreement.
- (f) A new definition of Global Switch is added as follows:
Global Switch means Global Switch Property (Australia) Pty Limited (ABN 97 094 051 779) having its principal place of business at 400 Harris Street, Ultimo, NSW 2007.
- (g) A new definition of Global Switch Co-Location Agreement is added as follows:
Global Switch Co-Location Agreement means the agreement between the Service Provider and Global Switch dated on or around 27 February 2012.
- (h) A new definition of RailCorp Data is added as follows:
RailCorp Data means all data and information relating to RailCorp and its operations, facilities, customers, dealings with the public, Personnel, assets, products, sales and

transactions in whatever form such information may exist and whether entered into, stored in, generated by or processed as part of the Services, and includes any:

- (i) database in which such data or information is contained;
- (ii) documentation or records related to such data or information; or
- (iii) products resulting from the use or manipulation of such data or information.

(l) A new definition of Successor Service Provider is added as follows:

Successor Service Provider has the meaning given in clause 22.13(a).

(j) A new definition of Third Party is added as follows:

Third Party means any person who is not a member of the Service Provider group, an Approved Subcontractor or RailCorp

(k) A new definition of Transfer Date is added as follows:

Transfer Date has the meaning given in clause 22.9(a).

(l) A new definition of Transferring Contract is added as follows:

Transferring Contract has the meaning given in clause 22.9(a).

(m) A new definition of Transition Out Plan is added as follows:

Transition Out Plan means the transition out plan developed in accordance with clause 22.11.

1.3 References to Defined Terms

All references to the term Termination Assistance in the Principal Agreement are amended and replaced by references to the term Disengagement Assistance.

2 Clause 22

Clause 22 (Disengagement Assistance) of the Principal Agreement is deleted and replaced in its entirety with the following:

"22 Disengagement Assistance

22.1 Introduction

RailCorp requires the Service Provider to:

- (a) continue the provision of some or all of the Services under clause 22.5; and
- (b) provide the Disengagement Assistance under clause 22.3,

in each case for a period of up to thirty six (36) months from the date of termination or expiration of this Master Services Agreement ("**Disengagement Period**") on the terms of this clause 22, and the Master Services Agreement will continue in full force and effect during such Disengagement Period.

22.2 Definitions

- (a) Capitalised terms that are not defined in clause 1.1 or Schedule 01 of this Master Services Agreement, but which are defined herein, have the meaning given to them herein.
- (b) "**Disengagement Assistance**" is that assistance provided by the Service Provider to RailCorp during the Disengagement Period in accordance with clause 22 from the expiry of the Term or the effective date of termination of this Master Services Agreement or a Services Schedule, where Service Provider :

- (i) makes available to RailCorp any disengagement assistance for the relevant Service(s);
 - (ii) complies with all obligations set out in the applicable Transition Out Plan;
 - (iii) makes available to RailCorp all assistance reasonably requested by RailCorp to facilitate the orderly transfer of the relevant Service(s) to RailCorp or its nominee; or Successor Service Provider;
 - (iv) does not do anything which may be obstructive and/or disruptive, and includes the assistance set out in clause 22.3(d).
- (c) **“Main Service Provider Location”** means the Fujitsu Data Centre in North Ryde from where Service Provider provides data centre services.
- (d) **“Services”** means the Initial Services and any other services provided by the Service Provider pursuant to a Services Schedule under this Master Services Agreement and from the expiry or termination of this Master Services Agreement, is in accordance with the structure set out in Schedule 4.

22.3 Disengagement Assistance

- (a) If RailCorp requires the Service Provider to provide any Disengagement Assistance, RailCorp must provide the Service Provider no less than 3 months' prior written notice of its requirement for that Disengagement Assistance. The parties acknowledge that RailCorp may notify the Service Provider under this clause 22.3(a) at different times during the Disengagement Period in order to receive Disengagement Assistance in relation to each Service, or parts of each Service, as notified by RailCorp.

For the avoidance of doubt, a notice under this clause 22.3(a) will not be issued by RailCorp prior to the later of:

- (i) execution of a contract for the provision of services by a Successor Service Provider; or
- (ii) 1 July 2014.

In addition, no Disengagement Assistance is provided within the notice period set out in this clause 22.3(a).

- (b) Any Disengagement Assistance provided by the Service Provider in relation to a Service will be provided by the Service Provider for a period of:
- (i) not less than 3 months; and
 - (ii) not greater than 9 months,
- unless notified by RailCorp pursuant to clause 22.3(c) or otherwise agreed by the parties in writing.
- (c) RailCorp will notify the Service Provider in writing prior to commencement of Disengagement Assistance under clause 22.3(b), should it require the Service Provider to provide any Disengagement Assistance beyond the completion of disengagement of the given Services to which the Disengagement Assistance relates, in which case the Service Provider will provide such Disengagement Assistance in accordance with the requirements notified by RailCorp subject to the terms of this clause 22.

For the avoidance of doubt, upon completion of the Disengagement Assistance requested by RailCorp under this clause 22.3, the Service Provider will have no

further obligations in relation to that disengaged Service, including as to Service Levels, except as specifically provided for otherwise in the Agreement.

- (d) The Disengagement Assistance shall be provided by the Service Provider during the Disengagement Period as RailCorp reasonably requests to achieve an orderly and staged transition of Services in accordance with the Transition Out Plan with minimal interruption from the Service Provider to RailCorp or one or more parties nominated by RailCorp and includes:
- (i) compliance with the Transition Out Plan;
 - (ii) the provision of all information and assistance as is reasonably necessary to assist RailCorp or one or more other parties to provide the Services or services like the Services to RailCorp;
 - (iii) such assistance in the transfer of knowledge and information as is reasonably necessary to assist RailCorp or one or more other parties to provide the Services or services like the Services to RailCorp as RailCorp reasonably requests;
 - (iv) the provision to RailCorp or one or more other parties nominated by RailCorp of such reasonable access to Service Provider Personnel (including Key Service Provider Positions and other Service Provider Personnel who have worked on RailCorp's account) and Service Provider locations (including the Service Provider Data Centre) as is reasonably necessary to assist RailCorp or one or more other parties to provide Services or services like the Services to RailCorp;
 - (v) if requested by RailCorp, participation by the Service Provider in a due diligence process to assist one or more new suppliers to assess the scope and nature of the services to be provided to RailCorp, including the provision of information and reasonable access to Service Provider Personnel and the Service Provider locations (including the Service Provider Data Centre); and
 - (vi) such other assistance as may reasonably be requested by RailCorp.
- (e) Without limiting clause 8 (Intellectual Property Rights), the Service Provider will not be required to make any of its proprietary information available to any Third Parties:
- (i) unless and until such Third Parties execute a Confidentiality Deed substantially in the form of schedule 26;
 - (ii) unless RailCorp considers provision of the information is reasonably required to achieve an orderly and staged transition of Services to RailCorp or one or more parties nominated by RailCorp including for the purposes listed in clause 22.3(d),

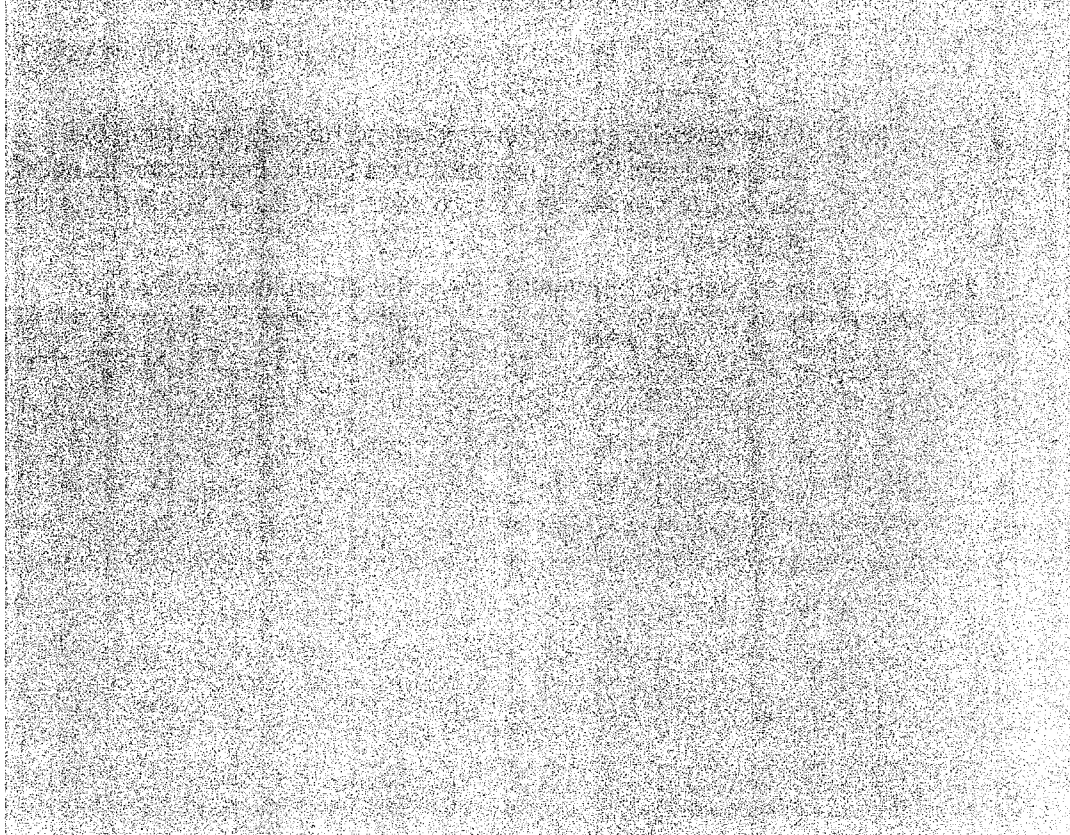
but in no event will the Service Provider be required to provide Critical Proprietary Information to Third Parties. For the purposes of this clause 22, Critical Proprietary Information means confidential information of the Service Provider or Third Party comprising project management methodologies; Supplier server build methodologies; monitoring tools and scripts developed by the Service Provider or a Third Party for use with multiple customers (except where these are generally made available to other parties under licence); Supplier processes in relation to IT Service Management (ITSM) implementation; capacity planning

methodologies (excluding the Capacity Plan); pricing models, tools and methodologies; and software development methodologies.

