

Funding Agreement

Contract No |CW2345778|

Central Coast Mobile Coverage and Station Wi-Fi Project

Sydney Trains
Principal

|Telstra Corporation Limited|
Contractor

Execution Copy

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Formal Instrument of Agreement

Formal Instrument of Agreement made at Sydney on the Commencement Date

Parties

Principal:

Name: Sydney Trains ABN 38 284 779 682

Address: Level 20, 477 Pitt Street, Sydney NSW 2000

Contractor:

Name [Telstra Corporation Limited] ABN [33 051 775 556]

Address: [Level 41, 242 Exhibition Street, Melbourne, Victoria 3000]

Background

- A. The Commonwealth and State of New South Wales have made funding available for the purpose of improving mobile and Wi-Fi connectivity in order to achieve the Funding Outcomes.
- B. In response to a request for tender issued by the Principal and in order to achieve the Funding Outcomes, the Contractor has made a successful application to participate in the Central Coast Mobile Coverage and Station Wi-Fi Project (**Project**).
- C. This Contract records:
 - (1) the payments and other support that the Principal has agreed to provide to the Contractor under the Project;
 - (2) the agreement of the Contractor to carry out the Rollout in accordance with this Contract; and
 - (3) certain other matters agreed between the Principal and the Contractor in connection with the Project.
- D. This Contract is legally binding upon the Contractor and Principal.

The parties agree

The Principal and the Contractor promise to carry out and complete their respective obligations in accordance with the Contract so as to assist the Principal to achieve the Funding Outcomes.

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

General Conditions of Contract

1. Definitions and interpretation

1.1 Definitions

In the Contract, unless the context indicates otherwise:

Acceptance Tests means such tests and verification processes as described in Schedule 2.

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

Achievement means achievement of a Milestone by the Contractor under clause 5.

Achievement Notification has the meaning given to that term under clause 5(c).

ACMA means the Australian Communications & Media Authority (or if that body ceases to exist, the authority replacing that body).

Act of Prevention means [REDACTED]

[REDACTED]

[REDACTED]

Affected Site means a Site regarding which a notice has been provided by the Contractor under clause 6.3(a).

Appendix means the Appendix to these General Conditions of Contract.

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

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

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

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

Asset Completion Report means a report that meets the requirements of Item 2 of Schedule 8.

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

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

Signed as an agreement

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



Signature of witness



Full name of witness

Signed for and on behalf of Telstra Corporation Limited ABN 33 051 775 556 by its duly authorised representative:



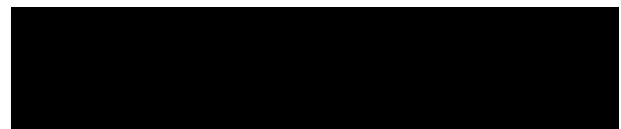
Signature of witness




Full name of witness

21.12.18

Date




Signature of authorised delegate



Full name of authorised delegate

21 / 12 / 2018

Date



Signature of Telstra's authorised representative



Full name of Telstra's authorised representative

21.12.18

Date

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

Australian Auditing Standards mean the standards made pursuant to section 227B of the *Australian Securities and Investments Commission Act 2001* (Cth) by the Australian Auditing and Assurance Standards Board.

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

Authorised User has the meaning given to that term in the definition of Mobile Network Operator.

Authority includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality (and includes the ASA and ONRSR). For the purposes of this Contract, an Authority can include the Principal.

BCIIP Act means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth), as amended from time to time.

Best Industry Practice means practices followed when works or services are undertaken in accordance with all of the following:

- (a) in a sound and workmanlike manner;
- (b) with due care;
- (c) using materials of merchantable quality, which are fit for their intended purpose; and
- (d) where contractors used are of a high skill and quality, with particular experience in Australia.

Building Code means the Code for the Tendering and Performance of Building Work 2016 made under the BCIIP Act, as amended from time to time.

Building Code Works means any part of the Contractor's Activities that is building work as defined in subsection 3(4) of the Building Code.

Building Work in relation to the Building Code has the meaning given in subsection 3(4) of the Building Code, or in relation to the WHS Accreditation Scheme has the same meaning as section 6 of the BCIIP Act.

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

Carrier has the meaning given to that term in the *Telecommunications Act 1997* (Cth).

Claim includes any dispute, action, application, claim, suit, proceeding, demand, of any kind, whether formal or informal, and whether or not involving any legal, administrative or other process, and unless the context indicates otherwise, includes a claim brought by a third party.

Code of Conduct means the Principal's Code of Conduct which is available, as at June 2018, at <https://www.transport.nsw.gov.au/about-us/who-we-are/culture-and-values> or upon request from the Principal's Representative, as updated from time to time.

Co-Locate means [REDACTED]

Co-Locating MNO means [REDACTED]

Commencement Date means the date on which this Contract is executed by the last party to execute.

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

- (a) the rail safety training undertaken by the Rail Safety Worker, including when, and for how long, the training was undertaken;
- (b) the qualifications of the Rail Safety Worker, including (if applicable):
 - (i) the units of competence undertaken to achieve the qualification;
 - (ii) the level of qualification attained;
 - (iii) if, and when, a re-assessment of competence is to be conducted;
 - (iv) if, and when, any re-training is due and was undertaken; and
 - (v) the name of any organisation conducting training or re-training;
- (c) the name and qualifications of any person who assessed the competence of the worker; and
- (d) any further information requested by the Principal with respect to the competence of the Rail Safety Worker.

Competitor of the Contractor means any person whose primary business is the provision of telecommunications services and, for clarity, includes a Mobile Network Operator (other than the Principal and Rail Corporation New South Wales).

Completion in respect of any New Infrastructure means all activities have been undertaken and all necessary agreements (as contemplated by this Contract) are in place to enable the provision of, as applicable, Retail Mobile Services and Wi-Fi Services from that New Infrastructure until the end of the relevant Operational Period.

Compliance Documents has the meaning given to that term in clause 3.2.

Confidential Information means:

- (a) information, including the Information Documents and any Personal Information, disclosed by a Discloser (or its Personnel) to a Recipient (or its Personnel) (or of which a Recipient becomes aware) in the course of discussions in relation to the Permitted Use;
- (b) information acquired by a Recipient or the Recipient Personnel in the course of discussions prior to the date of this Contract in relation to the Permitted Use;
- (c) information, that:
 - (i) is by its nature confidential, including (in the case for the Contractor) any information about the Contractor's mobile network (including coverage and costings); or
 - (ii) is designated as confidential by the Discloser or the Discloser's Personnel from time to time; or
- (d) any other information which by its nature should reasonably be considered to be the confidential information of the Discloser or the Discloser's Personnel, or which the Recipient or the Recipient's Personnel knows is confidential,

whether or not marked as "Commercial in Confidence", "Proprietary" or "Confidential", and which may be provided in writing, electronically, verbally or otherwise, but does not include any information which:

- (e) the Recipient can demonstrate to be in the public domain or was known to the Recipient at the time of disclosure other than through a breach of this Contract, including any information about the Contractor's mobile network (including costings and coverage);
- (f) is in the lawful possession of the Recipient without restriction in relation to disclosure before the date of receipt of the information from the Discloser or the Discloser's Personnel; or
- (g) was independently developed by the Recipient or the Recipient's Personnel.

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

Conflict means any matter, circumstance, interest or activity involving or affecting the Contractor which may, or may appear to, impair the Contractor's ability to perform the Contractor's Activities diligently and independently.

Consequential Loss means [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Contaminated or **Contamination** has the same meaning given to it in the *Contaminated Land Management Act 1997* (NSW).

Contract has the meaning given in clause 1.5.

Contractor's Activities means all things or tasks which the Contractor is, or may be, required to do to comply with its Contract obligations (including the carrying out of the Rollouts).

Contractor Fibre means optical fibre cables owned by the Contractor.

Contractor Group Member means any Related Body Corporate of the Contractor.

Contractor Site means the Contractor's offices or other Contractor-controlled locations (including Designated Locations) where the Contractor's Activities are being undertaken.

Contractor's Representative means the person so named in the Key Details or any other person from time to time appointed as the Contractor's Representative and notified to the Principal.

Coverage Category means the coverage category assigned to a particular Station in the Wi-Fi Schedule.

Date for New Infrastructure Completion means in respect of a New Infrastructure the date on which Completion occurs in respect of that New Infrastructure.

Date for Rollout Completion means the date on which Completion has occurred in respect of all New Infrastructure.

Defect means [REDACTED]

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

Designated Location means each of the locations of the New Infrastructure from where Expected Coverage is to be provided by the Contractor as specified in the Rollout Schedule, as varied in accordance with clauses 4.4, 4.5 or clause 6. For the avoidance of doubt, each Station will be a single Designated Location.

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

Discloser means a Party who discloses Confidential Information for the purposes of this Contract.

Disruption Costs means [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Duct Licence means the licence called "Fibre Duct Licence – Tunnels" between Contractor and Rail Corp for the licence to access and use certain duct infrastructure.

Electrical Distribution System means the electrical distribution system owned and maintained by or on behalf of the Principal.

End Date means the date that the applicable termination notice is provided under clause 2A(d)(i), 2A(d)(ii)(A) or 6.1(g) (as applicable).

Environmental Aspects means in respect of any land (including Designated Locations):

- (a) each interaction of any activity on the land with the environment; and
- (b) each of the following:
 - (i) heritage items on the land or heritage values or significance of the land or anything on it;
 - (ii) contamination or pollution of or from the land or from activities on the land; and
 - (iii) the flora and fauna on or in the vicinity of the land including threatened species, populations or ecological communities or their habitats on or in the vicinity of land.

Exclusion Sanction has the meaning given in subsection 3(3) of the Building Code.

Existing Services means the Principal's DTRS network, which is a safety critical system used for urgent warnings to drivers, such as notification of obstructions on the Rail Track.

Expected Coverage means:

■ [Redacted]

■ [Redacted]

Item	
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
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[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

Expected Date means, in relation to each Milestone, the "expected date" as set out in column 3 of Schedule 2.

Fibre Payment has the meaning given to that term in clause 2A(h)(ii)(A).

Final Milestone means the "Final" Milestone set out in Schedule 2.

First Extension Period has the meaning given to that term in clause 7.2(c)(i).

Fit for Purpose means, [Redacted]

■ [Redacted]

■ [Redacted]

■ [REDACTED]

■ [REDACTED]

(i) [REDACTED]

■ [REDACTED]

[REDACTED]

Force Majeure Event means [REDACTED]

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

Funding Outcomes are the outcomes sought from the Project as set out in the Rollout Schedules including, but not limited to, the following benefits to the commuting public of New South Wales and the government and people of New South Wales:

- (a) removing mobile blackspots and enhancing and providing mobile telecommunications coverage along the Rail Corridor as more particularly described in the Rollout Schedule;
- (b) providing the Wi-Fi Services as more particularly described in the Rollout Schedule and the Wi-Fi Schedule; and
- (c) providing access to New Infrastructure for Co-Locating MNOs, including, potentially, an Authority,

in each case so as to achieve the Expected Coverage.

General Conditions of Contract means these General Conditions of Contract, being clauses numbered 1 to 26 inclusive.

Government Furnished Materials means those materials to be provided by the Principal as set out in the Rollout Schedules.

GRN means any communications network owned and operated by the Authorised User.

GST or Goods and Services Tax means the tax payable on taxable supplies under the GST Legislation.

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

Information Documents means any Record in whatever form (including, electronic, verbal, written or visual):

- (a) issued or made available by, or on behalf of, a Discloser or any of the Discloser's Personnel to a Recipient or the Recipient Personnel in connection with this Contract, including the Permitted Use; and

- (b) includes any information, opinion, data or document referred to, or incorporated by reference, in any such Information Documents,

whether or not such Information Documents were issued or made available to a Recipient before or after the date of this Contract.

Initial Wi-Fi Operational Period means the period from such date on which the Principal provides the Contractor with an Achievement Notification in relation to the Completion of the Wi-Fi Rollout until [REDACTED]

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

- (a) the party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with the Contract for financial reasons;
- (b) a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or any foreign law equivalent or other person with similar power is appointed to the party;
- (c) the party:
- (i) becomes bankrupt or insolvent within the meaning of section 95A of the Corporations Act 2001 (Cth) or under any bankruptcy, insolvency or analogous Law;
 - (ii) would be presumed by a court to be insolvent under section 459C(2) of the Corporations Act 2001 (Cth);
 - (iii) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act 2001 (Cth)) and fails to remedy that failure within 7 days after being required in writing to do so by the party issuing the statutory demand;
 - (iv) makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors;
 - (v) seeks relief from its obligations to creditors under any bankruptcy, insolvency or analogous Law;
 - (vi) commences any proceeding, files a petition or proposal to take advantage of any act of bankruptcy or insolvency;
 - (vii) resolves to, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or other person with similar power of itself or of all or a portion of its assets; or
 - (viii) files a petition or otherwise commences any proceeding seeking to enter into any compromise, reorganisation, arrangement, composition or readjustment under any applicable bankruptcy, insolvency or analogous Law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition, or commencement of such proceedings; or
- (d) any act is done or event occurs which, under applicable Law, has a similar effect to anything mentioned in paragraphs (b) or (c).