- (f) The Service Provider must, by the end of the Disengagement Period or by such earlier date as RailCorp may specify (provided that RailCorp shall not be permitted to require the return, destruction or delivery of items under this clause 22.3(f) where the Service Provider still requires such information or documentation in order to provide the Services):
 - (i) return or destroy (at RailCorp's election) all copies of RailCorp Data, Confidential Information of RailCorp and other material of RailCorp in its, or its agent's possession, custody or control (other than Excepted Information which may be retained by the Service Provider for archival purposes only, subject to continuing obligations of confidentiality and privacy); and
 - (ii) deliver to RailCorp the Developed Work.
- (g) The Service Provider will provide Disengagement Assistance regardless of:
 - (i) the reason for termination or expiration; and
 - (ii) whether the termination is of the whole of or part of the Services.

22.4 Fees for Disengagement Assistance

GIPA Act s 14 - Table 4(b)



22.5 Continuity of Services during Disengagement Period

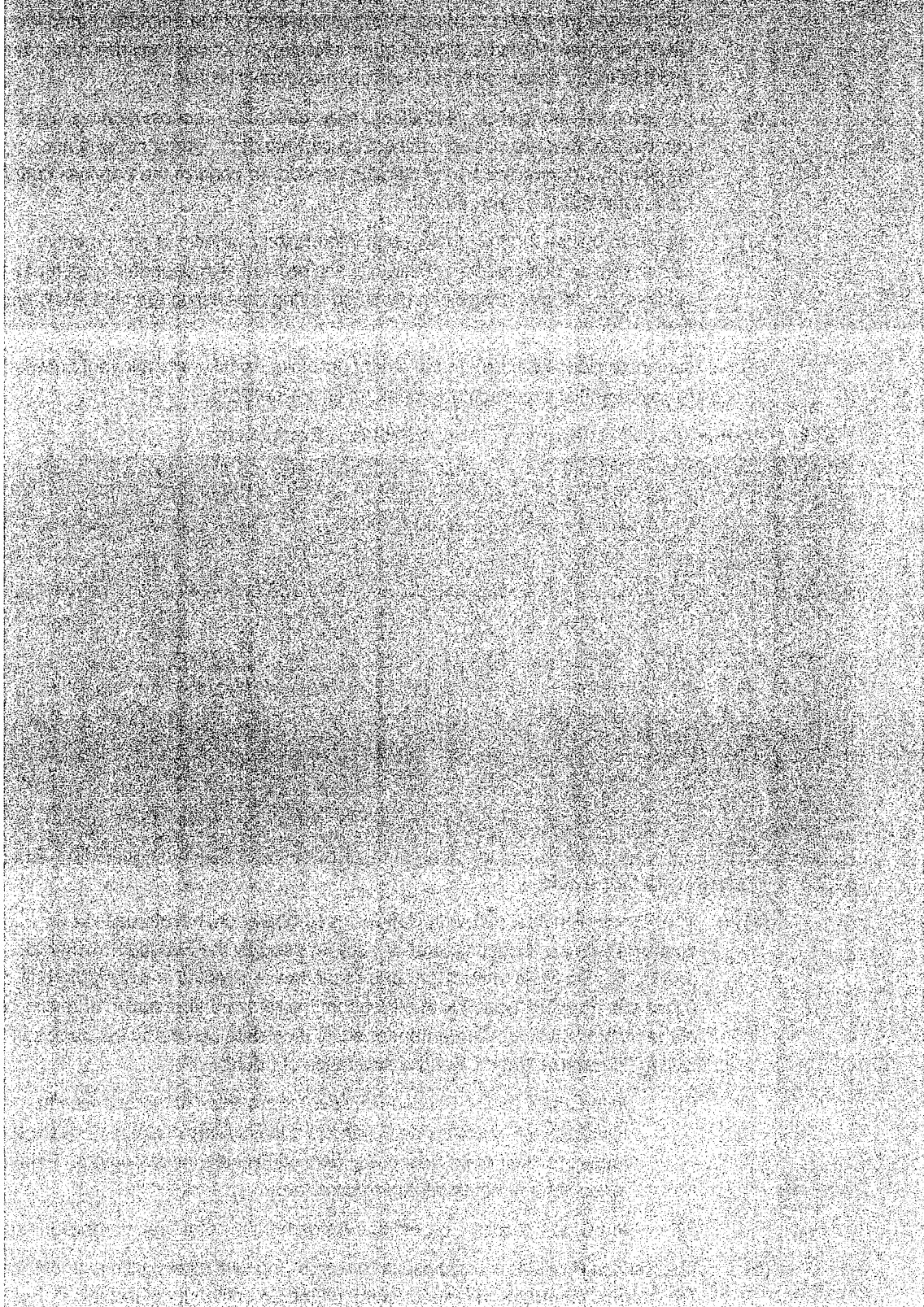
- (a) The Service Provider will, until their earlier of:

- (i) completion of the period for provision of Disengagement Assistance set out in clause 22.3(b); or
 - (ii) expiry of the Disengagement Period,
- comply with each of the following requirements:
- (iii) continue to provide the Services in accordance with the terms of this Master Services Agreement (including the Service Levels);
 - (iv) not make any material changes to the level of Service or number of Service Provider Personnel assigned to perform functions for RailCorp under the Master Services Agreement (except to the extent that the number of Service Provider Personnel is reduced due to the disengagement of a Service resulting in a reduction in the requirement for Service Provider Personnel, and with such reduction not effecting the level of Service received by RailCorp); and
 - (v) not change the level of Service or reassign the Service Provider's Personnel away from performance of functions under the Master Services Agreement.
- (b) RailCorp will ensure that where part or all of a Service is disengaged to a third party, that where Service Provider requires inputs from that service for it to provide the remaining Services (or any part thereof) to RailCorp, that :
- (i) such inputs are provided to at least the same level of service as was previously provided by the Service Provider; and
 - (ii) required tools, procedures, training, etc. are promptly provided to Service Provider, at RailCorp's cost.
- (c) Notwithstanding expiry of the Agreement, RailCorp may, during the Disengagement Period, request that the Service Provider provide Additional Services or New Services in accordance with clauses 11.3 and 11.4 of the Agreement.

22.6 Charges for Service Continuity during the Disengagement Period

GIPA Act s 14 - Table 4(b)

GIPA Act s 14 - Table 4(b)



22.7 Provision of information and access to Personnel

During the Disengagement Period, the Service Provider will:

- (a) if requested by RailCorp at any time, provide RailCorp with a list of resources and third party agreements necessary for the provision of the Services during the Disengagement Period and such other information concerning such resources and third party agreements as RailCorp reasonably requires;
- (b) provide such information as RailCorp may reasonably request relating to the number and function of each of the Service Provider's Personnel who are employed or contracted by the Service Provider to perform the Services under the Master Services Agreement;
- (c) subject to clause 22.3(e), make such information available to any potential successors as designated by RailCorp and provide all reasonable assistance to achieve an orderly transfer of knowledge during the Disengagement Assistance; and
- (d) subject to clause 22.3(e), to the extent possible, transfer any relevant knowledge to any potential successors as designated by RailCorp.

22.8 Acquisition by RailCorp of Service Provider Equipment

GIPFA/AGIS/14/ Table 41(a)



22.9 Transferring Contracts

- (a) The Service Provider will, with RailCorp's co-operation, novate each of its contracts with any subcontractor or supplier used by the Service Provider to provide the Services to RailCorp unless otherwise directed in writing by RailCorp ("Transferring Contract") with effect from the relevant termination or expiry date of the Master Services Agreement or such other date agreed by the parties in writing ("Transfer Date"). For the avoidance of doubt:
 - (i) leases held by the Service Provider for provision of the Services to RailCorp are Transferring Contracts and RailCorp will either novate such leases to itself or its Successor Service Provider or pay out the remaining lease commitments related to such; and
 - (ii) the Global Switch Co-Location Agreement is not a Transferring Contract.
- (b) The Service Provider is responsible for complying with all obligations under the Transferring Contracts in respect of the period up until (but not including) the Transfer Date, and will indemnify RailCorp against all Losses arising out of or in relation to the non-payment, non-observance, or non-performance of any obligation arising under, or arising in respect of the Transferring Contract or

founded on any fact, matter, occurrence, event or circumstance happening during or in respect of that period.

- (c) RailCorp is responsible for complying with all of the Service Provider's obligations under the Transferring Contracts in respect of the period on and from the Transfer Date and will indemnify the Service Provider against Losses, arising from claims relating to the non-payment, non-observance, or non-performance of any such obligations arising under, or arising in respect of, the relevant Transferring Contract or founded on any fact, matter, occurrence, event or circumstance happening during or in respect of the relevant period.

22.10 Agreements with third parties

- (a) Without limiting its obligations under clause 22.9, the Service Provider will use Commercially Reasonable Efforts to structure any new agreements with the licensors of third party software and its agreements with Third Parties for the purposes of providing Services during the Disengagement Period so that:
 - (i) the ongoing fees under those arrangements payable by RailCorp after the Transfer Date are consistent with and no higher than the fees payable by the Service Provider prior to the Transfer Date;
 - (ii) the Service Provider may assign or novate those agreements to RailCorp in the event of the termination or expiry of this Master Services Agreement or that consent to such assignment or novation will be given in those circumstances; and
 - (iii) no novation or transfer fee is payable on novation or transfer of those third party arrangements to RailCorp on termination or expiry of this Master Services Agreement.
- (b) The Service Provider warrants that, as of the Execution Date, will not enter into any software licence or other agreement which does not comply with the requirements of this clause without RailCorp's prior written consent, such consent not to be unreasonably withheld or delayed.

22.11 Transition Out Plan

- (a) RailCorp and the Service Provider shall establish a working group to develop a draft Transition Out Plan. The Transition Out Plan shall be a draft detailed plan for the transition of the Services to RailCorp or to one or more third parties nominated by RailCorp and will be updated once details of those parties, their transition in plan to RailCorp, etc. are provided to the Service Provider. The draft Transition Out Plan is to be submitted to RailCorp for approval by a date agreed by the parties. For the avoidance of doubt and notwithstanding clause 22.3, development of the Transition Out Plan will be undertaken as part of Disengagement Assistance and will be chargeable in accordance with clause 22.4.
- (b) If the working group does not (acting reasonably) agree a draft Transition Out Plan by the date set forth in clause 22.11(a) due to a dispute, then the Parties will attempt to resolve such Dispute in accordance with clause 24 (Dispute Resolution).
- (c) The Service Provider will work with RailCorp, participate in working groups and provide assistance to ensure that the Transition Out Plan is continuously updated to accurately reflect changes in:

- (i) the Services; and
- (ii) other matters within the scope of the Transition Out Plan.

22.12 Failure to provide Disengagement Assistance

- (a) Except where due to an unresolved bona fide Dispute, if the Service Provider fails to provide, or threatens not to provide, Disengagement Assistance to RailCorp, the Service Provider acknowledges that RailCorp will suffer irreparable harm which may not be compensable by an order for damages.
- (b) The Service Provider agrees that it will not oppose any application for a court order compelling it to provide Disengagement Assistance in accordance with this Master Services Agreement.

22.13 Arrangements for Service Provider Locations

- (a) If RailCorp notifies the Service Provider that RailCorp or another party which is to provide the Services or services like the Services to RailCorp ("**Successor Service Provider**"). requires the use of the Main Service Provider Location for any period beyond the termination or expiration of the Master Services Agreement, the Service Provider must for the period nominated by RailCorp enter into a Data Centre Services Agreement with RailCorp for the part or parts of the Main Service Provider Location occupied by equipment owned or leased by RailCorp which:
 - (i) allows access by the RailCorp or Successor Service Provider to those locations and allows RailCorp or Successor Service Provider to place, use or manage any equipment on those locations; and
 - (ii) provide for the provision of such services to RailCorp as are necessary for RailCorp or Successor Service Provider to operate the equipment owned or leased by RailCorp including any services which the Service Provider provides to other occupants of the Service Provider Locations.
- (b) The Service Provider must ensure that:
 - (i) the services fee charged to RailCorp for use of the locations as contemplated for under clause 22.13 is no more than the Service Provider charges to any of its other customers for comparable volumes of the same or similar services as RailCorp; and
 - (ii) that the terms of the Data Centre Services Agreement are at least as good as the terms on which the Service Provider provides space and services to each of its other customers using comparable services as RailCorp,provided that RailCorp will be responsible for all costs related to the establishment of a separate caged area within the Main Service Provider Location, where such is required.
- (c) If RailCorp notifies the Service Provider that RailCorp or Successor Service Provider requires the use of the Disaster Recovery Site for any period beyond 31 January 2017, the Service Provider will exercise reasonable endeavours to procure that Global Switch for the period nominated by RailCorp:
 - (i) within 10 days of RailCorp's notification under clause 22.13(c), enter into an agreement with RailCorp for part or parts of the Disaster Recovery Site occupied by equipment owned or leased by RailCorp, allowing

access by RailCorp or Successor Service Provider to those locations on terms no less favourable than the Global Switch Co-Location Agreement; and

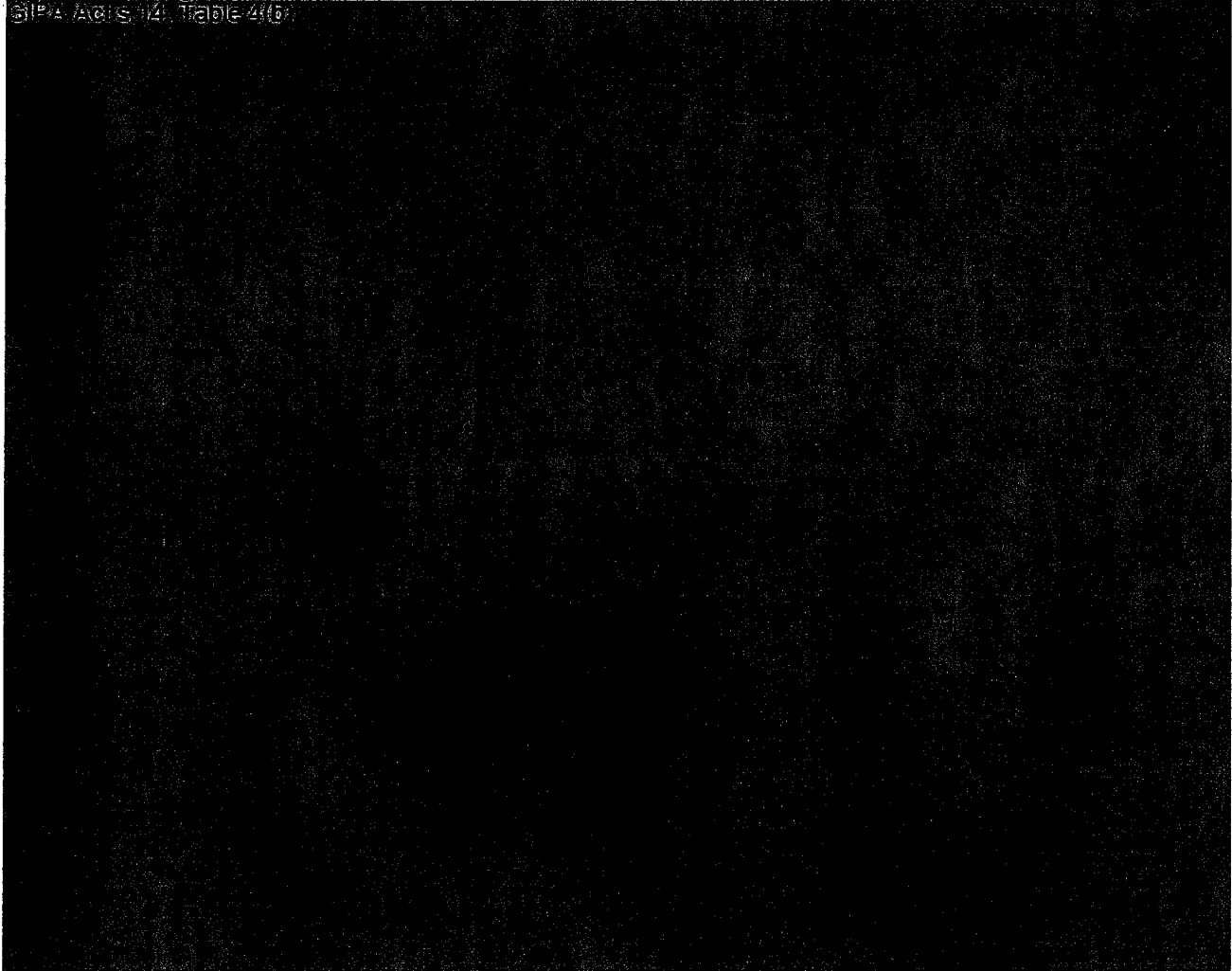
- (ii) allow RailCorp or Successor Service Provider to place, use or manage any equipment in those locations,

upon payment of the applicable charge to Global Switch and will exercise reasonable endeavours to procure that the fees Global Switch charges to RailCorp are no more than the fees Global Switch charges to the Service Provider for such location (apportioned as necessary to take account of the Service Provider's use of such location either for itself or on behalf of its other customers).

- (d) If required by RailCorp, the Service Provider must co-operate with RailCorp or Successor Service Provider and will exercise reasonable endeavours to procure that Global Switch co-operates with RailCorp or Successor Service Provider in accordance with the Transition Out Plan to ensure that RailCorp or Successor Service Provider can transfer the services being provided from the Service Provider Locations to suitable alternative locations at a time or times notified to the Service Provider by RailCorp."

Schedule 2 – Amendments to Charges

IPFA A&S 14, Table 4(b)



Schedule 3 – Confidentiality Deed

1 Schedule 26

A new Schedule 26 is inserted with the following content:



**Transport
Roads & Maritime
Services**

Confidentiality Deed Poll

| | |
|--|---|
| (Owner of confidential information) | Owner Name: ACN & ABN: Address: Attention: |
| Recipient of confidential information | Recipient Name: ACN & ABN: Address: Attention: |
| Approved Purpose (see clause 2.1) | [NOTE: Insert the purposes for which the Recipient can use the Confidential Information eg: "to prepare a tender for RFP # 123456"] |
| Date | Signed and Delivered as a Deed on the day of 20 |

| | |
|--|---|
| Signed in accordance with section 127 of the Corporations Act Signature of Director _____ Name _____ [Use if Recipient is a Company] | Signature of 2 nd Director or The Company Secretary _____ Name _____ |
|--|---|

| | |
|---|--|
| Signed as a Deed by the Recipient in the presence of | |
|---|--|

| | |
|--|---|
| <p>Signature of Witness: _____</p> <p>Name: _____</p> <p>[Use if Recipient is an individual]</p> | <p>Signature of Recipient _____</p> <p>Name _____</p> |
|--|---|

| | |
|--|---|
| <p>Signed As A Deed for and on behalf of the Recipient</p> <p>Signature of Witness: _____</p> <p>Name _____</p> | <p>Signature of Delegate or Authorised Person _____</p> <p>Name _____</p> <p>Position /Title _____</p> <p>The signatory warrants he is duly authorised to sign</p> |
|--|---|

Confidentiality Deed Poll

You enter into this Deed Poll ("agreement") in consideration for our agreement to allow you access to Confidential Information

1. What is the Confidential Information?

- 1.1 The Confidential Information governed by this agreement is information which you obtain from us in connection with the Approved Purpose (whether or not recorded in any form). It also includes all information relating to our business policies, plans, strategies, financial details, proposals, systems, ideas, methods, know-how and Intellectual property. It also includes information directly or indirectly derived from that information.
- 1.2 It does not include information which:
- (a) is or becomes part of the public domain (unless information is in or becomes part of the public domain because it has been disclosed without our consent);
 - (b) was already lawfully known to you on a non-confidential basis;
 - (c) is provided to you by another person who is in possession of it lawfully and can disclose it to you on a non-confidential basis; or
 - (d) is independently developed by you without access to the Confidential Information.
- 1.3 The Confidential Information always remains our property. This agreement does not give you any right, title or interest in it.