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

Internet Connectivity means the services and facilities that the Contractor uses to connect the Wi-Fi Network to the Internet, as further detailed in the Wi-Fi Schedule.

Invoice means an invoice that:

- (a) is in the form set out in Schedule 10; and
- (b) clearly sets out the amount that is due for payment and is correctly calculated in accordance with this Contract; and

is rendered at the times permitted by this Contract and addressed to the Project Manager.

Key Details means the particulars which appear in Schedule 1.

KPI Performance Report has the meaning given to that term under clause 9.4(b).

Law means:

- (a) any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by-law, order, proclamation, decree, ordinance, directive or code which is enacted, issued or promulgated by the Commonwealth or any State or Territory government;
- (b) common law and equity; and
- (c) any direction from a relevant Authority exercising its statutory powers regarding the Contractor's Activity.

Loss means [REDACTED]

Milestone means a milestone set out in column 2 of Schedule 2.

Milestone Criteria means the milestone criteria and/or list of Deliverables (as applicable) required for each Milestone as set out in column 5 of Schedule 2 and as further described in that Schedule.

Milestone Notification has the meaning given to that term in clause 5(a).

Mobile Network Operators or MNOs means:

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

Mobile Operational Period means, in respect of each New Infrastructure, the period from Completion of a New Infrastructure that is part of the Mobile Rollout until the date which is the twentieth (20th) anniversary of such Completion.

Mobile Rollout (or Mobile Coverage Rollout) means all activities required to be undertaken to achieve Completion of all New Infrastructure from which Retail Mobile Services will be provided under the Rollout Schedule (and excludes the Wi-Fi Rollout).

Mobile Tower Lease means the lease called "Master Lease – Towers" between Rail Corp and the Contractor for the lease of certain Rail Corp land.

Monthly Status Report has the meaning given to that term under clause 9.2.

National Construction Code means the *National Construction Code 2016* published by the Australian Building Codes Board as amended from time to time.

New Base Station means a mobile wireless base station facility to be constructed by the Contractor at a Designated Location as part of the Rollout Schedule.

New Infrastructure means a component of network and other infrastructure (including but not limited to mobile stations, Wi-Fi routers and any necessary cabling), technology and plant and equipment used to provide mobile phone or Wi-Fi Services (and other carriage services), as specified in the applicable Rollout Schedule, to be constructed by the Contractor at a Designated Location.

New Infrastructure Completion Report means a report that meets the requirements of Item 1 of Schedule 8.

Notice of Dispute has the meaning given in clause 23.1.

Notice of Failure means a notification issued under clause 5(d)(iv) or clause 5(e) (as applicable).

NSW Rail Assets has the meaning assigned to it in the ASA Charter.

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

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

Operational Period means either the Mobile Operational Period or Wi-Fi Operational Period, as the context requires.

Payment Tranche means [REDACTED]

Permitted Use means use for the purposes of the Contractor carrying out the Project and for the achievement of the Funding Outcomes, and for no other purposes.

Personal Information has the same meaning as in the *Privacy and Personal Information Protection Act 1998 (NSW)*.

Personnel means:

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

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

- (a) the policies, codes and standards that, as at June 2018, appear on the website: <https://www.transport.nsw.gov.au/about-us/who-we-are/sydney-trains/contractors>;
- (b) the policies, codes and standards that appear, as at June 2018, on the Railsafe website at <https://railsafe.org.au/>, including:
 - (i) the policy entitled "Health and Safety Policy"; and
 - (ii) the applicable specifications on the safety and environment specifications page, available, as at June 2018, at: <https://railsafe.org.au/safety-and-environment-specifications>;
- (c) the New South Wales Government Code of Practice for Procurement (January 2005);
- (d) in relation to work, health and safety management, the Work Health and Safety Management Systems and Auditing Guidelines (5th edition) (September 2013);
- (e) in relation to quality management, AS/NZS ISO 9001 and, if applicable, the NSW Government Quality Management Systems Guidelines for Construction (Edition 3 August 2013);
- (f) in relation to environmental management, AS/NZS ISO 14001 and, if applicable, the NSW Government Environmental Management System Guidelines (Edition 3 August 2013);
- (g) if applicable, the NSW Government Procurement Guideline "Skills and Training in the Construction Industry";
- (h) if applicable, the NSW Government Policy on Aboriginal Participation in Construction; and
- (i) any other policies, codes and standards that are notified to the Contractor by the Principal from time to time.

Pollution has the meaning given to it in the *Protection of the Environment Operations Act 1997* (NSW) and Polluted has the same meaning as Pollution.

Principal Contractor has the meaning given to it under the WHS Legislation.

Principal Fibre means optical fibre cables owned by the Principal.

Principal's Operations means any part of the Principal's operations, systems or assets including:

- (a) the Rail Line;
- (b) the Rail Corridor;
- (c) the operations of third parties using the Rail Line; and
- (d) the Principal's ability to construct, or operate, future additions to the Rail Line.

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

Principal's Work has the meaning given to that term in clause 10.5.

Privacy Laws means the *Privacy and Personal Information Protection Act 1998* (NSW), the *Privacy Act 1988* (Cth), any applicable principles, codes of conduct or directions issued under those Acts and all other applicable Laws relating to privacy or personal information.

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

Project has the meaning given in recital B of the Formal Instrument of Agreement.

Project Manager means the person from time to time nominated by the Principal to co-ordinate with the Contractor in relation to the Rollout Schedule and interaction between the Contractor and the Principal.

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

- (a) the respective rights and interests and liabilities to third parties of the Principal, the Contractor, the Principal's Representatives and all Subcontractors from time to time; and
- (b) the parties' respective liability to each other for loss or damage to property (including the Principal's property) and the death of or injury to any person (other than liability which the Law requires to be covered under a Workers Compensation Insurance policy),

arising out of, or in any way in connection with, the Contractor's Activities.

Qualifying Cause means:

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

RailCorp means Rail Corporation New South Wales (ABN 59 325 778 353), a corporation constituted by section 4(1) of the *Transport Administration Act 1988* (NSW).

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

Rail Line means the guided system for the transportation of passengers or freight on the Rail Track within the Rail Corridor, commencing at Hornsby Station and ending at Wyong Station.

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

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

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

Rail Track means the rails fastened on sleepers or transoms and founded on ballast, bridge decking or concrete slab, associated signalling and overhead wiring components (in electrified areas).

Rail Transport Agency means Transport for NSW (and each of its divisions), RailCorp, Sydney Trains and NSW Trains.

Recipient means a Party who receives Confidential Information (including from a Discloser) in connection with this Contract.

Records include documents, information and data stored by any means and all copies and extracts of the same.

Regulatory Event means a change or introduction of any Law or where the Contractor is required to comply with any applicable legally binding order, instruction or request of an Authority, an emergency services organisation or any other competent authority.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth), but as if each reference to a "body corporate" includes a proprietary company, a partner or a trust.

Reports means those reports required to be provided to the Principal by the Contractor as set out in this Contract, including those described at clauses 9.2 and 9.4 and in Schedule 8.

Retail Mobile Services means the supply of 'public mobile telecommunications services' (as defined in section 32 of the *Telecommunications Act 1997* (Cth)) to retail customers of the Contractor.

Risk Register means a register to be prepared and updated from time to time by the Contractor of all hazards and risks in the design prepared by the Contractor that have either been notified to the Contractor by the Principal or the Principal's Representative or which have been identified by the Contractor, and which sets out in respect of each hazard and risk details of:

- (a) the nature of the hazard or risk;
- (b) whether the hazard or risk has been considered in the preparation of the design and, if so, the steps that have been taken in preparing the design to either eliminate or mitigate the hazard or risk; and
- (c) if a hazard or risk has not been considered in the preparation of the design the reasons why, and when the Contractor proposes to consider the steps that can be taken to either eliminate or mitigate the hazard or risk in the design which it is preparing.

Rollout means Mobile Rollout or Wi-Fi Rollout, as the context requires.

Rollout Schedule means the Rollout Schedule set out at Schedule 9 and as varied from time to time in accordance with this Contract.

Safety Report means the report required to be prepared by a designer of a structure by regulation 295 of the *Work Health and Safety Regulation 2017* (NSW), which without limiting the requirements of regulation 295 must include the Risk Register current at the time.

SDR Date means [REDACTED].

Second Extension Period has the meaning given to that term in clause 7.2(d)(i).

Site means any particular location on which any or all of the New Infrastructure is to be installed within a Designated Location.

Site Frustration Event means [REDACTED]

[REDACTED]

[REDACTED]

SOP Act means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

Stations means each of those Sydney Trains railway stations on the Rail Line (as amended in accordance with this Contract).

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

Subcontractor means any person engaged by the Contractor for the performance of any of the Contractor's Activities.

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

System Definition Review has the meaning given to that term at clause 6.1(a)(i).

Target Date means

(a) for the Mobile Rollout, [REDACTED]; and

(b) for the Wi-Fi Rollout, [REDACTED].

Test Coverage means the estimated voice coverage along the Rail Line (as a percentage) which is agreed by the parties following the provision of the System Definition Review (as Test Coverage may be amended from time to time in accordance with this Contract).

Term has the meaning given to that term in clause 2.

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

Utilities includes all gas, electricity, telephone, water, sewerage, drainage, fire prevention, communication, hydraulic, and all other services or systems.

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

WHS Accreditation means accreditation obtained under the WHS Accreditation Scheme.

WHS Accreditation Scheme means the Australian Government Building and Construction Work Health and Safety Accreditation Scheme established by the BCIIIP Act and the *Fair Work (Building Industry- Accreditation Scheme) Regulations 2016* (Cth) (as preserved by the *Building and Construction Industry (Consequential and Transitional Provisions) Act 2016* (Cth)), as amended from time to time.

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

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

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

WHS Management Plan means the work health and safety plan to be prepared by the Contractor under clause 15.6, which must:

- (a) set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from a work health and safety perspective;
- (b) describe how the Contractor proposes to ensure the Contractor's Activities are performed consistently with WHS Legislation; and
- (c) comply with the specific requirements of Part 6.4 of the *Work Health and Safety Regulation 2017* (NSW) in relation to the matters that a WHS management plan must include.

Wi-Fi (or Station Wi-Fi) means a wireless local area network products that are based on the Institute of Electrical and Electronics Engineers' (IEEE) 802.11 a/g/n standards.

Wi-Fi Access means the provision of Wi-Fi at each Station to the commuting public via the Wi-Fi Network.

Wi-Fi Network means the Wi-Fi Network Equipment used to provide the Wi-Fi Services, and includes the software incorporated in the relevant Network infrastructure.

Wi-Fi Network Equipment means the equipment detailed in the Network Design (including any cabling) which the Contractor will install at a Station as part of the Wi-Fi Network in accordance with the Rollout Schedule and the Wi-Fi Schedule.

Wi-Fi Operational Period means the Initial Wi-Fi Operational Period and, subject to clause 7.2, the First Extension Period and the Second Extension Period.

Wi-Fi Rollout means all activities required to be undertaken to achieve Completion of all New Infrastructure from which Wi-Fi Services will be provided under the Wi-Fi Rollout Schedule.

Wi-Fi Schedule means Schedule 12 to this Contract.

Wi-Fi Services means Wi-Fi Access and Internet Connectivity to be made available to the commuting public at the Stations using the Wi-Fi Network.

Workers Compensation Insurance means a policy of insurance to insure against liability for death of or injury to employees, including liability by statute and at common law.

1.2 Interpretation

In the Contract:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) an obligation or liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "person" includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes a party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;

- (e) a reference to a document (including the Contract) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause schedule, exhibit, attachment or annexure to or of the Contract, and a reference to the Contract includes all schedules, exhibits, attachments and annexures to it;
- (i) if the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Contract, falls on a day which is not a Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be taken to be on the next Business Day;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) "includes" in any form is not a word of limitation;
- (l) a reference to "\$" or "dollar" is to Australian currency; and
- (m) the word "Subcontractor" will include suppliers and consultants.

1.3 No bias against drafting party

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

1.4 Provisions limiting or excluding liability

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

1.5 Precedence of documents

- (a) This contract consists of the following parts:
 - (i) the Formal Instrument of Agreement;
 - (ii) these General Conditions of Contract;
 - (iii) the Key Details;
 - (iv) the Rollout Schedules;
 - (v) the Schedules (excluding the Rollout Schedules but including the Appendix);
 - (vi) the exhibits, attachments or annexures;
 - (vii) the other documents (if any) referred to in the Key Details; and
 - (viii) any other document incorporated into this contract by reference (the **Contract**).

- (b) If there is any inconsistency between any parts of this Contract, then the document listed earlier in the hierarchy above will prevail to the extent of any inconsistency.