2. Your use of Confidential Information

- 2.1 You must use the Confidential Information solely for the Approved Purpose. You must not use it for any other purpose, or allow any other person to do so without our written consent.
- 2.2 You must not disclose the Confidential Information to any other person without our prior written consent. If we consent then you must ensure that other person signs a confidentiality agreement on the same terms as this agreement and you remain responsible for their actions.
- 2.3 You may disclose the Confidential Information to your employees and contractors on a strict need-to-know basis for the Approved Purpose provided you expressly inform them that it is our Confidential Information and you ensure that they owe you legally enforceable confidentiality obligations in respect of it. At any time we may require that you obtain a confidentiality undertaking from those persons in our favour.
- 2.4 You may disclose the Confidential Information as strictly required by law but you must inform us first and seek to limit the terms of that disclosure in any manner we reasonably request.
- 2.5 You must take reasonable steps to protect the Confidential Information and keep it secure from unauthorised access.
- 2.6 You must inform us as soon as possible if:
- (a) you become aware or suspect that there has been any unauthorised disclosure or use; or
 - (b) you are required to disclose the information by law.
- 2.7 You must return or destroy (at our option) the Confidential Information and all copies of it when you no longer require it for the Approved Purpose or on our earlier request.

3. General

- 3.1 This agreement contains the entire agreement between both of us in relation to the Confidential Information and supersedes all other discussions, representations and statements about the Confidential Information.
- 3.2 This agreement may be varied or waived only if we both agree in writing.
- 3.3 You must not assign your rights or obligations under this agreement without our prior written consent.
- 3.4 If we do not exercise a right at any time in connection with a default under this agreement, this does not mean that we have waived the right or cannot exercise it later.

4. Privacy

If any Personal Information is disclosed to you by us or on our behalf, you must not use or disclose it except for the Approved Purpose; and notify us of any request for access to that information. You must also comply with any reasonable direction which we give you relating to our obligations under Privacy Laws.

5. Governing law

The laws of New South Wales, Australia, govern this agreement and we both submit to the non-exclusive jurisdiction of the courts of that place.

6. Indemnity

You undertake to indemnify us against all liability or loss arising directly or indirectly from, and any costs, charges and expenses incurred in connection with:

- (a) any breach by you of this Deed; or
- (b) any act or omission by any of your representatives which, if done or omitted to be done by you, would be a breach of your obligations under this Deed.

7. Injunction

You agree that damages are not a sufficient remedy for us for any breach of this agreement and we are entitled to specific performance or injunctive relief.

8. End of this agreement

This agreement ends when:

- (a) we notify you in writing it ends; or
- (b) it is replaced by a later agreement which protects the Confidential Information to the same or similar degree; or
- (c) the Confidential Information is no longer confidential (but not through a breach by you or anyone you have disclosed it to).

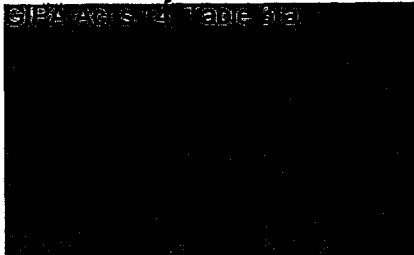
9. Definitions

In this agreement, unless the contrary intention appears:

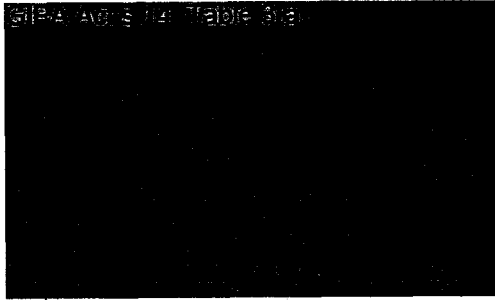
Approved Purpose means the purpose described on the front page of this agreement;
Confidential Information has the meaning as described in clause 1 of this agreement;
Personal Information has the same meaning it has in the Privacy Act;
Privacy Laws means the Privacy & Personal Information Protection Act 1998 (NSW);
we and us and our means the person named on page 1 as the owner of Confidential Information;
you means the person named on page 1 as the recipient of Confidential Information.

Executed as an Agreement in Sydney.

**Executed for and on behalf of Sydney
Trains by an authorised delegate in the**



Print Name



Print Name

**Executed for and on behalf of Fujitsu
Australia Limited by its authorised
representative in the presence of:**

Witness Signature

Print Name

Authorised Representative Signature

Print Name

Sydney Trains
Fujitsu Australia Limited

Amendment Agreement

Amendment to Master Services Agreement for Information Technology Goods and Services

Contents

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This Agreement is made on

Parties

- 1 **Sydney Trains** (ABN 38 284 779 682), a public subsidiary corporation of RailCorp constituted under the provisions of the Transport Administration (General) Amendment (Sydney Trains and NSW Trains) Regulation 2012 of 477 Pitt Street, Sydney, NSW 2000 (**Sydney Trains**)
- 2 **Fujitsu Australia Limited** (ABN 19 001 011 427) of 118 Talavera Road, Macquarie Park NSW 2113 (**Fujitsu**).

Recitals

- A Rail Corporation New South Wales (ABN 59 325 778 353) (**RailCorp**), Rail Infrastructure Corporation (ABN 21 298 300 693) (**RIC**) and Fujitsu are parties to a Master Services Agreement dated 8 August 2006 as amended (the **Principal Agreement**) under which Fujitsu provides information technology goods and services on the terms set out in the Principal Agreement.
- B On 17 June 2013, the Minister for Transport made an Order under the Transport Administration Act 1988 Section 94, vesting the assets, rights and liabilities of RailCorp arising out of information technology contracts, including the Principal Agreement, in Sydney Trains and accordingly references to RailCorp are to be construed as references to Sydney Trains.
- C Fujitsu provides certain Services to RailCorp under the Principal Agreement, much of which is to be transitioned to other parties as part of the Next Generation Infrastructure Services (NGIS) program
- D On 23 December 2013 the parties amended the Principal Agreement, particularly around the provisions for disengagement of the services (**First Amendment Agreement**). Since then, there have been subsequent Amendment Agreements executed to meet specific requirements of the NGIS program.
- E On 28 October 2016 Transport for NSW notified the Service Provider of its requirement to an extension of the Disengagement Period, and the planned Service Cutover Date for various Services or parts thereof. In an email sent on 15 November 2016, Fujitsu notified Transport for NSW of the principles/elements which the Amendment Agreement is to capture for the extension period in relation to Transport for NSW's requirements.
- F Transport for NSW has requested that clause 22.3(d) be amended such that a DESIA is only required upon request of Transport for NSW. Transport for NSW acknowledges that, where no DESIA is requested, this removes the Service Provider's ability to ascertain and notify it of potential risks or Service interruptions in relation to the particular disengagement event to be undertaken under each DAR. Transport for NSW acknowledges and accepts the potential for increased risk as a result.
- G The parties wish to amend the Principal Agreement in the manner set out in this Amendment Agreement.

It is agreed as follows.

1 Definitions and Interpretation

- (a) Words which are defined in the Principal Agreement and which are used in this Amendment Agreement have the same meaning in this Amendment Agreement as in the Principal Agreement, unless the context requires otherwise.
- (b) The provisions of clauses 1.1, 1.2 and 1.3 of the Principal Agreement form part of this Amendment Agreement as if set out at length in this Amendment Agreement.

2 Amendments

In consideration for the mutual promises contained herein (including the payment of certain fees by Sydney Trains to Fujitsu and the provision by Fujitsu of certain services to Sydney Trains), the Principal Agreement is amended, on and from the Effective Date, as set out in:

- (a) Schedule 1 (Amendments to the Principal Agreement), which replaces and supersedes clause 22 of the Principal Agreement;
- (b) Schedule 2 (Amendments to Charges), which replaces Schedule 4 to Principal Agreement and makes consequential amendments; and
- (c) Schedule 3 (Amendments to Services Schedules) which replaces the applicable Services Schedule.

3 Effective Date

This Amendment Agreement takes effect, and the parties agree to be bound by the Principal Agreement as amended by this Amendment Agreement, from 31 January 2017 (the *Effective Date*).

4 Remaining Provisions Unaffected

Except as specifically amended by this Amendment Agreement, all terms and conditions of the Principal Agreement remain in full force and effect including with regards the provision of Services. With effect from the Effective Date (as defined in clause 3), the Principal Agreement as previously amended and by this Amendment Agreement is to be read as a single integrated document incorporating the amendments effected by this Amendment Agreement.

5 Governing Law and Jurisdiction

This Amendment Agreement is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

6 Counterparts

This Amendment Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Schedule 1 – Amendments to the Principal Agreement

1 Definitions

The definition of "Centralised Computing Services" is inserted into clause 1.1 of the Principal Agreement with the following meaning:

Centralised Computing Services means the:

- (i) Data Centre & Server Services set out in Services Schedule 02B;
- (ii) that part of the Cross Functional Services set out in Services Schedule 02A provided to support the Data Centre & Server Services; and
- (iii) Disaster Recovery Services set out in Services Schedule 02E.

The definition of "Services" is deleted from clause 1.1 of the Principal Agreement and replaced by the following:

Services means the Initial Services, and any other services provided by the Service Provider, pursuant to a Services Schedule or Project under this Master Services Agreement, and from the expiry or termination of this Master Services Agreement, in accordance with the structure, including the Defined Services, as set out in Schedule 4. The disengagement of a part of a Service(s) includes any component of the Services or a Defined Service.