1.6 Discretion

Subject to any express provision in the Contract to the contrary:

- (a) a provision of the Contract which says that the Principal or the Principal's Representative "may" do or not do something is not to be construed as imposing an obligation on the Principal or the Principal's Representative to do or not do that thing; and
- (b) there will be no procedural or substantive limitation upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by the Contract.

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

1.7 Authorities

- (a) The Contract will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
 - (i) the Principal or any other Rail Transport Agency to exercise any of their respective functions and powers pursuant to any legislation; or
 - (ii) the ASA to exercise any of its functions and powers pursuant to the ASA Charter, including any functions or powers required to be exercised by the Principal or any Rail Transport Agency pursuant to any Configuration Management Framework.
- (b) Subject to clause 1.7(c), the Contractor:
 - (i) 
 - (ii) acknowledges and agrees that:
 - A. there are many Authorities with jurisdiction over aspects of the Contractor's Activities, the Rail Corridor, and other matters affecting and affected by the Contractor's Activities; and
 - B. such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Contractor's Activities (including, the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers).
- (c) Nothing in this clause limits clauses 4.4, 4.5 or 6.

2. Term

This Contract commences on the Commencement Date and continues until all Operational Periods have ended unless terminated earlier in accordance with its terms (Term).

2A Relevant Documents and Duct Access

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

- [Redacted]
- [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
- [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
- [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
- [Redacted]
 - [Redacted]
- [Redacted]
 - [Redacted]
- [Redacted]
 - [Redacted]
- [Redacted]
 - [Redacted]

- [Redacted]
- [Redacted]
- B. [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

Interim licence to Relevant Infrastructure

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- (i) [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

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

Rail Transport Agencies

- (o) The parties acknowledges that:
 - (i) Rail Corp is the contracting party to the Tunnel Licence, Duct Licence, Mobile Tower Lease and Wi-Fi Equipment Licence; and
 - (ii) Rail Corp is the owner of the Relevant Infrastructure.
- (p) The Principal must ensure that Rail Corp complies with the requirements relevant to Rail Corp in this clause 2A as if references to 'the Principal' are references to 'Rail Corp'.

3. Contractor obligations

3.1 Rollout

- (a) The Contractor must:
 - (i) carry out the Mobile Rollout in accordance with this Contract (including the Rollout Schedule) and the Compliance Documents; and
 - (ii) carry out the Wi-Fi Rollout in accordance with this Contract (including the Rollout Schedule and the Wi-Fi Schedule) and the Compliance Documents,so as to assist the Principal to achieve the Funding Outcomes.
- (b) Except as otherwise expressly provided in this Contract, the Contractor:
 - (i) as between the Principal and the Contractor, accepts all risks in connection with performing each Rollout; and

- [REDACTED]
- [REDACTED]

- B. is solely responsible for and must fund all amounts which are necessary to complete each Rollout and provide the Retail Mobile Services and the Wi-Fi Services during the relevant Operational Period, and Expected Coverage for the duration of any Operational Period.



- (c) As between the Principal and the Contractor, the Contractor is responsible for all aspects of health and safety for, or in connection with, each Rollout including:
- (i) controlling and managing the performance of each Rollout;
 - (ii) undertaking each Rollout safely and in a manner that, so far as it is reasonably practicable, does not put at risk the health and safety of persons; and
 - (iii) managing all safety hazards and risks, including, so far as it is reasonably practicable, undertaking a complete review and assessment of any hazards and risks associated with each Rollout and identifying and implementing appropriate measures to control all such hazards and risks prior to each Rollouts commencing and throughout each Rollout.
- (d) The Contractor must:
- (i) in conducting each Rollout, comply with all applicable Laws and all directions of the Principal and the Principal's Representative with respect to the Contractor's compliance with applicable Laws; and
 - (ii) ensure that it does not knowingly do anything or knowingly fail to do anything that would cause the Principal to be in breach of any Law, including work health and safety laws. Without limiting the foregoing, for the purposes of this clause 3.1(d)(ii), the Contractor is deemed to be aware of any Law which they have been notified of (by any means) by the Principal.
- (e) The Contractor warrants and undertakes to the Principal on the date of this Contract that it has obtained all necessary internal approvals (including for funding) as required:
- (i) to carry out each Rollout in accordance with this Contract; and
 - (ii) to achieve Completion of each Rollout by the applicable Target Date.
- (f) The Contractor must provide the Principal with the Reports as set out in Schedule 8 and at such times as provided for in Schedule 8.
- (g) Nothing in this clause prejudices the Contractor's right to bring a Claim against the Principal for a breach of any of the Principal's obligations under this Contract.

3.2 Compliance with Policies, Codes and Standards

- (a) The Contractor acknowledges that each of the below has been made available to the Contractor prior to the Commencement Date and confirms that it, and all relevant Contractor Personnel, have reviewed in detail each of the below prior to the Commencement Date:
- (i) the Code of Conduct;

- (ii) the Policies, Codes and Standards; and
 - (iii) Schedule 1 of the Appendix,
- (together, the **Compliance Documents**).
- (b) The Contractor must, and must ensure that each of its Personnel will, comply in full with the terms of the Compliance Documents.
 - (c) For the purposes of clauses 3.2(a) and 3.2(b), any reference to "NSW government sector employees" or "Sydney Trains employees" in the Policies, Codes and Standards is to be read as a reference to the Contractor's employees.
 - (d) The Contractor is responsible and liable for all acts and omissions of its Personnel in relation to the Compliance Documents.
 - (e) [REDACTED]
 - (i) [REDACTED]
 - [REDACTED]

3.3 Requirements for working in Rail Corridor

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

3.4 Commonwealth Building Code and WHS legislation

- (a) In relation to the Building Code Works but only to the extent not validly exempted under the Building Code, the Contractor warrants that it and its relevant Subcontractors are not subject to an Exclusion Sanction.
- (b) The Contractor:
 - (i) declares as at the Commencement Date in relation to the Building Code Works; and
 - (ii) must ensure during the term of the Contract in relation to the Building Code Works,

that it and any relevant Subcontractors will, to the extent applicable taking into account any exemption validly issued to the Contractor under the Building Code, comply with the Building Code (including the requirements in the Building Code that apply to Commonwealth funded building work).
- (c) Compliance with the Building Code does not relieve the Contractor from responsibility to perform the Contract arising from compliance with the Building Code.

- (d) The Contractor must maintain accreditation under the WHS Accreditation Scheme established by the BCIIIP Act while Building Work is carried out. The Contractor must comply with all conditions of WHS Accreditation and the National Construction Code performance requirements in relation to building materials.
- (e) A contract for Building Work must not be entered into with a Subcontractor if the Subcontractor is not accredited under the WHS Accreditation Scheme, at the time the contract for Building Work is signed. Any building contract must require that the Subcontractor maintains WHS Accreditation while carrying out the Building Work. The Subcontractor must comply with all conditions of WHS Accreditation and the National Construction Code performance requirements in relation to building materials.

4. Implementation of Rollout

4.1 General obligations of Contractor

Subject to clauses 4.4, 4.5 and 6 the Contractor must:

- (a) carry out each Rollout in a cost efficient manner;
- (b) complete each Milestone by the applicable Expected Date; and
- (c) commence and expeditiously and diligently undertake each Rollout in accordance with the applicable Rollout Schedule.

4.2 Rollout obligations

Subject to clauses 10.4 and 10.5, the Contractor must supply, or procure the supply of, all plant and equipment, resources, materials or other works and the provision of all labour and other services necessary to carry out each Rollout.

4.3 Rollout Schedule

- (a) The Contractor recognises the importance to the Principal of the Date for Rollout Completion being as early as practicable but in any event by no later than the Target Date.
- (b) The purpose of each Rollout Schedule is to assist in the achievement of each Rollout as early as practicable but in any event by no later than the Target Date. At all times, the Rollout Schedule must address each of the following for each New Infrastructure that is part of the Rollout:
 - (i) design timeframe and steps for a Configuration Control Board (CCB) gate for each Site that sits within the Rail Corridor;
 - (ii) lock down of Designated Locations;
 - (iii) applications to and approvals required from third parties; and
 - (iv) New Infrastructure timelines and expected Date for New Infrastructure Completion.
- (c) Starting from Commencement Date and ending with the Date of Rollout Completion, the Contractor must provide the Principal with an updated Rollout Schedule within 20 Business Days of the beginning of each calendar month where one or more of the following events have occurred:
 - (i) the location or proposed completion date of any New Infrastructure has changed in accordance with clauses 4.4 or 4.5 or 6;

- (ii) the Contractor's proposed timeline for completion of the Rollout has been affected by a Force Majeure Event; or
 - (iii) there is a change in relation to the accessibility or availability of electricity supply in relation to New Infrastructure; or
 - (iv) there is a change in the Site access arrangements to a Site which sits within the Rail Corridor.
- (d) The Contractor is ultimately responsible for all of the Contractor's Activities set out in the Rollout Schedules, and must ensure that to the extent it reflects a dependency on a third party activity, that such third party has accepted the activity description, responsibility for such activity and its timing.
- (e) The Contractor acknowledges and agrees that despite any involvement of the Principal (or the Project Manager) in the development of each Rollout Schedule:
- (i) the Principal will not assume or owe any duty of care to the Contractor to review or comment on, direct any amendments to or approve a Rollout Schedule; and
 - (ii) failure by the Principal to review or comment on a Rollout Schedule will not:
 - A. limit or relieve the Contractor of any obligation or liability under this Contract;
 - B. limit any right the Principal has under this Contract;
 - C. constitute acceptance by the Principal of the performance of the Contractor's obligations under this Contract;
 - D. be considered as a representation or acknowledgement that a Rollout Schedule complies with this Contract; or
 - E. give rise to any claim on the Contractor's part, whether under this Contract or otherwise at Law.

4.4 Infrastructure variations within the Rail Corridor

- [REDACTED]
- [REDACTED]
- [REDACTED]
- (i) [REDACTED]
- [REDACTED]

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

4.5 Infrastructure variations outside of the Rail Corridor

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

4.6 Standards for New Infrastructure

The Contractor must design and construct each New Infrastructure so that it:

- (a) is Fit for Purpose and in accordance with Best Industry Practice; and

(b) remains Fit for Purpose for the relevant Operational Period.

4.7 Co-Location

(a) [Redacted]

■ [Redacted]

(ii) [Redacted]

■ [Redacted]

(b) [Redacted]

■ [Redacted]

■ [Redacted]

(c) [Redacted]

(i) [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

(d) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- (i) [REDACTED]
- (j) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

5. Acceptance Testing

- (a) If the Contractor reasonably considers that it has achieved a Milestone, it must promptly notify the Principal of such (**Milestone Notification**).
- (b) Following receipt of the Milestone Notification, the Principal will carry out Acceptance Tests. The Contractor must provide all reasonable assistance requested by the Principal. The Principal will permit the Contractor and any of its Personnel to observe the Acceptance Tests.
- (c) Other than in respect of the Final Milestone, if the Contractor has provided the Deliverables specified in schedule 2 in accordance with the Contract, then:
 - (i) the Contractor has met the applicable Milestone Criteria;
 - (ii) the applicable Milestone will pass Acceptance Tests; and
 - (iii) the Principal will issue a notice to the Contractor confirming Achievement of such Milestone (**Achievement Notification**).
- (d) If the Contractor has not provided the deliverables specified in schedule 2 in accordance with the Contract, then:
 - (i) the Contractor has not met the applicable Milestone Criteria; and
 - (ii) the Milestone will fail the Acceptance Tests,then the Principal will give the Contractor a notice setting out:
 - (iii) the reasons for the failure; and
 - (iv) a further date by which the Contractor must provide a Milestone Notification in respect of such Milestone.
- (e) In respect of the Final Milestone, if the Principal is satisfied that the Contractor has met the applicable Milestone Criteria, then the Final Milestone will pass Acceptance Tests and the Principal will issue a notice to the Contractor confirming Achievement of such Milestone (**Final Milestone Achievement Notification**).

- (f) The Final Milestone will fail Acceptance Tests if the Acceptance Tests demonstrate that such Milestone does not meet the Milestone Criteria or if the Principal is unable to complete the Acceptance Tests due to the fault of the Contractor. If the Final Milestone fails the Acceptance Tests, then the Principal will give the Contractor a notice setting out:
- (i) the reasons for the failure; and
 - (ii) a further date by which the Contractor must provide a Milestone Notification in respect of such Final Milestone.
- (g) The Principal must conduct Acceptance Tests under this clause 5 within two (2) weeks of receipt of the applicable Milestone Notification.
- (h) On receipt of a Notice of Failure, the Contractor must take all reasonable steps to achieve the applicable Milestone by the date set out in the Notice of Failure and provide the Principal with a Milestone Notification in relation to such. The Principal will then conduct a repeat of the Acceptance Tests in accordance with this clause.
- (i) If a Milestone fails the Acceptance Tests carried out under clause 5(h), the Principal may at its option do any of the following:
- (i) issue a Notice of Failure in which case clauses 5(g), 5(h) and this clause 5(i) will apply to a further round of correction and testing; or
 - (ii) accept the Milestone "as is" by notice to the Contractor, subject to the Contractor completing, at its own cost, a set of procedures to remove the Defects or their impact.
- (j) If the Milestone is accepted under clause 5(i)(ii) and the Contractor fails to complete the set of procedures (including in the timeframe required by the Principal) to remove the Defects or their impacts, the Principal may notify the Contractor that Achievement of that Milestone is withdrawn, in which case the Principal may exercise its rights under clause 5(i)(i).
- (k) For the avoidance of doubt, nothing will give rise to any deemed Achievement of a Milestone, nor waive any rights the Principal may otherwise have.
- (l) The parties acknowledge that:
- (i) Acceptance Tests are not capable of testing for every possible Defect;
 - (ii) the sole purpose of the Acceptance Tests under this clause 5 is to provide the Principal with the remedies set out or referenced in this clause;
 - (iii) Achievement does not affect the Contractor's obligation to correct Defects or any other obligation under this Contract;
 - (iv) the Acceptance Tests for the Final Milestone will compare the Tested Coverage against the actual coverage at the end of the Mobile Rollout; and
 - (v) the Acceptance Test will not require the Contractor to test the Expected Coverage.

6. System Definition Review, Delay, Site Frustration Events, and Duct Remediation

6.1 System Definition Review

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

[Redacted]

■ [Redacted]

■ [Redacted]

(b) [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

[Redacted]

(c) [Redacted]

■ [Redacted]

■ [Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

(d) [REDACTED]

(e) [REDACTED]

(f) [REDACTED]

(g) [REDACTED]

[REDACTED]

[REDACTED]

6.2 Notification of delay and extension of time

- (a) The parties acknowledge that the Contractor can adjust the dates for Completion of New Infrastructure in the Rollout Plan provided that any change to the Target Date must only be made in accordance with clause 6.2(g) or 6.2(h).
- (b) The Contractor must take all reasonable steps to minimise delay in achieving Completion of New Infrastructure in accordance with the Rollout Schedule and by the relevant Target Date.
- (c) If the Contractor becomes aware that, for any reason, it will be delayed in achieving Completion of New Infrastructure by the relevant due date for completion of that New Infrastructure as set out in a Rollout Schedule, the Contractor must promptly provide a notification to the Principal setting out the following:
 - (i) details of the nature of the delay including whether the delay was caused by a Qualifying Cause; and
 - (ii) details of the steps the Contractor will take to limit and mitigate the delay, including any consequential impact on the Rollout.
- (d) The Contractor must update the Rollout Schedule in accordance with clause 4.3(b) to take into account any change to the timetable of Completion of New

Infrastructure due to any delay regardless of whether the delay was caused by a Qualifying Cause.

- (e) Failure to achieve Completion of New Infrastructure by the relevant due date for completion of that New Infrastructure as set out in a Rollout Schedule:
 - (i) will not be a breach of clauses 6.2(a) or 4.3(a); and
 - (ii) the due date is deemed extended to the new Completion Date,provided that the relevant New Infrastructure is completed on or prior to the Target Date.
- (f) If the Contractor becomes aware that, for any reason, it will be, or is likely to be, delayed in achieving Completion of New Infrastructure beyond the applicable Target Date for any reason, the Contractor must provide notice of such to the Principal as soon as the Contractor is aware of that situation and propose a new Target Date in respect of the affected New Infrastructure only.
- (g) Failure to achieve Completion of New Infrastructure by the Target Date:
 - (i) will not be in breach of clause 6.2(a) or 4.3(a); and
 - (ii) the Target Date is deemed extended to the proposed Target Date.provided that the Contractor's failure to complete New Infrastructure by the applicable Target Date was caused by a Qualifying Cause.

(h) [Redacted]

- [Redacted]
- [Redacted]

(i) [Redacted]

6.3 Site Frustration Event

- (a) [Redacted]
- [Redacted]
- [Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

(b) [Redacted]

(c) [Redacted]

(d) [Redacted]

(i) [Redacted]

■ [Redacted]

■ [Redacted]

6.4 Duct remediation

- [Redacted]
- [Redacted]

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

7. Operational Period

7.1 Mobile Operational Period

- (a) During the Mobile Operational Period, the Contractor shall treat the New Infrastructure as part of its mobile network in accordance with its business as usual practices, and deliver Retail Mobile Services to its customers through such infrastructure in accordance with its usual business practices.
- (b) The Contractor acknowledges that as between the Principal and itself that it is solely responsible for all costs associated with the provision of the Retail Mobile Services from the New Infrastructure, including the costs of repairs and upgrades to the New Infrastructure.

7.2 Wi-Fi Operational Period

- (a) During the Wi-Fi Operational Period, the Contractor shall deliver the Wi-Fi Services in accordance with the Wi-Fi Schedule and otherwise to its customers in accordance with its business as usual practices.
- (b) The Contractor acknowledges that as between the Principal and itself that it is solely responsible for all costs associated with the provision of the Wi-Fi Services from the New Infrastructure, including the costs of repairs and upgrades to the New Infrastructure.
- (c) Prior to the expiry of the Initial Wi-Fi Operational Period, the Principal will conduct a review of the Contractor's performance of the Wi-Fi Services. Following completion of such review, the Principal will notify the Contractor of its election (such election being at the Principal's sole discretion but to be provided to the Contractor by no later than the date which is 30 days prior to the expiry date of the Initial Wi-Fi Operational Period) to:
 - (i) extend the Wi-Fi Operational Period by a further term of [REDACTED] (*First Extension Period*);
 - (ii) extend the Wi-Fi Operational Period by the First Extension Period but de-scope particular Stations from such First Extension Period; or

- (iii) terminate the Wi-Fi Operational Period at the conclusion of the Initial Wi-Fi Operational Period.
- (d) Prior to the expiry of the First Extension Period, the Principal will conduct a review of the Contractor's performance of the Wi-Fi Services. Following completion of such review, the Principal will notify the Contractor of its election (such election being at the Principal's sole discretion but to be provided to the Contractor by no later than the date which is 30 days prior to the expiry date of the First Extension Period) to:
 - (i) extend the Wi-Fi Operational Period by a further term of [REDACTED] (**Second Extension Period**);
 - (ii) extend the Wi-Fi Operational Period by the Second Extension Period but de-scope particular Stations from such Second Extension Period; or
 - (iii) terminate the Wi-Fi Operational Period at the conclusion of the First Wi-Fi Operational Period.
- (e) If the Principal elects to de-scope particular Stations under clauses 7.2(c)(ii) or 7.2(d)(ii) and without any liability to the Principal, the Contractor is relieved from its obligations to provide Wi-Fi Services in respect of such Stations from the date such de-scoping takes effect.

[REDACTED]

8. Not used

9. Project Management and Governance

9.1 Parties obligations to each other

- (a) Subject to clauses 1.7, 6 and 9.1(b), each party will:
 - (i) cooperate with the other to achieve each Rollout by the applicable Target Date; and
 - (ii) act in good faith with respect to matters that relate to this Contract.
- (b) Each party's obligations under clause 9.1(a) do not fetter any discretion or right of that party under this Contract or any of the Compliance Documents.

9.2 Monthly Status Report

Within 10 Business Days of the end of each month, starting from the Commencement Date and ending with the Date for Rollout Completion, the Contractor will provide to the Principal a Monthly Status Report. The Monthly Status Report must contain the following information:

- (a) all work that has been completed during the previous month (including as against the Rollout Schedule);
- (b) all work scheduled to be undertaken or completed during the next month;
- (c) a summary of outstanding work to be undertaken including a percentage of the total Project that is complete;

- (d) any safety and environmental incidents that occurred during the previous month;
- (e) KPI Performance Reports;
- (f) in respect of any New Infrastructure which has been Completed during the previous month, a New Infrastructure Completion Report and an Asset Completion Report;
- (g) the up-to-date issues and risk register in relation to the Project; and
- (h) an up-to-date planned vs actual Project cost report.

9.3 Monthly meetings

The Principal's Representative and the Contractor's Representative must meet each month, or as otherwise agreed, to:

- (a) discuss any issues arising under this Contract including:
 - (i) any proposed variations, extensions of time or other claims;
 - (ii) progress of the Project against the Rollout Schedule;
 - (iii) safety and environmental incidents that occur during the Project; and
- (b) review the progress of the Project and attempt to agree actions to mitigate time and cost impacts; and
- (c) review the close out of previously agreed actions.

9.4 Compliance with KPIs and Key Performance Reports

- (a) The Contractor in performing the Contractor's Activities must use reasonable endeavours to comply with the KPIs set out in table 2 below.
- (b) The Contractor must report to the Principal in the form of a report (**KPI Performance Report**) which will be discussed in the monthly meeting, and which:
 - (i) provides description of the performance of the Contractor in meeting the KPIs;
 - (ii) identifies any non-compliances;
 - (iii) proposes an action plan to remedy non-compliances (which the Contractor will comply with); and
 - (iv) reports on whether the Contractor has implemented any previous action plan and, if not, the extent of non-compliance.

Table 2

Key Performance Indicator (KPIs)		Measure	Target (per Contract)
Safety and environment			
1.	Minor incidents	[REDACTED]	■
2.	Major incidents	[REDACTED]	■

Key Performance Indicator (KPIs)		Measure	Target (per Contract)
		[REDACTED]	
■	[REDACTED]	[REDACTED]	[REDACTED]
■	[REDACTED]	[REDACTED]	[REDACTED]
Delivery			
■	[REDACTED]	[REDACTED]	[REDACTED]
■	[REDACTED]	[REDACTED]	[REDACTED]
■	[REDACTED]	[REDACTED]	[REDACTED]
Quality			
■	[REDACTED]	[REDACTED]	[REDACTED]

10. Sydney Trains obligations

10.1 Funding

(a)

[REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

(b)

The Principal must pay any invoice within 30 days after the date the Contractor gives the Principal an Invoice that complies with clause 10.1(a).

- (c) The parties acknowledge that the consideration payable by the Principal under this Contract, being the aggregate of the Payment Tranches, is calculated otherwise than by reference to the value of the work to be carried out by the Contractor or the value of the goods and services to be supplied by the Contractor under this Contract.

10.2 Incorrect payments

If, after payment, an Invoice is found to have been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available remedies, will be credited against any amount subsequently due by the Principal to the Contractor under this Contract.

10.3 Payment on account

Any payment of moneys is not:

- (a) an admission of liability; or
- (b) approval by the Principal or the Principal's Representative of the Contractor's performance or compliance with the Contract.

Payment is only to be taken as payment on account.

10.4 Government Furnished Materials

- (a) The Principal must provide the Government Furnished Materials at the times and in accordance with the requirements agreed in the applicable Rollout Schedule.
- (b) The Contractor must:
 - (i) not use any Government Furnished Materials other than for the purposes of this Contract without the prior written consent of the Principal;
 - (ii) not part with possession of any Government Furnished Materials unless the Principal has provided its prior written consent, nor create or allow the creation of any lien, charge or mortgage over any Government Furnished Materials;
 - (iii) take all reasonable care of all Government Furnished Materials until risk in such Government Furnished Materials passes back to the Principal in accordance with clause 10.4(e);
 - (iv) promptly inform the Principal of any loss, destruction or damage to any Government Furnished Materials;
- (c) If the Government Furnished Materials are no longer required for the purposes of this Contract, they must be returned to the Principal, unless other arrangements are agreed. In respect of Government Furnished Materials which consist of electrical padmounts, the parties agree that such materials are not required to be returned to the Principal under this clause.
- (d) At all times, the Principal retains ownership of all Government Furnished Materials.
- (e) Risk in the Government Furnished Materials passes to the Contractor upon the provision of the relevant Government Furnished Material to the Contractor under clause 10.4(a). Risk in the Government Furnished Materials passes back to the Principal:

- (i) upon completion of any relevant works required of the Contractor in respect of the Government Furnished Materials as set out in a Rollout Schedule; or
- (ii) otherwise in accordance with clause 10.4(c).