The definition of "Defined Services" is inserted into clause 1.1 of the Principal Agreement with the following meaning:

Defined Services means the subset of Services described as such in Schedule 4, as amended from time to time.

The definition of "Transition Out Plan" is deleted from clause 1.1 of the Principal Agreement and replaced by the following:

"Transition Out Plan" means the transition out plan finalised in accordance with clause 22.13

2 Clause 22

Clause 22 of the Principal Agreement (as Amended by the First Amendment Agreement) is deleted and replaced in its entirety by the following:

"22 Disengagement Assistance

22.1 Introduction

- (a) RailCorp requires the Service Provider to:
 - (i) continue the provision of some or all of the Services under clause 22.7; and
 - (ii) provide the Disengagement Assistance under clause 22.3 and 22.4, in each case for a period from the effective date of termination or expiration of this Master Services Agreement to 31 January 2018 ("**Disengagement Period**") on the terms of this clause 22, and the Master Services Agreement will continue in full force and effect during such Disengagement Period.
- (b) Subject to clause 22.15(c), RailCorp may request the Service Provider to extend the Disengagement Period, subject to RailCorp providing a written notice no less than 3 months prior to the end of the Disengagement Period confirming the necessity for an extension, and setting out the required term and scope of such an extension and the Services or parts of Services it will relate to.

The parties will act in good faith to agree the terms applicable to any such extension of the Disengagement Period which will be based on the following principles:

- (i) Data Centre Services set out in Services Schedule 02B (as amended) will be for a minimum twelve (12) months;
- (ii) Services Schedules excluding Services Schedule 02B (Data Centre Services) may be extended for a maximum six (6) months, unless agreed otherwise by the parties in writing;
- (iii) a review of the baseline minimum volumes and Minimum Charges for each Service, or part thereof, applicable to the further extension period;

GIPA ADRS 14 Table 4(b)



22.2 Definitions

- (a) Capitalised terms that are not defined in clause 1.1 or Schedule 01 of this Master Services Agreement, but which are defined herein, have the meaning given to them herein.
- (b) **"Disengagement Assistance"** is that assistance as is reasonably requested by RailCorp and is provided by the Service Provider to RailCorp during the Disengagement Period in accordance with this clause 22 from the expiry of the Term or the effective date of termination of this Master Services Agreement or a Services Schedule, to achieve an orderly and staged transition of Services (or part thereof) with minimal interruption from the Service Provider to RailCorp or one or more parties nominated by RailCorp, where the Service Provider:
 - (i) assists with the preparation of Transition Out Plans in accordance with clause 22.13;
 - (ii) complies with all obligations set out in any applicable Transition Out Plan;
 - (iii) makes available to RailCorp all information and assistance reasonably requested by RailCorp to facilitate the orderly transfer of the relevant Service(s) to RailCorp or Successor Service Provider;
 - (iv) makes available such assistance in the transfer of knowledge and information as is reasonably necessary to assist RailCorp or one or more other parties to provide the Services or services like the Services to RailCorp as RailCorp reasonably requests;
 - (v) makes available to RailCorp or one or more other parties nominated by RailCorp of such reasonable access to Service Provider Personnel (including Key Service Provider Positions and other Service Provider Personnel who have worked on RailCorp's account) and Service Provider

locations (including the Service Provider Data Centre) as is reasonably necessary to assist RailCorp or one or more other parties to provide Services or services like the Services to RailCorp;

- (vi) does not do anything which may be obstructive and/or disruptive;
 - (vii) if requested by RailCorp, participates in a due diligence process to assist one or more new suppliers to assess the scope and nature of the services to be provided to RailCorp, including the provision of information and reasonable access to Service Provider Personnel and the Service Provider locations (including the Service Provider Data Centre); and
 - (viii) provides such other assistance as may reasonably be requested by RailCorp.
- (c) **"Main Service Provider Location"** means the Fujitsu Data Centre in North Ryde from where Service Provider provides data centre services.
- (d) **"Service Cutover Date"** is the completion of the Disengagement Assistance for, and/or disengagement of, a relevant Service or part of a Service, by which date the Service Provider will no longer be performing those Services or parts of Service and, subject to any requirement for any continuing Services after the Service Cutover Date for which Charges apply, any Charges directly relating to those Services or parts of Services will cease at such date.

22.3 Disengagement Assistance – General

- (a) Subject to clause 22.4, if RailCorp requires the Service Provider to provide any Disengagement Assistance in relation to the Services or part thereof, then except as it relates to Service Desk (for which no such notice period applies), RailCorp must provide the Service Provider no less than 8 weeks prior written notice of its requirement for that Disengagement Assistance. The parties acknowledge that RailCorp may notify the Service Provider under this clause 22.3(a) at different times during the Disengagement Period in order to receive Disengagement Assistance in relation to each Service, or parts of each Service, as notified by RailCorp. No Disengagement Assistance is provided within the notice period set out in this clause 22.3(a). Any such disengagement notice issued after the Effective Date must include the planned Service Cutover Date applicable to the Services or part set out in that notice
- (b) Any Disengagement Assistance provided by the Service Provider in relation to a Service other than as set out in clause 22.4 will be provided by the Service Provider for a period of:
- (i) not less than 8 weeks; or
 - (ii) where RailCorp has rescinded, withdrawn or has issued a written request to extend the Service Cutover Date in accordance with clause 22.5(a) for a specific Service(s) or part thereof as contained in a previously issued Disengagement Notice:
 - (A) not less than 8 weeks; and
 - (B) not greater than 9 months,
- unless notified by RailCorp pursuant to clause 22.3(c) or otherwise agreed by the parties in writing
- (c) RailCorp will notify the Service Provider in writing either:

- (i) prior to commencement of Disengagement Assistance under clause 22.3(b), or
- (ii) as it relates to the Services which are the subject of disengagement from the Service Provider no less than 6 weeks prior to the planned Service Cutover Date notified by RailCorp to the Service Provider in relation to those Services

should it require the Service Provider to provide any Disengagement Assistance or Services beyond the completion of disengagement of the given Services to which the disengagement activities relate, which such will be for a minimum a period to be reasonably agreed on terms to be agreed between the parties in good faith, in which case the Service Provider will provide such Disengagement Assistance in accordance with the requirements notified by RailCorp subject to the terms of this clause 22.

- (d) Disengagement Assistance requests will be issued to the Service Provider by RailCorp utilising the agreed Disengagement Assistance Request (DAR) template, which sets out the specific details of the request, including as a minimum, the applicable Service Cutover Date. The parties agree to update the DAR template to provide for the recording of any change, or potential impact, to Service Levels and any other relevant information previously contained in the DESIA.

The parties will review and discuss the request and details contained in each DAR on a weekly (or as agreed) basis, and update each DAR (where applicable) with relevant information from such reviews eg: whether a Service Level(s) no longer applies or is potentially impacted by the implementation of the DAR, such reviews (where applicable and agreed) may include the Service Provider's Business Assurance review process (FBA). At the sole discretion and request of TfNSW, the parties will populate a Disengagement Event Service Impact Assessment form (DESIA) for the relevant DAR(s) based on the information provided by RailCorp, summarising the request and outlining the change to the Services, potential Service impacts or interruptions, Service risks, impacted Service Levels and other related information.

The changes sought in the referenced DAR(s), as updated by agreement, and where applicable approved DESIA, will be actioned in accordance with the operational Change Management process.

For the avoidance of doubt, clause 22.7 continues to apply including where a DESIA is not required.

- (e) RailCorp acknowledges and accepts, that Service Provider is not responsible for the completeness of the information provided by RailCorp or its nominee in the DAR, and that the impacts and risks set out in the DESIA are based on the information provided. RailCorp as Service Integrator, is responsible for, and will undertake its own risk assessment of the proposed change(s) to the Services.

22.4 Disengagement Assistance – Centralised Computing Services

- (a) If RailCorp requires the Service Provider to provide any Disengagement Assistance for Centralised Computing Services, RailCorp must provide the Service Provider with a notice in writing of its requirement to receive such Disengagement Assistance in accordance with clause 22.3. The Service Provider must begin performing Disengagement Assistance with planning activities for Centralised Computing Services as soon as practicable, and in any event within fourteen (14) days of receipt of such a notice and the DAR for the relevant Service or part of a Service from RailCorp. For the avoidance of doubt, clauses 22.3(d) to 22.3(e) inclusive continue to apply. Subject to clauses 22.3, 22.4(b), 22.4(c) and 22.5(b), and unless otherwise agreed, the Service Provider will

continue to provide Disengagement Assistance as requested for the later of the duration of the period stated in the disengagement notice or until the Service Cutover Date.

- (b) The parties acknowledge and agree that Service Provider Personnel will be excused from their obligations to perform Disengagement Assistance under clause 22.4(a) if a Major Incident is declared by Service Provider and the parties agree (acting reasonably) in writing that such Personnel are required to resolve the Major Incident rather than perform Disengagement Assistance, provided that the performance of such Personnel is only excused for the duration of the Major Incident and to the extent necessary to participate in root cause determination and resolution of the Major Incident.

RailCorp has adopted a 'Business Impact Rating' rating process for Major Incident prioritisation. The process involves an assessment of the impact that the incident is having on RailCorp's business. Where RailCorp's assessment of an incident falls within the definition of a Major Incident, RailCorp may request that the Service Provider declare such and proceed accordingly. For the purposes of this clause 22.4(b), "Major Incident" means any one or more of the following:

- (A) a failure of Services infrastructure which results in one or more business critical Services being unavailable;
 - (B) an unresolved Severity Level 1 incident with no clear path of action to resolution and/or workaround;
 - (C) any in scope messaging incident where messaging is unavailable for five (5) minutes or more; and/or
 - (D) a Service issue determined to be a major incident following a request from the Service Provider's High Priority Incident team (HPI) or SDM or the Service Provider's senior management.
- (c) Notwithstanding anything else in this clause 22, the parties acknowledge that RailCorp must provide the Service Provider with at least six (6) weeks' notice prior to any Service Cutover Date for any Centralised Computing Services or part of any Centralised Computing Services required by RailCorp. In addition, RailCorp will include in any such notice any further period it may require the Service Provider to continue to provide any Centralised Computing Services or part of any Centralised Computing Service, resources and/or equipment, providing specific details of its requirements, beyond the proposed Service Cutover Date contained in that notice. For the avoidance of doubt, the provision of such Centralised Computing Services, resources and/or equipment by Service Provider will be chargeable in accordance with clauses 22.6 and 22.8 as applicable.
- (d) RailCorp may notify the Service Provider under clause 22.4(c) at different times during the Disengagement Period in order to receive Disengagement Assistance in relation to Centralised Computing Services, or parts of any of those Services, as notified by RailCorp. The Service Provider will provide Disengagement Assistance for the period required to achieve the Service Cutover Date for the Service or part of a Service.