10.5 Work performed by the Principal

- (a) If:
 - (i) a Rollout Schedule expressly provides that the Principal will undertake certain work in relation to such Rollout; or
 - (ii) the Principal is requested by the Contractor to perform work in relation to a Rollout and the Principal agrees to undertake such work,

(together, **Principal's Work**),

the Contractor must pay to the Principal the estimated cost of the Principal's Work, as notified by the Principal, before such work is commenced.
- (b) The estimation of the Principal's costs for carrying out any Principal's Work shall be calculated taking into account the Principal's then current rate card.
- (c) The Principal will issue an invoice to the Contractor at intervals determined by the Principal in relation to the Principal's Work.
- (d) Any invoice issued by the Principal under clause 10.5(c) is due and payable by the Contractor 30 Business Days of the date of such invoice.
- (e) Upon the conclusion of the Principal's Work:
 - (i) if the amount paid by the Contractor in accordance with clause 10.5(b) is greater than the actual costs of the Principal's Work, the Principal will reimburse the Contractor for the difference so long as there are no other amounts due and payable to the Principal under the Contract (in which case the difference may be set-off against such amounts); or
 - (ii) if the actual costs of the Principal's Work are greater than the amount paid by the Contractor in accordance with clause 10.5(b), the Contractor must pay the Principal the difference as invoiced in accordance with clauses 10.5(c) and 10.5(d).
- (f) The Principal must:
 - (i) perform the Principal Work in accordance with:
 - A. all Laws including the *Transport Administration Act NSW 1988*, the *Rail Safety National Law*, the *Passenger Transport Act NSW 1990*, the *Work Health and Safety Law* and any Law which regulates or has as its objective the protection or enhancement of the environment;
 - B. all approvals, conditions and licences issued by any Authority; and
 - C. Best Industry Practice;
 - (ii) perform the Principal Work in a timely manner; and

- (iii) ensure that, where applicable, all goods supplied as part of or in connection with the Principal Work:
 - A. comply with any description or specification of the works in this Contract;
 - B. are new, unless otherwise specified in this Contract; and
 - C. where a particular purpose or functionality is expressly set out in this Contract, are reasonably fit for that purpose or function.
- (g) If the Principal Work has a design component, the Principal must provide the Contractor with all relevant documents in accordance with Contractor AEO methodology in a timely manner. The Principal must produce any design documents in accordance with its ASA Authorisation, or the ASA Authorisation of any subcontractor, to the extent that compliance with ASA Requirements is required

10.6 New electrical infrastructure

- (a) Title in any new asset connected to the Electrical Distribution System delivered by or on behalf of the Contractor under this Contract (including any Rollout Schedule) will transfer to the Principal immediately upon installation of such asset.
- (b) Clause 10.6(a) does not apply in relation to any asset which is Government Furnished Material, the ownership of which is governed by clause 10.4(d).

10.7 Access

- (a) Subject to clauses 3.3, 10.7(b) and the Compliance Documents, the Principal will use its best endeavours to facilitate timely access to the land owned or controlled by the Principal in order for the Contractor to fulfil its obligations under this Contract, including on the terms of Schedule 6 and Schedule 7.
- (b) The parties acknowledge that it is intended that any formal grant of rights in relation to land will be governed by clauses 10.8(b) and 10.8(d) and the documents contemplated by those clauses.

10.8 Utilities and land

- (a) If a Rollout Schedule provides that the Principal will provide the Contractor with electricity, the parties agree that the provision of electricity will be on terms substantially similar to those set out at Schedule 4, and the parties must take all steps necessary (including executing any documents) to give effect to such terms.
- (b) If a Rollout Schedule provides that the Principal will licence to the Contractor land owned by the Principal in order to undertake the Mobile Rollout, the parties agree that any such licence will be on terms substantially similar to those set out at Schedule 5 at Attachment A or B (as applicable), and the parties must take all steps necessary (including executing any documents) to give effect to such terms.
- (c) If a Rollout Schedule provides that the Principal will lease to the Contractor land owned by the Principal, the parties agree that any such lease will be on terms substantially similar to those set out at Schedule 6, and the parties must take all steps necessary (including executing any documents) to give effect to such terms.
- (d) If a Rollout Schedule provides that the Principal will licence to the Contractor land owned by the Principal in order to undertake the Wi-Fi Rollout, the parties agree that any such licence will be on terms substantially similar to those set out at Schedule 7, and the parties must take all steps necessary (including executing any documents) to give effect to such terms.

- (e) Nothing in this clause 10.8 limits clause 2A.

11. No Warranty or Representation

Notwithstanding anything to the contrary, the Principal does not warrant or represent:

- (a) that a Designated Location is suitable for carrying out the Rollout;
- (b) that there will be any or adequate Utilities available on the Rail Corridor to meet the needs of the Contractor or third parties at any time;
- (c) anything in connection with the Environmental Aspects of a Designated Location whether or not arising as a result of an act or omission of the Principal, or any of its Personnel or any other person in or around the Designated Location;
- (d) the accuracy of information about any past use of a Designated Location; or
- (e) that a Designated Location is, or is not, Contaminated or Polluted, or the nature or extent of any Contamination or Pollution,

and (subject to any Law to the contrary which cannot be excluded) all representations, conditions and warranties (whether express or implied, statutory or otherwise) provided by the Principal prior to the execution of this Contract are expressly excluded.

12. GST

12.1 Recovery of GST

If GST is payable, or notionally payable, on a Supply made under or in connection with this Contract, the party providing the consideration for that Supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that Supply (the **GST Amount**). Subject to the prior receipt of a Tax Invoice, the GST Amount is payable at the same time that the other consideration for the Supply is provided. If a Tax Invoice is not received prior to the provision of that other consideration, the GST Amount is payable within 30 days of the receipt of a Tax Invoice. This clause 12 does not apply to the extent that the consideration for the Supply is expressly stated to be GST inclusive or the Supply is subject to reverse charge.

12.2 Liability net of GST

Where any indemnity, reimbursement or similar payment under this Contract is based on any cost, expense or other liability, it shall be reduced by any Input Tax Credit entitlement, or notional Input Tax Credit entitlement, in relation to the relevant cost, expense or other liability.

12.3 Adjustment events

If an adjustment event occurs in relation to a Supply made under or in connection with this Contract, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

12.4 Survival

This clause 12 will not merge upon completion and will continue to apply after expiration or termination of this Contract.

12.5 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) shall have the same meaning in this clause.

13. Conflict of Interest

- (a) The Contractor warrants that at the date of this Contract, no Conflict exists in the performance of the Contractor's Activities in respect of the Contractor or any of its Personnel, except as has been disclosed in writing by the Contractor to the Principal prior to the execution of this Contract.
- (b) The Contractor must use its best endeavours to ensure no Conflicts arise and must notify the Principal, in writing, immediately upon becoming aware of the existence, or possibility, of a Conflict.
- (c) On receipt of a notice under clause 13(b), the Principal may:
 - (i) approve the Contractor continuing to perform the Contractor's Activities; or
 - (ii) where in the Principal's view the Conflict cannot be appropriately managed, notify the Contractor that the Conflict constitutes a material breach of the Contract under clause 21.2(g) and exercise its rights under clause 21.2, provided that the Principal and the Contractor first try to resolve the Conflict under clause 23.2 and clause 23.4.

14. Design and documentation

14.1 IP

- (a) Subject to this clause 14, as between the Contractor and the Principal (but without affecting the position between the Contractor and a third party) Intellectual Property Rights in Deliverables created by:
 - (i) the Contractor in connection with this Contract vest immediately in the Contractor; and
 - (ii) the Principal in connection with this Contract vest immediately in the Principal.
- (b) The Contractor grants to the Principal a non-exclusive, irrevocable, perpetual, royalty-free licence to use, reproduce, make adaptations of, modify or incorporate into other work (and sub-license any third party to do so on terms substantially similar to the terms of this licence) the Intellectual Property comprised in or subsisting in the Deliverables:
 - (i) to allow the Principal to exercise its rights and comply with its obligations under this Contract;
 - (ii) to allow the Principal to procure, undertake or perform any works, activities, goods or services in connection with any further upgrade or refurbishment of the Principal's existing assets, or any plant, equipment or infrastructure systems owned, operated or maintained by the Principal or any other Rail Transport Agency;
 - (iii) to disclose on a confidential basis to third parties (other than a Competitor of the Contractor) for the purposes of a tender process for any procurement for any further upgrade or refurbishment of the Principal's existing assets, or any plant, equipment or infrastructure systems owned, operated or maintained by the Principal or any other Rail Transport Agency; and
 - (iv) to install, operate, maintain and monitor the Principal's existing assets or any plant, equipment or infrastructure systems owned, operated or maintained by the Principal or any other Rail Transport Agency.

- (c) The licence granted in respect of clauses 14.1(b)(ii) and 14.1(b)(iv) does not extend to those Deliverables which solely address New Infrastructure situated wholly outside of the Rail Corridor.

14.2 Keeping Records

- (a) During the Term, the Contractor must create and maintain, and where relevant undertake best endeavours to require Subcontractors with whom the Contractor enters into contracts from the Commencement Date to create and maintain, full and accurate Records of the conduct of the Project including (without limitation):
 - (i) the actual progress of the Project, including the Contractor's Activities, achievement of Completion in respect of New Infrastructure and the nature and effect of any delay to the Target Date;
 - (ii) a register listing all items of plant and equipment incorporated into the Project as constructed;
 - (iii) the completion of each Milestone and any disposal of New Infrastructure or reapplication of payments to any alternative infrastructure approved under this Contract, however this information is only required to be provided until such time as each Operational Period has commenced;
 - (iv) the implementation and provision of the Wi-Fi Services and Retail Mobile Services in compliance with the Expected Coverage;
 - (v) the receipt and use of the Payment Tranches;
 - (vi) the receipt and use of the Contractor's Contributions and the other Contributions; and
 - (vii) in addition to paragraphs (v) and (vi), financial records relating to the performance of the Project so as to enable the audit of those financial statements in accordance with the Australian Auditing Standards.
- (b) The Contractor must bear its own costs of complying with this clause.

14.3 Contractor to retain Records

The Contractor must, for the later of either ten years from the Commencement Date or three years from the date of termination or expiry (unless otherwise required by law), keep true and accurate Records and accounts required to be created and maintained under clause 14.2 together with all relevant documents and supporting materials.

14.4 Auditing and probity

- (a) The Contractor acknowledges and agrees that:
 - (i) no more than once in any calendar year, the Principal's Representative (or any other person nominated by the Principal's Representative) may conduct an audit to enable the Principal to confirm the Contractor's compliance with this Contract by giving the Contractor at least ten Business Days' prior written notice; and
 - (ii) the Contractor must provide reasonable access to any Contractor Site to enable the Principal or its nominees to carry out any such audit and must co-operate with and provide all assistance requested by the Principal or its nominees when carrying out any such audit, including providing access to all relevant facilities, documentation, records and Personnel (including those of Subcontractors).

- (b) An audit under this clause is subject to the following limitations:
- (i) where conducting the audit under paragraph (a)(i), the Principal and its Personnel must comply with the Contractor's reasonable confidentiality, security and privacy requirements;
 - (ii) the party conducting the audit must not be a Competitor of the Contractor; and
 - (iii) nothing in this clause requires the Contractor to provide the Principal's Representative (or any other person nominated by the Principal's Representative) with access to the Contractor's core network or back-end systems provided that the Contractor must, at all times, make available to the Principal's Representative (or any other person nominated by the Principal's Representative) such information and Records as contemplated by clause 14.2.

14.5 Evidence of financial standing or financial arrangements

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

14.6 Survive termination

Clauses 14.1 to 14.3, and the licences granted to the Principal under them, will survive any termination of the Contract for a period of 7 years (unless the licence is perpetual).

15. General Contractor obligations

15.1 Contractor's Acknowledgement

The Contractor acknowledges that the Principal has entered into the Contract relying on the professional skill, care, diligence and expertise of the Contractor in the performance of the Contractor's Activities.

15.2 Standard of care

The Contractor:

- (a) must exercise the standard of skill, care, diligence and expertise in the performance of the Contractor's Activities that would be expected of a professional provider of services equivalent to the Contractor's Activities;
- (b) warrants that each of its Subcontractors will exercise the standard of skill, care, diligence and expertise in the performance of the part of the Contractor's Activities being performed by each of the Subcontractors that would be expected of a professional provider of services equivalent to each part of the Contractor's Activities;
- (c) must ensure that the Contractor's Activities will be Fit for Purpose; and
- (d) must perform the Contractor's Activities in a timely and efficient manner.

15.3 No authority to act

Other than as expressly authorised, the Contractor has no authority to, and must not:

- (a) enter into any contracts, commitments or other legal documents or arrangements in the name of, or on behalf of, the Principal; or
- (b) take any act or step to bind or commit the Principal in any manner, whether as a disclosed agent of the Principal or otherwise.

Without limiting clause 26.17, the Contractor is an independent Contractor and is not, and must not purport to be, a partner or joint venturer of the Principal.

15.4 Compliance with Law

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

- (a) comply with all applicable Law;
- (b) obtain all Approvals except for those specified in the Key Details which were either obtained prior to the Commencement Date or will be obtained after the Commencement Date by the Principal;
- (c) comply with, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the Contractor or specified in the Key Details) including those conditions and requirements which the Principal is required under the terms of the Approvals specified in the Key Details to comply with, carry out and fulfil;
- (d) as soon as practicable (and not later than 5 Business Days after receipt of the relevant documents), provide copies of all documents (including the Approvals and other notices) to the Principal's Representative that any Authority issues to the Contractor in relation to the performance of the Contractor's Activities; and
- (e) prepare and give the Principal's Representative any documents that an Authority requires in order for the Principal to obtain the Approvals it requires to use the New Infrastructure.

15.5 Work health and safety

- (a) Without limiting the Contractor's obligations under any other provision of the Contract (including clause 15.6), the Contractor must comply, and must do all that is reasonably practicable to ensure that its Subcontractors and any other person

engaged by the Contractor for the purposes of the Contract comply, with the WHS Legislation including:

- (i) any obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
 - (ii) insofar as the Contractor, in carrying out the Contractor's Activities, is a person conducting a business or undertaking that designs plant, substances or structures to whom section 22 of the *Work Health and Safety Act 2011* (NSW) applies, the obligations under that section and any other provision of the WHS Legislation imposing obligations upon designers;
 - (iii) if requested by the Principal's Representative or required by WHS Legislation, demonstrate compliance with the WHS Legislation, including providing evidence of any Approvals, prescribed qualifications or experience, or any other information relevant to work health and safety matters;
 - (iv) consulting with the Principal for the purposes of the consultation requirements contained in regulation 294 of the *Work Health and Safety Regulation 2017* (NSW); and
 - (v) preparing the Safety Report in accordance with the requirements of, and otherwise discharging its obligation under, the provisions of the WHS Legislation and providing the Safety Report to the Principal and for this purpose preparing and maintaining the Risk Register, ensuring the Risk Register is updated, as necessary, to reflect the design development process and providing the updated Risk Register to the Principal at regular intervals.
- (b) The Contractor acknowledges and agrees that the Principal may provide a copy of the Safety Report to any person who has been provided with the design for the purposes of giving effect to it.
- (c) In performing its obligations under the Contract the Contractor must:
- (i) exercise a duty of utmost good faith to the Principal in carrying out the Contractor's Activities to enable the Principal to discharge the Principal's duties under the WHS Legislation; and
 - (ii) ensure that in performing the Contractor's Activities, it does all that is reasonably practicable to ensure that the Principal is not in breach of the WHS Legislation.
- (d) The term 'design' has any meaning assigned to that term under the WHS Legislation.

15.6 Principal Contractor

- (a) The parties acknowledge that the Principal will be the Principal Contractor in respect of the Contractor's Activities.
- (b) As a condition precedent to the Principal's obligation under the Contract to provide the Contractor with access to, or possession of a Site, the Contractor must prepare and submit a WHS Management Plan to the Principal's Representative for approval (such approval not to be unreasonably withheld).
- (c) No comment upon nor any review, acceptance or approval of the WHS Management Plan by the Principal's Representative will affect any warranty or

guarantee given by the Contractor or relieve the Contractor of any of its liabilities or obligations under the Contract.

- (d) Without limiting the Contractor's obligations under any other provision of the Contract including clause 15.5, the Contractor must:
- (i) if requested by the Principal's Representative or required by WHS Legislation, demonstrate compliance with the WHS Legislation, including providing evidence of any Approvals, prescribed qualifications or experience, or any other information relevant to work health and safety matters;
 - (ii) notify the Principal's Representative immediately (and in any event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Contractor's Activities;
 - (iii) insofar as the Contractor, in carrying out the Contractor's Activities is under any duty imposed by the WHS Legislation, do everything necessary to comply with any such duty; and
 - (iv) do all that is reasonably practicable to ensure that the Principal is not in breach of the WHS Legislation.

15.7 ASA Authorisation

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

15.8 ASA compliance

- (a) The Contractor must (and must ensure that its Personnel) comply with the conditions of the applicable ASA Authorisation referred to in clause 15.6.
- (b) The Contractor must:
 - (i) if the ASA Authorisation applies under clause 15.5 comply with the applicable ASA Authorisation for so long as the Contractor's Activities are carried out; and
 - (ii) (and must ensure that its Personnel) comply with the conditions of the applicable ASA Authorisation.
- (c) When performing the Contractor's Activities under clause 15.7, the Contractor must and must ensure that its Personnel):
 - (i) implement and comply with the requirements of any ASA Requirements applicable to the Asset Services;
 - (ii) cooperate fully with the ASA in the performance of the ASA's functions;
 - (iii) provide access to premises and resources as reasonably required by the ASA, including so that it can effectively carry out its review, surveillance and audit functions;
 - (iv) comply with the directions, instructions and requirements issued by the ASA;
 - (v) notify the ASA of any matter that could reasonably be expected to affect the exercise of the ASA's functions;

- (vi) provide the ASA with any information relating to its activities or any documents or other things reasonably required by the ASA in the exercise of its functions; and
 - (vii) provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to cooperate fully with the ASA and to implement and comply with ASA Requirements.
- (d) The Contractor acknowledges and agrees that it is not entitled to make (and neither the Principal nor the ASA will be liable upon) any Claim arising out of or in connection with the obligation to comply with the requirements of ASA and the ASA Authorisation.

15.9 Rail safety and Accreditation

- (a) The Contractor warrants that it either:
- (i) has, in which case it must at all times retain, the Accreditation required for the performance of the Contractor's Activities; or
 - (ii) will perform the Contractor's Activities pursuant to the Accreditation of the person stated in the Key Details.
- (b) The Contractor must:
- (i) liaise and co-operate with the Principal, and do everything necessary to enable and assist the Principal and any Rail Transport Agency to:
 - A. maintain their respective Accreditations, including obtaining any variation to any Accreditations required as a result of the Contractor's Activities to be performed in accordance with the Contract; and
 - B. comply with their respective obligations in relation to rail safety, including under the Rail Safety National Law;
 - (ii) except as required by Law, not do, or omit to do, anything which may cause an Accreditation to be suspended or cancelled; and
 - (iii) give any Authority such access to premises and information as the Authority lawfully requests to fulfil its functions with respect to the Contractor's Activities, within the time requested.

15.10 No interference

The Contractor must at all times in relation to the Contractor's Activities:

- (a) in respect of frequencies used by the Contractor which:
- (i) are regulated by the ACMA; and
 - (ii) the Contractor is, at all relevant times, licenced or authorised to use in the provision of telecommunication services,

the Contractor must comply with any conditions, requirements or other specifications imposed by the ACMA and any other Authority that is responsible for the regulation of telecommunications; and

- (b) in respect of frequencies used by the Contractor which are not regulated by the ACMA, the Contractor must on request from the Principal, provide all information and assistance reasonably required by the Principal (including carrying out

investigations and preparing any reports) in order to prevent, resolve or otherwise determine the source of interference with any equipment or facilities operated by the Principal.

15.11 Competence Records

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

- (a) prior to any Rail Safety Worker carrying out any Rail Safety Work in connection with the Contractor's Activities, provide the Principal with the Competence Records in the form directed by the Principal (acting reasonably) (which may be electronic);
- (b) ensure that any Rail Safety Worker who carries out Rail Safety Work in connection with the Principal's railway operations has the competence to carry out that work; and
- (c) ensure that each Rail Safety Worker used in connection with the Contractor's Activities has a form of identification that is sufficient to enable the type of competence and training undertaken by that Rail Safety Worker to be checked by a rail safety officer.

15.12 Benefit of the Contract

- [REDACTED]
- [REDACTED]
- (i) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

16. General obligations of the Principal

16.1 Provide other information

The Principal must as soon as practicable, make available to the Contractor all other relevant Records and particulars relating to the New Infrastructure and to the Principal's requirements for the New Infrastructure.

16.2 Provide additional information

If:

- (a) the Contractor, requires any additional Records or particulars to enable it to perform the Contractor's Activities, that are within the possession, custody or control of the Principal or that the Principal can reasonably obtain; and
- (b) the additional Records or particulars are not provided by the Principal under the Contract after reasonable request from the Contractor,

then:

- (c) the Contractor must give notice in writing to the Principal's Representative of the details of that additional Records or particulars and the reasons why they are required (where reasonable and practicable); and
- (d) the Principal must, arrange the provision of the additional Records or particulars as soon as possible.

16.3 Acknowledgement

The Contractor acknowledges that clause 25.1 of this Contract applies to any Records or particulars provided by the Principal to the Contractor under this clause 16.

17. Insurance

17.1 Not used

17.2 Contractor insurance obligations

The Contractor must:

- (a) from the Commencement Date, effect or have in place the following insurance:
 - (i) Professional Indemnity Insurance and Workers Compensation Insurance, [REDACTED]; and
 - (ii) if an amount is included in the Key Details for such insurance, Public Liability Insurance,
- for at least the amounts referred to and with the maximum deductibles specified in the Key Details;
- (b) ensure that each of the insurance policies required to be in place under clause 17 extends the benefit of cover to the Principal, NSW Trains, Transport for NSW and RailCorp as insureds in respect of their vicarious liability for the acts or omissions of the Contractor and its Subcontractors;
 - (c) in relation to the Workers Compensation Insurance, ensure that each of its Subcontractors has similar insurance to the Workers Compensation Insurance covering the Subcontractor's employees;
 - (d) ensure that if the Contractor's Activities are to be carried out on or near rail, the Public Liability Insurance (if required) does not contain any exclusions or limitations in cover in respect of works conducted on or near rail;
 - (e) ensure that the Public Liability Insurance complies with the requirements set out in the Key Details;
 - (f) provide the Principal's Representative with copies of certificates of currency for the insurances referred to in paragraphs (a) and (b) as required by the Principal's Representative from time to time; and

- (g) upon request by the Principal's Representative, promptly provide the Principal's Representative with a copy of any certificate of currency of the insurance policies required to be in place under this clause 17.

17.3 Period of insurance

The insurance which the Contractor is required to have in place under clause 17 must be maintained:

- [REDACTED]
- [REDACTED]

17.4 Insurers

Subject to clause 17.10 the insurance which the Contractor is required to have in place under clause 17.2 must be maintained with insurers that:

- (a) are authorised under the *Insurance Act 1973* (Cth) to carry on an insurance business in Australia and are supervised by the Australian Prudential Regulation Authority; and
- (b) have a credit rating of not less than A from Standard & Poor's, A2 from Moody's Investor Services or A- from A.M. Best Company.

17.5 Insurance obligations

The Contractor must ensure that it:

- (a) does not do anything which prejudices any insurance;
- (b) if necessary, rectifies anything which might prejudice any insurance;
- (c) reinstates an insurance policy if it lapses;
- (d) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal's Representative;
- (e) immediately notifies the Principal's Representative of any event which may result in an insurance policy lapsing or being cancelled; and
- (f) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

17.6 Failure to insure

If the Contractor fails to:

- (a) provide evidence satisfactory to the Principal's Representative that the policy is current; or
- (b) effect insurance which is with insurers and on terms satisfactory to the Principal's Representative,

as required by clause 17.2 the Principal may, without prejudice to any other rights it may have, effect the insurance and the cost will be a debt due from the Contractor to the Principal.

17.7 Notice of potential claim

The Contractor must:

- (a) as soon as possible inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by the Contract, if that claim would:
 - (i) have a material impact on insurance proceeds available under that policy; or
 - (ii) affect the Contractor's ability to comply with its obligations under the Contract, including this clause 17;
- (b) keep the Principal informed of subsequent developments concerning the claim; and
- (c) ensure that its Subcontractors similarly inform the Contractor and the Principal in respect of occurrences which may give rise to a claim by them.

17.8 Cross liability

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

17.9 Liabilities unaffected

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

17.10 Insurance warranties and representations

- (a) [REDACTED]
 - [REDACTED]
 - [REDACTED]
- (b) [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- (c) [REDACTED]
- [REDACTED]
- [REDACTED]

18. Right of set off

The Principal may deduct from any moneys otherwise due to the Contractor:

- (a) any debt or other moneys due from the Contractor to the Principal (including any due debt from the Contractor to the Principal pursuant to section 26C of the SOP Act); or
- (b) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act; or
- (c) any Claim to money which the Principal may have against the Contractor whether for damages or otherwise,

under this Contract or relating to the Contractor's Activities.

The rights given to the Principal under this clause 18 are in addition to and do not limit or affect any other rights of the Principal under the Contract or at Law and nothing in the clause affects the right of the Principal to recover from the Contractor the whole of the debt or Claim in question or any balance that remains owing.

Failure by the Principal to deduct from an amount otherwise due to the Contractor any amount which the Principal is entitled to deduct under this clause 18, will not prejudice the Principal's right to subsequently exercise its right of deduction under this clause.

Clause 18 will survive any termination of the Contract.

19. Subcontractors

19.1 Subcontracting

- (a) The Principal acknowledges that the Contractor may be subcontracting parts of the Contractor's Activities.
- (b) The Contractor will be fully responsible for the performance of the Contractor's Activities despite entering into subcontracts contemplated by clause 19.1(a).
- (c) The Contractor will be vicariously liable to the Principal for all acts, omissions and defaults of its Subcontractors (and those of the employees and agents of its Subcontractors) relating to, or in any way connected with the performance of the Contractor's Activities.
- (d) In the System Definition Review, the Contractor will provide the Principal with a list of Subcontractors that the Contractor proposes to use (as at the date of the System Definition Review) to undertake the Contractor's Activities within the Rail Corridor.