22.5 Further Disengagement Assistance Provisions

- (a) Following RailCorp's provision of a notice under either of clause 22.3(a) or 22.4(c), any subsequent changes to the Services or Disengagement Assistance

specified in such notice issued by RailCorp will be agreed by the parties in accordance with the Change Control Procedure.

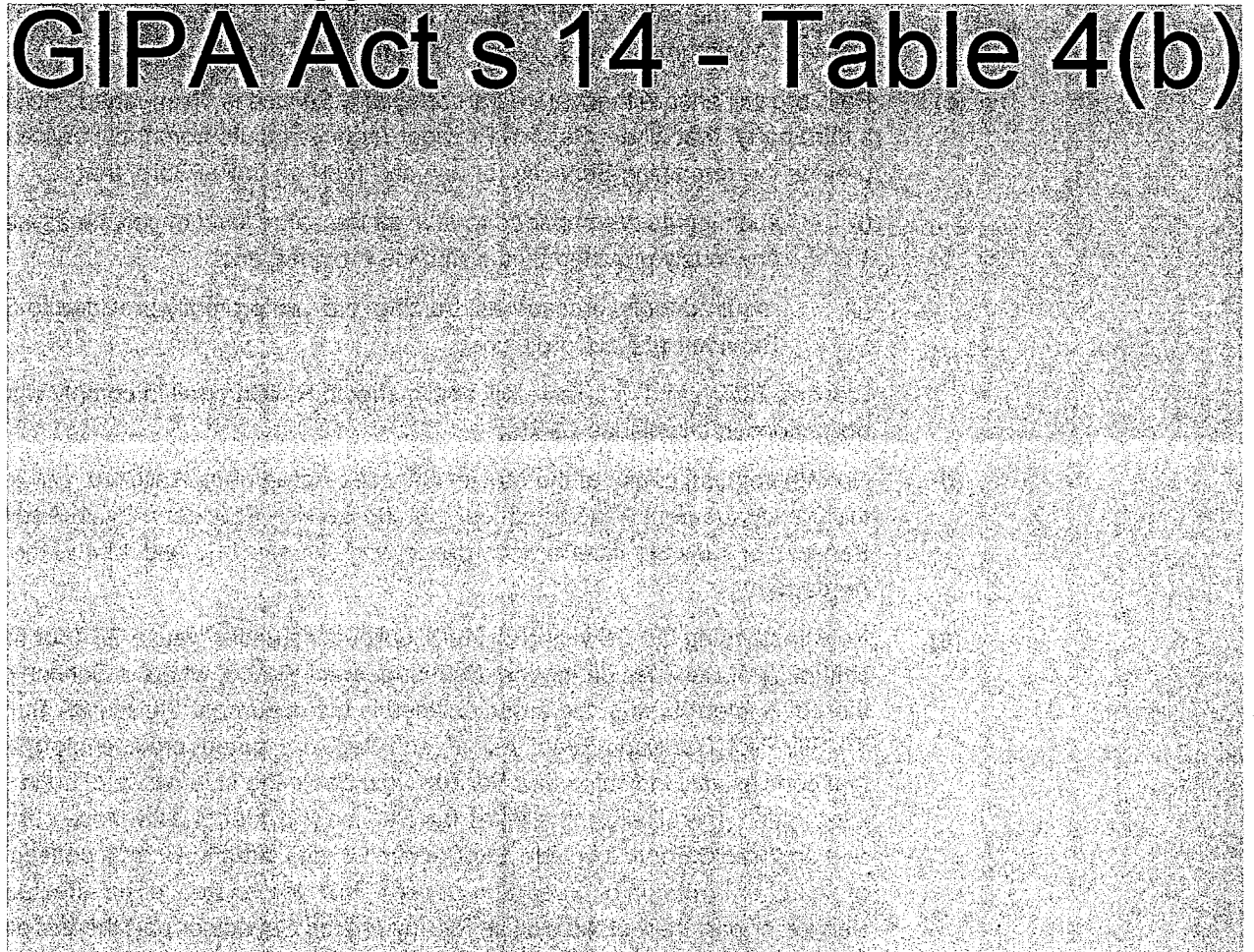
- (b) Upon completion of any Disengagement Assistance requested by RailCorp under clauses 22.3 or 22.4 (including any changes to the Services and Disengagement Assistance agreed by the parties under clause 22.5(a)), the Service Provider will have no further obligations in relation to that disengaged or de-scoped Service or part of a Service, including as to Service Levels, except as specifically provided for otherwise in the Master Services Agreement.
- (c) Without limiting clause 8 (Intellectual Property Rights), the Service Provider will not be required to make any of its proprietary information available to any Third Parties:
 - (i) unless and until such Third Parties execute a Confidentiality Deed substantially in the form of schedule 26;
 - (ii) unless RailCorp considers provision of the information is reasonably required to achieve an orderly and staged transition of Services to RailCorp or one or more parties nominated by RailCorp,

but in no event will the Service Provider be required to provide Critical Proprietary Information to Third Parties and for the avoidance of doubt, nor is RailCorp authorised to do so. For the purposes of this clause 22, Critical Proprietary Information means confidential information of the Service Provider or Third Party comprising project management methodologies; Supplier server build methodologies; monitoring tools and scripts developed by the Service Provider or a Third Party for use with multiple customers (except where these are generally made available to other parties under licence); Supplier processes in relation to IT Service Management (ITSM) implementation; capacity planning methodologies (excluding the Capacity Plan); pricing models, tools and methodologies; and software development methodologies.

- (d) The Service Provider must, by the end of the Disengagement Period or by such earlier date as RailCorp may specify (provided that RailCorp shall not be permitted to require the return, destruction or delivery of items under this clause 22.5(d) where the Service Provider still requires such information or documentation in order to provide the Services):
 - (i) return or destroy (at RailCorp's election) all copies of RailCorp Data, Confidential Information of RailCorp and other material of RailCorp in its, or its agent's possession, custody or control (other than Excepted Information which may be retained by the Service Provider for archival purposes only, subject to continuing obligations of confidentiality and privacy); and
 - (ii) deliver to RailCorp the Developed Work.
- (e) The Service Provider will provide Disengagement Assistance regardless of:
 - (i) the reason for termination or expiration; and
 - (ii) whether the termination is of the whole of or part of the Services.

22.6 Fees for Disengagement Assistance

GIPA Act s 14 - Table 4(b)



22.7 Continuity of Services during Disengagement Period

- (a) The Service Provider will, until the earlier of:
 - (i) the Service Cutover Date in respect of a relevant Service or part of a Service; or
 - (ii) expiry of the Disengagement Period,and subject to this clause 22.7, comply with each of the following requirements:
 - (iii) continue to provide the Services in accordance with the terms of this Master Services Agreement (including the Service Levels);
 - (iv) not make any material changes to the level of Service or number of Service Provider Personnel assigned to perform functions for RailCorp under the Master Services Agreement (except to the extent that the number of Service Provider Personnel is reduced due to Disengagement Assistance resulting in a reduction in the requirement for Service Provider Personnel, and with such reduction not effecting the level of Service received by RailCorp); and
 - (v) not change the level of Service or reassign the Service Provider's Personnel away from performance of functions under the Master Services Agreement.

- (b) Notwithstanding anything else in this clause 22, the parties acknowledge that the Service Provider will continue to provide, and RailCorp will continue to receive and pay for, the provision of Services in alignment with Charges, including the Services Minimum Charges, set out in clause 22.8 and Schedule 4.
- (c) RailCorp will ensure that where part or all of a Service is disengaged, including to a third party, that where Service Provider requires inputs from that service for it to provide the remaining Services (or any part thereof) to RailCorp, that :
 - (i) such inputs are provided to at least the same level of service as was previously provided by the Service Provider; and
 - (ii) required tools, procedures, training, etc. are promptly provided to Service Provider, at RailCorp's cost.

Clauses 22.7(j) to (l) inclusive will apply, should RailCorp fail to comply with its obligations in this clause 22.7(c).

- (d) Notwithstanding expiry of the Master Services Agreement, RailCorp may, during the Disengagement Period, request that the Service Provider provide Additional Services or New Services in accordance with clauses 11.3 and 11.4 of the Agreement.
- (e) Notwithstanding the Service Provider's obligations under clause 22.7 for the continuity of Services during the Disengagement Period, where a Service or part thereof is interrupted in the areas outlined in the document "Fujitsu BA Summary TfNSW Pilot Transition Event 1.xlsx", and RailCorp cannot provide information that conclusively indicates that Service Provider is the sole cause of such interruption, then RailCorp relieves the Service Provider of all Service obligations and applicable Service Levels and Service Credits directly, or as a consequence of an act or omission of other than Service Provider, related to the affected Service or part thereof, as well as for any related Service or part thereof directly or consequentially adversely impacted as a result.
- (f) Where a Service interruption has occurred as set-out in clause 22.7(e), the parties will promptly meet to review the impact of the interruption and to determine any actions that might be taken to remediate the interruption.