19.2 Subcontractor's statement

- (a) The Contractor must:
 - (i) submit a signed subcontractor's statement, in the form set out in Schedule 12 of the Appendix; and
 - (ii) ensure that any such subcontractor's statement is not dated before the date of the relevant payment claim.
- (b) The Contractor acknowledges that pursuant to the Workers Compensation Act 1987 (NSW), the Payroll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW):
 - (i) the subcontractor's statement is required to be provided to the Principal; and
 - (ii) the Principal may withhold any payment due to the Contractor under this Contract until the Contractor gives a subcontractor's statement in the form of Schedule 12 of the Appendix. Any penalty for late payment under the Contract does not apply to any payment withheld under this clause 19.1(b)(ii).

20. Default and rectification

20.1 Notice of Default

- (a) If a party is in default of this Contract (including in relation to any obligation under a Rollout Schedule), then without limiting the other party's rights and remedies, the party may give a notice of default to the other party (**Notice of Default**).
- (b) The Notice of Default must state:
 - (i) that this is a notice given under this clause 20.1;
 - (ii) the default relied upon; and
 - (iii) if the default is capable of being remedied, any steps that the party reasonably requests the other party to follow to remedy the default and the number of Business Days (which the party must determine acting

reasonably taking into account the nature of the breach) by which the default must be remedied.

- (c) For clarity, in relation to any breach of this Contract which may impact on the safe operation of the Principal's Operations, the Contractor must immediately:
 - (i) take all steps to rectify such breach of this; and
 - (ii) comply with all directions given by the Principal or its Personnel in relation to such rectification.

20.2 Remediation

If a party gives a Notice of Default, then the other party must unless the default is not capable of being remedied within a reasonable time, provide to the party a plan for remedying the default reasonably acceptable to the party, consult in good faith with the party with respect to the remedial plan; and carry out the remedial plan to remedy the default.

20.3 De-Scope

[REDACTED]

21. Termination

21.1 Preservation of rights

Subject to clause 21.6 nothing in this clause 21 or that a party does or fails to do pursuant to this clause 21 will prejudice the right of that party to exercise any right or remedy (including recovering damages) which it may have where the other party breaches (including repudiates) the Contract.

21.2 Termination by Principal for default

[REDACTED]

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

■ [Redacted]

21.3 Termination [Redacted]

(a) [Redacted]

(b) [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

21.4 Termination for convenience

[Redacted]

■ [Redacted]

■ [Redacted]

21.5 Costs

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

[Redacted]

■

[Redacted]

■

[Redacted]

[Redacted]

(b)

[Redacted]

■

[Redacted]

■

[Redacted]

(c)

[Redacted]

(d)

This clause 21.5 will survive termination of the Contract by the Principal under clause 21.4.

21.6 Contractor's entitlements after termination

[Redacted]

■

[Redacted]

■

[Redacted]

This clause 21.6 will survive any termination of the Contract.

22. Risk and Liability

22.1 Risk

[Redacted]

■

[Redacted]

■

[Redacted]

■

[Redacted]

[REDACTED]

22.2 Indemnity

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

22.3 Limitation of liability

(a) [REDACTED]

■ [REDACTED]

(ii) [REDACTED]

(b) [REDACTED]

(i) [REDACTED]

■ [REDACTED]

■ [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

- [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]

22.4 Electrolysis, noise and vibration

- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- (b) [REDACTED]

22.5 Mitigation

[REDACTED]

23. Disputes

23.1 Notice of Dispute

If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Principal's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the New Infrastructure or the Contract, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the procedure in this clause 23.

Where such a dispute or difference arises, either party may give a notice in writing (**Notice of Dispute**) to the Principal's Representative and the other party specifying:

- (a) the dispute or difference;
- (b) detailed particulars of the party's reasons for being dissatisfied (including the applicable facts which are relied on in sufficient detail so as to permit verification); and
- (c) the position which the party believes is correct.

23.2 Negotiation

The Principal's Representative and the Contractor's Representative (or their nominees) must, within 5 Business Days of a Notice of Dispute being given under clause 23.1, meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference.

23.3 Urgent relief

Nothing in clause 23.1 or 23.2 will prejudice the rights of either party to institute proceedings to enforce this Contract or to seek injunctive or urgent declaratory relief in respect of any dispute.

23.4 Executive negotiation

Whether or not negotiations have taken place under clause 23.2, if the dispute or difference is not resolved within 10 Business Days after a notice is given under clause 23.1, it must be referred to senior executives of each party (as nominated by each party) who must:

- (a) meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference; and
- (b) if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference.

23.5 Arbitration

- (a) Whether or not negotiations have taken place under clause 23.2 or the dispute or difference has been referred to senior executives of each party under clause 23.4, if the dispute or difference is not resolved within 20 Business Days after a Notice of Dispute being given under clause 23.1, either party may refer to the dispute or difference to arbitration.
- (b) The arbitration will be conducted before a person to be:
 - (i) agreed between the parties; or
 - (ii) failing agreement within 20 Business Days of the referral to arbitration, appointed by the Chair for the time being of the Resolution Institute (unless the parties agree otherwise).
- (c) To the extent that they are not inconsistent with the Contract, the Resolution Institute Arbitration Rules will apply to the arbitration.
- (d) The seat of the arbitration will be Sydney, Australia.
- (e) The arbitrator will have power to grant all legal, equitable and statutory remedies.
- (f) Notwithstanding anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW).

23.6 Survive termination

This clause 23 will survive any termination of the Contract.

23.7 Continuation of obligations

Despite the existence of a dispute or difference between the parties:

- (a) the Contractor must continue to carry out the Contractor's Activities; and

- (b) both parties must otherwise comply with their obligations under the Contract.

24. Not used

25. Confidentiality

25.1 Representations and warranties regarding Information Documents

The Contractor acknowledges and agrees, for itself and for the Contractor's Personnel that:

- (a) the Information Documents are provided by the Principal for the information only of the Contractor or as otherwise required for the Permitted Use;
- (b) neither the Principal nor the Principal's Personnel are responsible for, or make any representation or warranty (express or implied) in respect of, the contents of the Information Documents including the accuracy, adequacy, suitability or completeness of any reports, data, test results, samples, reports or investigations, opinions, recommendations, findings or other information contained in the Information Documents for any purpose, including the Permitted Use; and
- (c) The Principal has provided, or will provide, the Information Documents to the Contractor in reliance upon the acknowledgements and agreements contained in clause 2.

25.2 Confidentiality

A Recipient acknowledges and agrees, for itself and the Recipient's Personnel, that it will:

- (a) keep the Confidential Information confidential, safe, secure and protected against unauthorized use and access and, subject to clause 25.6 not disclose the Confidential Information to any person;
- (b) not use or permit the use of the Confidential Information for any purpose other than for the Permitted Use;
- (c) ensure Confidential Information is not copied or reproduced without the express written consent of the Discloser (except as strictly necessary to allow the Contractor to comply with the Contract);
- (d) not introduce any Confidential Information into any computer system or other device operated, controlled or which may be accessed to any extent by a person other than the Recipient or the Recipient's Personnel to whom the Confidential Information has been disclosed in accordance with this Contract;
- (e) ensure that any Personnel of the Recipient to whom the Recipient discloses Confidential Information:
 - (i) is aware of the confidentiality requirements of this Contract; and
 - (ii) is advised that he or she is strictly forbidden to disclose the Confidential Information to any other person or use the Confidential Information for any purpose other than as provided for in this Contract;
- (f) not issue any information, publication, document or article or make any statement to or advertise in any media about any matters relating to the Permitted Use or this Contract, unless otherwise approved in writing by the Discloser to do so; and

- (g) not attempt to access any Confidential Information other than the Confidential Information that they need to know and access for the purposes of the Permitted Use.

25.3 Comply with Privacy Laws

In relation to any Personal Information provided by the Discloser to the Recipient under or in connection with this Contract or its subject-matter, the Recipient warrants that it will comply with all applicable Privacy Laws including, if applicable, obtaining the consent of each individual to whom the Personal Information relates for the collection use and disclosure of that Personal Information.

25.4 Not cause breach by Principal

[REDACTED]

25.5 Security Measures

A Recipient must ensure that any Confidential Information in its or the Recipient's Personnel's possession, custody or control is kept secure at all times, including by, where the Recipient has access to Confidential Information by password or other secure means, the Recipient must not disclose that password or means of access to any other person unless it has been authorised in writing to do so by the Discloser.

25.6 When Recipient may disclose

- (a) The obligations on the parties under this clause 25 will not be taken to have been breached to the extent that Confidential Information is disclosed:
 - (i) with the prior written consent of the Discloser;
 - (ii) to the Recipient's Personnel or the Recipient's legal advisors, but only to the extent that each such person has a "need to know" the Confidential Information for the purposes of the Permitted Use;
 - (iii) by a party to its internal management personnel, solely to enable effective management of this Contract, subject to such personnel having agreed to maintain the confidentiality of the Confidential Information;
 - (iv) subject to clause 25.7, is authorised or required by Law to be disclosed or otherwise is permitted to be disclosed under this Contract;
 - (v) is in the public domain otherwise than due to a breach of this clause 25;
 - (vi) by either party to MNOs in accordance with the provisions of clause 4.7 and any Expert appointed under clause 4.8;
 - (vii) by the Principal to State or Commonwealth Ministers;
 - (viii) by the Principal within the Principal's organisation, or with another State or Commonwealth department, agency, authority or entity, where this serves the legitimate interests of the Principal in relation to the Project provided that it is not a customer of mobile tower construction services of the Contractor;
 - (ix) by the Principal in response to a request by the State Parliament or any committee of the Parliament, or in response to a request by the

Parliament of the Commonwealth of Australia or by any committee of the Parliament of the Commonwealth of Australia.

- (b) Where a Party discloses Confidential Information to another person:
- (i) pursuant to clauses 25.6(a)(ii), 25.6(a)(iii) and 25.6(a)(viii) the disclosing Party must:
 - A. notify the receiving person that the information is Confidential Information; and
 - B. not provide the information unless the receiving person agrees to keep the information confidential; or
- pursuant to clauses 25.6(a)(vii) or 25.6(a)(ix), the disclosing Party must notify the receiving party that the information is Confidential Information.
- (c) The Principal may only disclose Sensitive Information of Contractor:
- (i) to State or Commonwealth Ministers;
 - (ii) if required by Law to be disclosed by the Principal;
 - (iii) to its advisers or employees, solely in order to comply with obligations, or to exercise rights under this Agreement.
- provided that:
- (iv) any disclosure of Sensitive Information is only made to the extent required; and
 - (v) if the Principal is required to disclose Sensitive Information, the Principal ensures the receiver of that Sensitive Information knows it is confidential and seeks the fullest protection possible for that Sensitive Information.

For the purpose of clause 25.6(c) **Sensitive Information** means any information:

- (d) that has been designated by the Contractor as Sensitive Information and agreed with the Principal to be Sensitive Information;
- (e) about any costings and contribution amounts in this Contract and the Rollout Schedule; or
- (f) about Contractor's mobile network rollout which is not part of report that is provided to the Principal under this Contract,

but excluding any information which:

- (a) the Principal can demonstrate to be in the public domain or was known to the Principal at the time of disclosure other than through a breach of this Contract;
- (b) is in the lawful possession of the Principal without restriction in relation to disclosure before the date of receipt of the information from the Principal or the Principal Personnel; or
- (g) was independently developed by the Principal or the Principal Personnel

25.7 Disclosure required by Law

If a Recipient is required by Law to disclose any Confidential Information, the Recipient must before doing so immediately notify the Discloser and comply with any reasonable directions given by, or requirements of, the Discloser.

25.8 Additional circumstances when the Principal may disclose

- (a) The Contractor acknowledges that the Principal is subject to the *Government Information (Public Access) Act 2009 (NSW) (GIPA Act)* and agrees that the Principal may disclose any part or all of this Contract on its nominated website established for GIPA Act disclosures (provided that information of the nature set out in clauses 25.8(c)(i), 25.8(c)(ii) and 25.8(c)(iii) will not be disclosed). The Contractor irrevocably consents to the Principal acting in accordance with this clause.
- (b) To the extent that section 121 of the GIPA Act applies or a disclosure is otherwise required to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability, the Contractor must, upon receipt of a written request by the Principal, provide the Principal with immediate access to the following information contained in Records held by the Contractor:
 - (i) information that relates directly to the performance of obligations under this Contract by the Contractor;
 - (ii) information collected by the Contractor from members of the public to whom it provides, or offers to supply, Retail Mobile Services and Wi-Fi Services; and
 - (iii) information received by the Contractor from the Principal to enable it to perform its obligations under this Contract.
- (c) For the purposes of clause 25.8(b), information does not include:
 - (i) information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;
 - (ii) information that the Contractor is prohibited from disclosing to the Principal by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
 - (iii) information that, if disclosed to the Principal, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the Principal, whether at present or in the future.
- (d) The Contractor will provide copies of any of the information in clause 25.8(b), as requested by the Principal, at the Contractor's own expense and in such medium as the Principal may reasonably require.