RailCorp agrees to pay the Service Provider :

- (i) at then current Time and Materials Rates :
 - a. for Service Provider participation in this review,
 - b. for any actions required by RailCorp to be undertaken by the Service Provider subsequent to the interruption
- (ii) charges for remediation of impacts to the Service Provider's operating environment incurred as a result of activities in Transition Event 1.
- (g) The relief provided for in clause 22.7(e) shall continue until the Service Provider is able to provide the Services to the same level of service as was previously provided by the Service Provider before the commencement of Transition Event 1 and when accepted by RailCorp.
- (h) Where a Service or part thereof is interrupted as a result of a failure of the Service Provider's Service Desk tool (USD), the Service Provider's subsequent inability to provide the Services in the manner contemplated by this Master

Services Agreement shall not be considered a breach of its obligations under clause 22.7(a)(iii). If the Service Provider fails to remedy such interruption in accordance with the Service Levels, then the parties agree that the provisions of clause 6.4(d) of this Master Services Agreement shall apply to this failure.

- (i) The relief provided for in clause 22.7(h) shall continue until any of the following options are agreed between the parties (acting reasonably), and undertaken, at RailCorp's cost :

(A) the Service Provider is reasonably able to:

(1) restore the Services that were interrupted; and/or

(2) recover or repair the Service Desk tool (USD)

to the same level of service as was previously provided by the Service Provider prior to the interruption or failure, or

(B) the Service Provider replaces the Service Provider's Service Desk tool (USD) with a suitable replacement, or

(C) RailCorp provides an alternate tool,

and in each case, the parties have undertaken all reasonable activities necessary to enable the Service Provider to provide the Services to the same level of service as was previously provided by the Service Provider before 4 June 2016 and when accepted by RailCorp.

For the avoidance of doubt, whilst the Service Provider has made the issues with further extension of the use of USD known to RailCorp and recommended an upgrade of this tool, RailCorp acknowledges the issues and risks of continued use and has decided to continue use of USD instead of undertaking an upgrade.

- (j) Where a Service or part thereof is impacted and/or interrupted as a result of, or consequentially adversely impacted as a result of, a change to the Services where such is undertaken solely by RailCorp or its nominee, or is related to a disengagement activity including a request for Disengagement Assistance, then:

(A) the Service Provider will continue to exercise all reasonable efforts to provide the Services in accordance with the Service Levels; and

(B) where RailCorp cannot provide evidence that indicates that Service Provider is the cause of such interruption;

then

(C) the Service Provider will not be:

(1) in breach of its obligations to provide such Services or any related Service(s) or part thereof directly or consequentially adversely impacted or interrupted; and

to the extent that the Services provided fall below the minimum Service Level through no fault of the Service Provider,

(2) in breach of the applicable Service Levels; or

(3) liable for related Service Credits

- (k) Where a Service is impacted, or an interruption has occurred, as set-out in clause 22.7(j), RailCorp will initially review the incident to determine the party that caused the interruption or impact. If this process is inconclusive, the parties will promptly meet to review the impact or interruption in accordance with the

Problem Management Process and to attempt to determine the root cause and any actions that might be taken to remediate such impact or interruption. For clarity, the Service Provider agrees to provide assistance and data reasonably requested by RailCorp to assist in any review process.

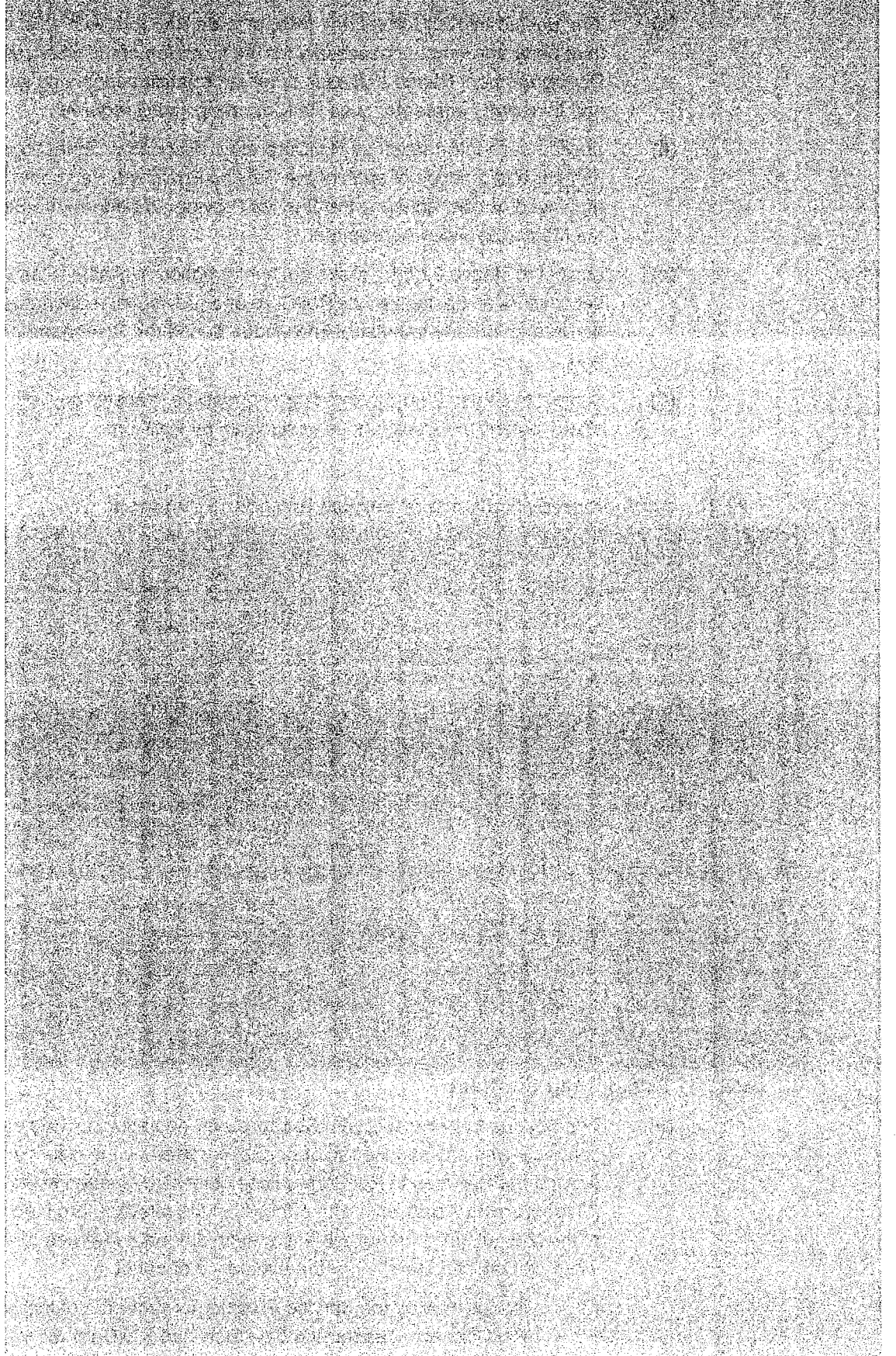
RailCorp agrees to pay the Service Provider:

- (i) at then current Time and Materials Rates :
 - a. for Service Provider participation in this review;
 - b. for any actions required by RailCorp to be undertaken by the Service Provider subsequent to the interruption; and
 - (ii) charges for remediation of impacts to the Service Provider's operating environment incurred as a result of the changes undertaken.
- (l) The relief provided for in clause 22.7(j) shall continue until the Service Provider is able to provide the Services to the same level of service as was previously provided by the Service Provider before the change and when accepted by RailCorp.

22.8 Charges for Service Continuity during the Disengagement Period

GIPA Act s 14 - Table 4(b)

GIPA Act s 14 - Table 4(b)



22.9 Provision of information and access to Personnel

During the Disengagement Period, the Service Provider will:

- (a) if requested by RailCorp at any time, provide RailCorp with a list of resources and third party agreements necessary for the provision of the Services during the Disengagement Period and such other information concerning such resources and third party agreements as RailCorp reasonably requires;
- (b) provide such information as RailCorp may reasonably request relating to the number and function of each of the Service Provider's Personnel who are employed or contracted by the Service Provider to perform the Services under the Master Services Agreement;
- (c) subject to clause 22.5(b), make such information available to any potential successors as designated by RailCorp and provide all reasonable assistance to achieve an orderly transfer of knowledge during the Disengagement Assistance; and
- (d) subject to clause 22.5(b), to the extent possible, transfer any relevant knowledge to any potential successors as designated by RailCorp.

22.10 Acquisition by RailCorp of Service Provider Equipment

©IPAA 2014, Table 4(b)



22.11 Transferring Contracts

- (a) The Service Provider will, with RailCorp's co-operation, novate each of its contracts with any subcontractor or supplier used by the Service Provider to provide the Services to RailCorp unless otherwise directed in writing by RailCorp ("**Transferring Contract**") with effect from the relevant termination or expiry date of the Master Services Agreement or such other date agreed by the parties in writing ("**Transfer Date**"). For the avoidance of doubt:
 - (i) leases held by the Service Provider for provision of the Services to RailCorp are Transferring Contracts and RailCorp will either novate such

leases to itself or its Successor Service Provider or pay out the remaining lease commitments related to such; and

- (ii) the Global Switch Co-Location Agreement is not a Transferring Contract.
- (b) The Service Provider is responsible for complying with all obligations under the Transferring Contracts in respect of the period up until (but not including) the Transfer Date, and will indemnify RailCorp against all Losses arising out of or in relation to the non-payment, non-observance, or non-performance of any obligation arising under, or arising in respect of the Transferring Contract or founded on any fact, matter, occurrence, event or circumstance happening during or in respect of that period.
- (c) RailCorp is responsible for complying with all of the Service Provider's obligations under the Transferring Contracts in respect of the period on and from the Transfer Date and will indemnify the Service Provider against Losses, arising from claims relating to the non-payment, non-observance, or non-performance of any such obligations arising under, or arising in respect of, the relevant Transferring Contract or founded on any fact, matter, occurrence, event or circumstance happening during or in respect of the relevant period.

22.12 Agreements with third parties

- (a) Without limiting its obligations under clause 22.11, the Service Provider will use Commercially Reasonable Efforts to structure any new agreements with the licensors of third party software and its agreements with Third Parties for the purposes of providing Services during the Disengagement Period so that:
 - (i) the ongoing fees under those arrangements payable by RailCorp after the Transfer Date are consistent with and no higher than the fees payable by the Service Provider prior to the Transfer Date;
 - (ii) the Service Provider may assign or novate those agreements to RailCorp in the event of the termination or expiry of this Master Services Agreement or that consent to such assignment or novation will be given in those circumstances; and
 - (iii) no novation or transfer fee is payable on novation or transfer of those third party arrangements to RailCorp on termination or expiry of this Master Services Agreement.
- (b) The Service Provider warrants that, as of the Execution Date, will not enter into any software licence or other agreement which does not comply with the requirements of this clause without RailCorp's prior written consent, such consent not to be unreasonably withheld or delayed.

22.13 Transition Out Plan

- (a) The Transition Out Plan is the RailCorp plan for the transition of the nominated Services to RailCorp or to one or more third parties nominated by RailCorp. For the avoidance of doubt and notwithstanding clause 22.3 and 22.4, if the Service Provider assists with the development of the Transition Out Plan, it will be chargeable in accordance with clause 22.6.
- (b) RailCorp will provide to the Service Provider a Transition Out Plan for review and the Service Provider will submit a time and materials based proposal based on the requirements of, and information contained in, the Transition Out Plan in a reasonable timeframe.

- (c) Once the proposal is accepted by RailCorp, it will assist in the forming of a program of work with RailCorp to disengage Services.
- (d) Any amendments to the Transition Out Plan or within the program of work will be in accordance with Change Control Process or as otherwise agreed by the parties, noting that as the Service Provider's proposal is time and materials based in accordance with this clause 22.13(b) is therefore subject to charging based on actual effort and costs
- (e) The Service Provider will work with RailCorp and provide assistance to implement the Transition Out Plan and the program of work to be continuously updated to reflect changes in:
 - (i) the program of work; or
 - (ii) other matters within the scope of the Transition Out Plan; and
 - (iii) any changes to the Transition Out Plan or program of work which will be advised to the Service Provider and the Service Provider will, unless otherwise agreed due to complexity, provide a target response date within three business days of the impact of the changes.
- (f) RailCorp may create multiple Transition Out Plans to disengage different aspects of the Services during the Disengagement Period. Each Transition Out Plan will be developed in accordance with this clause 22.13.

22.14 Failure to provide Disengagement Assistance

- (a) Except where due to an unresolved bona fide Dispute, if the Service Provider fails to provide, or threatens not to provide, Disengagement Assistance to RailCorp, the Service Provider acknowledges that RailCorp will suffer irreparable harm which may not be compensable by an order for damages.
- (b) The Service Provider agrees that it will not oppose any application for a court order compelling it to provide Disengagement Assistance in accordance with this Master Services Agreement.

22.15 Arrangements for Service Provider Locations

- (a) If RailCorp notifies the Service Provider that RailCorp or another party which is to provide the Services or services like the Services to RailCorp ("**Successor Service Provider**") requires the continued use of the Main Service Provider Location during the Disengagement Period or from any other date agreed between the parties, the Service Provider must for the period nominated by RailCorp enter into a Data Centre Services Agreement with RailCorp for the part or parts of the Main Service Provider Location occupied by equipment owned or leased by RailCorp which:
 - (i) allows access by the RailCorp or Successor Service Provider to those locations and allows RailCorp or Successor Service Provider to place, use or manage any equipment on those locations; and
 - (ii) provide for the provision of such services to RailCorp as are necessary for RailCorp or Successor Service Provider to operate the equipment owned or leased by RailCorp including any services which the Service Provider provides to other occupants of the Service Provider Locations.
- (b) The Service Provider must ensure that:

- (i) the services fee charged to RailCorp for use of the locations as contemplated for under this clause 22.15 is no more than the Service Provider charges to any of its other customers for comparable volumes of the same or similar services as RailCorp; and
- (ii) that the terms of the Data Centre Services Agreement are at least as good as the terms on which the Service Provider provides space and services to each of its other customers using comparable volumes of the same or similar services as RailCorp,

provided that RailCorp will be responsible for all costs related to the establishment of a separate caged area within the Main Service Provider Location, where such is required.

- (c) RailCorp acknowledges and agrees that from the day following the Effective Date set out herein, RailCorp will be responsible for, and have a direct agreement with GlobalSwitch, for the provision of the Disaster Recovery Site.

In such agreement, RailCorp will obtain consent and access for the Service Provider to provide the relevant Services at, and in relation to, that Disaster Recovery Site.

For the avoidance of doubt:

- (i) the existence of the direct agreement and provision of access to the Disaster Recovery Site, are dependencies on RailCorp and any failure to provide such access in any way will be subject to clause 22.7(j) to (l);
- (ii) any Service Provider Equipment that is not purchased by RailCorp in accordance with clause 22.10, remains the property of Service Provider; and
- (iii) the Service Provider is no longer responsible for the provision of the Disaster Recovery Site, and clause 22.5(b) applies, from the day following the Effective Date set out herein.

Schedule 2 – Pricing

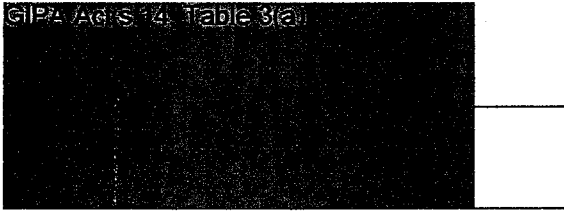
The parties agree and acknowledge that the current pricing matrix for the Principal Agreement which is set out in an excel spreadsheet as an attachment to Schedule 4 (Pricing) is deleted and superseded in all respects with effect from and on 31 January 2017 and replaced with the attached spreadsheet setting out the applicable Charges for each respective component of the Services

Schedule 3 – Services Schedules

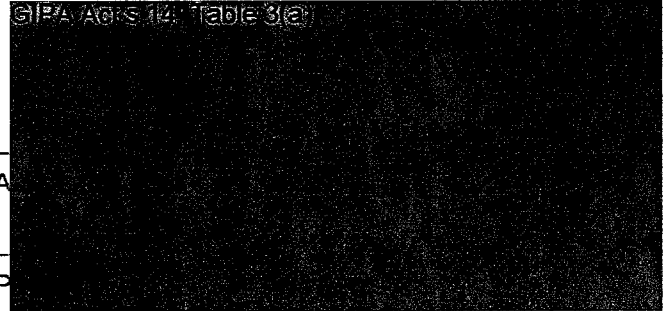
Services Schedule 02D (Service Desk) and 02E (Disaster Recovery) are deleted and replaced with the attached

Executed as an Agreement in Sydney.

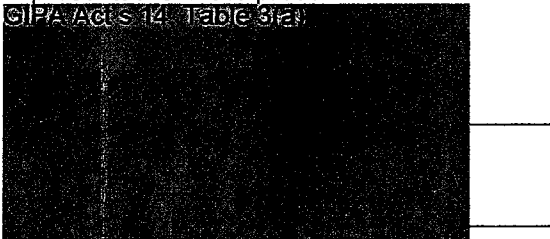
**Executed for and on behalf of Sydney
Trains by an authorised delegate in the
presence of:**



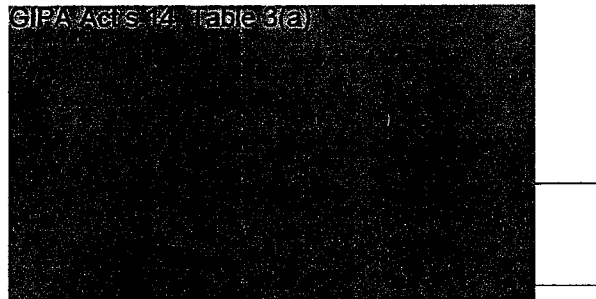
Print Name



**Executed for and on behalf of Fujitsu
Australia Limited by its authorised
representative in the presence of:**



Print Name



Print Name

25 January 2018

Mr Michael Street
Director, Commercial Management
Transport for NSW
477 Pitt Street
Sydney NSW 2000

LETTER AGREEMENT

Dear Mr Michael Street


Fujitsu Australia Limited (Fujitsu) acknowledges receipt of a request from Transport for NSW (TfNSW) dated 13 October 2017 to extend the Disengagement Period of the Master Services Agreement between Fujitsu Australia Limited (Fujitsu) and Sydney Trains (MSA).

TfNSW has requested additional time to complete negotiations of, and to execute, the amendment agreement to reflect the aforementioned extension of the Disengagement Period. This letter formalises discussions between Fujitsu and TfNSW where both parties acting in good faith have agreed that they will work toward execution of the Amendment Agreement to extend the Disengagement Period of the MSA, which is to be effective from 1 February 2018 (Effective Date), on or before 16 February 2018 or as otherwise agreed between the parties acting reasonably.

Fujitsu and TfNSW acknowledge that the Disengagement Period of the MSA will expire on 31 January, 2018 and notwithstanding such expiry, TfNSW requests Fujitsu, and Fujitsu accepts, to continue to provide the Services under the terms of the existing MSA and this letter agreement for up to a further sixteen (16) days or as otherwise agreed between the parties acting reasonably. TfNSW agrees to pay the invoice for the Fujitsu fees and charges applicable under the MSA in accordance with its terms and the parties agree that upon execution of an Amendment Agreement to extend the Disengagement Period of the MSA, that such agreement will apply from the Effective Date and this letter will cease to apply to the MSA. Following such execution, Fujitsu will process any applicable adjustments to invoices already supplied to TfNSW for the fees and charges reflective of the newly executed agreement in future invoices. For clarity, Fujitsu will not be issuing credit notes to invoices already supplied.

Fujitsu and TfNSW agree that this Letter agreement is intended to be legally binding.

GIPA Act s 14 - Table 3(a)



Please sign below to confirm your acceptance to the above.

Signed for and on behalf of TfNSW
by an Authorised Representative

GIPA Act s 14 - Table 3(a)