25.9 Not used

25.10 Breach of confidentiality obligations

If the Recipient becomes aware of any actual, threatened or suspected breach of this clause 25, including by any of the Recipient's Personnel, the Recipient must:

- (a) immediately notify the Discloser in writing and take all steps necessary to remedy, prevent or stop the actual, threatened or suspected breach of this Contract and

comply with any reasonable directions issued by the Discloser regarding any unauthorised use or disclosure of the Confidential Information; and

- (b) provide such other assistance as may be reasonably required by the Discloser, including in relation to any Claim or proceedings that the Discloser may bring against any third party for unauthorised use or disclosure of the Confidential Information.

25.11 Return of Confidential Information

- (a) Subject to clause 25.11(b), if requested by the Discloser, the Recipient must:
 - (i) promptly return to the Discloser all documents and other physical records of Confidential Information in its or the Recipient Personnel's possession, custody or control;
 - (ii) delete the Confidential Information from any computer system or other device operated or controlled by, or which may be accessed by, the Recipient or the Recipient's Personnel to which the Confidential Information has been disclosed by the Recipient; and
 - (iii) comply with any reasonable directions issued by the Recipient in respect of the Confidential Information.
- (b) If the Recipient is required by Law to retain any Confidential Information, and provided the Recipient has not breached any of its obligations under this Contract, the Recipient may retain one copy of part or all of the Confidential Information, to the extent that the Recipient is obliged to retain a copy of part of or all of the Confidential Information by Law. Any Confidential Information retained pursuant to any such obligation at Law shall continue to be subject to the obligations of this Contract.

25.12 Discloser may enforce confidentiality obligations

The Recipient:

- (a) agrees that:
 - (i) the obligations in clause 25 are for the benefit of the Discloser and the Discloser's Personnel, and that the Discloser or the Discloser's Personnel may enforce those obligations; and
 - (ii) the Confidential Information is the exclusive property of the Discloser or the Discloser's Personnel and this Contract does not convey any proprietary or other interest in the Confidential Information to the Recipient or the Recipient's Personnel; and
- (b) acknowledges that:
 - (i) the Confidential Information is valuable to the Discloser and the Discloser's Personnel and that damages may not be an adequate remedy for the Discloser and the Discloser's Personnel for any breach of this Contract by the Recipient; and
 - (ii) the Discloser is, and Discloser's Personnel are, entitled to seek injunctive relief as a remedy for any breach or threatened breach of this Contract by the Recipient, in addition to any other remedies available at Law or in equity under or independently of this Contract.

25.13 Breach by Personnel

Where the Recipient discloses the Confidential Information to the Recipient's Personnel, a breach of a provision of this Contract by the relevant Recipient's Personnel will be deemed to be a breach of this Contract by the Recipient.

25.14 Release

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

25.15 Media

- (a) Subject to clauses 25.15(b) and 25.15(g) the Contractor must not, in any publication, promotional and advertising material, public announcement or public statement, disclose:
 - (i) any discussions or negotiations between the Contractor and the Principal in relation to, or concerning this Contract; or
 - (ii) any term of this Contract (except for a term of this Contract which is already in the public domain other than due to a breach of this Contract),without the prior written consent of the Principal.
- (b) Subject to clause 25.15(i), a Party must, in all publications, promotional and advertising materials, public announcements and activities by that Party or on its behalf in relation to the Project, acknowledge the financial and other support of the other Party (which in the case of the Principal, may include the NSW Government or the Australian Government) in a form to be approved by the other Party in writing prior to its use.
- (c) Where the Contractor conducts any unplanned publicity activities, the Contractor must use reasonable endeavours to ensure that the general nature of the proposed publicity activities are consistent with the Principal's public statements in relation to the Project and provide the Principal, where practicable, with details of the unplanned publicity activities as soon as practicable after it has occurred.
- (d) Without limiting clause 14.1(b)(iii), the Principal may use any information made available to the Principal by the Contractor under this Contract for the purposes of developing other communications-related government policies and programmes provided that it has obtained the Contractor's prior written consent to use that information, such consent not to be unreasonably withheld.

- (e) Without limiting the Principal's rights under this Contract, where practicable, the Principal will endeavour to notify the Contractor of the general nature of any planned public report on the Contractor's performance prior to it being made. Where the Principal does not notify the Contractor prior to making a public report, the Principal will endeavour to notify the Contractor of the general nature of the report as soon as practicable after it has been made.
- (f) The Contractor must facilitate the participation of the Commonwealth Minister for Communications, the NSW Minister for Transport or the respective Minister's nominated representative at any function associated with the Project (including, at Completion and the commencement of the provision of Retail Mobile Services and Wi-Fi Services), including the opportunity to speak at the function.
- (g) The Principal reserves the right to publicise and report on the awarding of funding to the Contractor and the achievement or failure of the Funding Outcomes. The Principal may do (but is not limited to doing) this by, amongst other means, including on its website, and in media releases, annual reports and general announcements information about the funding, including the Contractor's name, the amount of the funds given to the Contractor, the Date of this Contract, the Term of the Contract, and the title and a brief description of the Project. The Principal's rights contemplated by this clause may also be exercised by Transport for NSW, the Commonwealth Department of Communications, the Commonwealth Minister for Communications or the NSW Minister for Transport.
- (h) Where the Contractor has been provided with funding to produce any public publication referencing the Project, a copy of the publication must be provided to the Principal if requested by the Principal at any time.
- (i) If notified by the Principal in writing the Contractor must, within 20 Business Days of that notification, cease all or any part of the acknowledgement of support pursuant to clause 25.15(d) in any new publications, promotional and advertising materials, public announcements and activities in accordance with the terms of the Principal's Notice.

26. Miscellaneous

26.1 Address for service

- (a) All communications (including notices, consents, approvals, requests and demands) under or in connection with the Contract:
 - (i) must be in writing;
 - (ii) subject to clause 26.1(b), must be delivered or posted by prepaid express post to the address, sent by fax to the number, or sent by email to the email address, of the Principal's Representative or the Contractor's Representative (as applicable) set out in this Contract or such other address, fax number or email address as may be notified in writing by a party to the other party; and
 - (iii) are taken to be received by the addressee:
 - A. (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;
 - B. (in the case of express post sent to an address in another country) on the fourth Business Day after the date of posting;
 - C. (in the case of fax) at the local time (in the place of receipt of that fax) which then equates to the time that fax is sent as

shown on the transmission report produced by the machine from which that fax is sent confirming transmission of that fax in its entirety;

- D. (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 26.1(a)(ii); and
- E. (in the case of email), at the local time (in the place of receipt of that email) that would be determined if section 13A of the *Electronic Transactions Act 2000* (NSW) were to apply in respect of the email,

provided that if the communication would be taken to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

(b) If:

- (i) the Contractor sends a notice under clause 23 or concerning a claim for payment; or
- (ii) the Principal sends a notice under clause 23.1,

by email, the Contractor or the Principal (as applicable) must also deliver or post such notice to the relevant address or send it to the fax number provided in clause 26.1(a)(ii).

(c) For the avoidance of doubt:

- (i) no notice referred to in clause 26.1(b) will be effective until it has been delivered, posted or sent by fax in accordance with clause 26.1(b); and
- (ii) if a notice referred to in clause 26.1(b) is issued by both email and is also either delivered by hand, posted or sent by fax, both notices must be identical, and in the event that they are not identical, neither notice will constitute a valid notice.

(d) Where clause 26.1(b) applies, the relevant notice will be taken to have been received on the date determined in accordance with clause 26.1(a)(iii)A, 26.1(a)(iii)B, 26.1(a)(iii)C or 26.1(a)(iii)D (as the case may be).

(e)

[REDACTED]

[REDACTED]

(ii)

[REDACTED]

26.2 Restructure of Rail Transport Agency

- (a) The parties acknowledge and agree that the NSW Government has indicated that it may from time to time restructure Rail Transport Agencies. The restructure of Rail Transport Agencies may result in the assets, rights and liabilities of Rail Transport Agencies being transferred to other entities constituted under the *Transport Administration Act 1988* (NSW), other relevant Law or otherwise any other person that assumes the functions or obligations of the Principal. The Contractor agrees:

- (i) that this Contract and any assets, rights or liabilities a Rail Transport Agency holds in connection with this Contract may be novated, assigned or otherwise transferred from the Rail Transport Agency to any other entity constituted under the *Transport Administration Act 1988* (NSW), other relevant Law, or otherwise any other person that assumes the functions or obligations of the Principal;
 - (ii) to undertake all actions reasonably requested by the Rail Transport Agency to effect such a novation, assignment or other transfer; and
 - (iii) that it is not entitled to make, and the Rail Transport Agency and any novatee, assignee or transferee will not be liable upon, any Claim arising from or in connection with any novation, assignment or transfer contemplated by this clause.
- (b) If the Principal elects to novate the Contract:
- (i) pursuant to clause 26.2(a); or
 - (ii) to another person to whom the Contractor consents,
- the Principal and the Contractor will endeavour to complete a deed of novation (on commercially reasonable terms) and the Contractor must execute the deed of novation and return it to the Principal within 5 Business Days of receipt of the relevant deed of novation.

26.3 Governing Law

The Contract is governed by and must be construed according to the Laws of the State of New South Wales.

26.4 Jurisdiction

Subject to clause 23.5, each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to the Contract; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 26.4(a).

26.5 Counterparts

- (a) This Contract may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Contract, and all together constitute one agreement.
- (b) A party who has executed a counterpart of this Contract may exchange that counterpart with another party by emailing the counterpart executed by it to that other party and, upon request by that other party, will thereafter promptly deliver by hand or post to that party the executed counterpart so exchanged or email, but delay or failure by that party to so deliver a counterpart of this Contract executed by it will not affect the validity of this Contract.

26.6 Entire agreement

This Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersedes:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Contract; or
- (b) any correspondence or other documents relating to the subject matter of this Contract that may have passed between the parties prior to the Commencement Date and that are not expressly included in this Contract.

26.7 Survival

The covenants, conditions and provisions of this Contract which are intended or capable of having effect after the expiration or termination of this Contract (including clauses 21.1, 22.2, 25, and 26.19) must remain in full force and effect following any expiration or termination of this Contract.

26.8 Amendments

This Contract may only be amended by a document signed by or on behalf of both the Principal and the Contractor.

26.9 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under the Contract by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under the Contract.
- (b) A waiver or consent given by a party under the Contract is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of the Contract operates as a waiver of any other breach of that term or of a breach of any other term of the Contract.

26.10 Assignment

The Contractor must not assign, novate or otherwise transfer any of its rights or obligations under the Contract without the prior written consent of the Principal (such approval is not to be unreasonably withheld or delayed in circumstances where such assignment or novation is to a Contractor Group Member of substantially similar financial standing to the Contractor). If the Principal, in its absolute discretion, approves a novation of this Contract, the Contractor must provide the Principal with a duly completed and executed deed of novation in relation to this Contract, and the Principal's costs and expenses in connection with negotiating, preparing and executing any deed of novation will be a debt due and payable from the Contractor to the Principal.

26.11 Consents

A consent required under the Contract from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless the Contract expressly provides otherwise.

26.12 Expense

Except as otherwise provided in the Contract, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing the Contract.

26.13 Severance

If at any time a provision of the Contract is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of the Contract; or
- (b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of the Contract.

26.14 Indemnities

- (a) Each indemnity in the Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiry of the Contract.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by the Contract.

26.15 English language

All communications between the parties and all documentation provided in connection with the Contractor's Activities (including the Deliverables) must be in the English language.

26.16 Taxes

- (a) Without limiting clause 15.4, the Contractor must pay all taxes which may be payable in respect of the Contractor's Activities, including any customs duty and primage applicable to imported plant, equipment and materials required for the Contractor's Activities.
- (b) If the Principal is required by law to withhold any amount in respect of tax from a payment to be made to the Contractor (**Tax Deduction**) under the Contract, then the Principal must make that Tax Deduction, and any payment required in connection with that Tax Deduction, to the relevant taxing authority in accordance with the applicable law. Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Principal making that Tax Deduction will deliver to the Contractor evidence reasonably satisfactory to the Contractor that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (c) If the Principal pays an amount to the Contractor without withholding an amount in respect of tax, the Contractor must indemnify the Principal for any loss suffered by the Principal as a result of the Principal failing to withhold the amount in respect of tax.

26.17 No partnership, joint venture or other fiduciary relationship

Nothing in the Contract will be construed or interpreted as constituting the relationship between the Principal on one hand and the Contractor on the other hand as that of partners, joint venturers or any other fiduciary relationship.

26.18 Exchange of information between government agencies

The Contractor acknowledges and agrees that:

- (a) any information about the Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Contractor future opportunities for NSW government work;

- (b) the communication of such information to any NSW government department or agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
- (c) the Principal has in place processes for assessing the performance of its suppliers, that these processes will apply to the Contractor's performance under the Contract and that it will participate in the Principal's "Contractor Performance Reporting" process.

26.19 Proportionate liability

- [Redacted]
- [Redacted]
- [Redacted]
 - [Redacted]
 - [Redacted]

26.20 Not used

26.21 Force majeure

- [Redacted]
- [Redacted]
 - [Redacted]
 - [Redacted]

Schedule 1 - Key Details

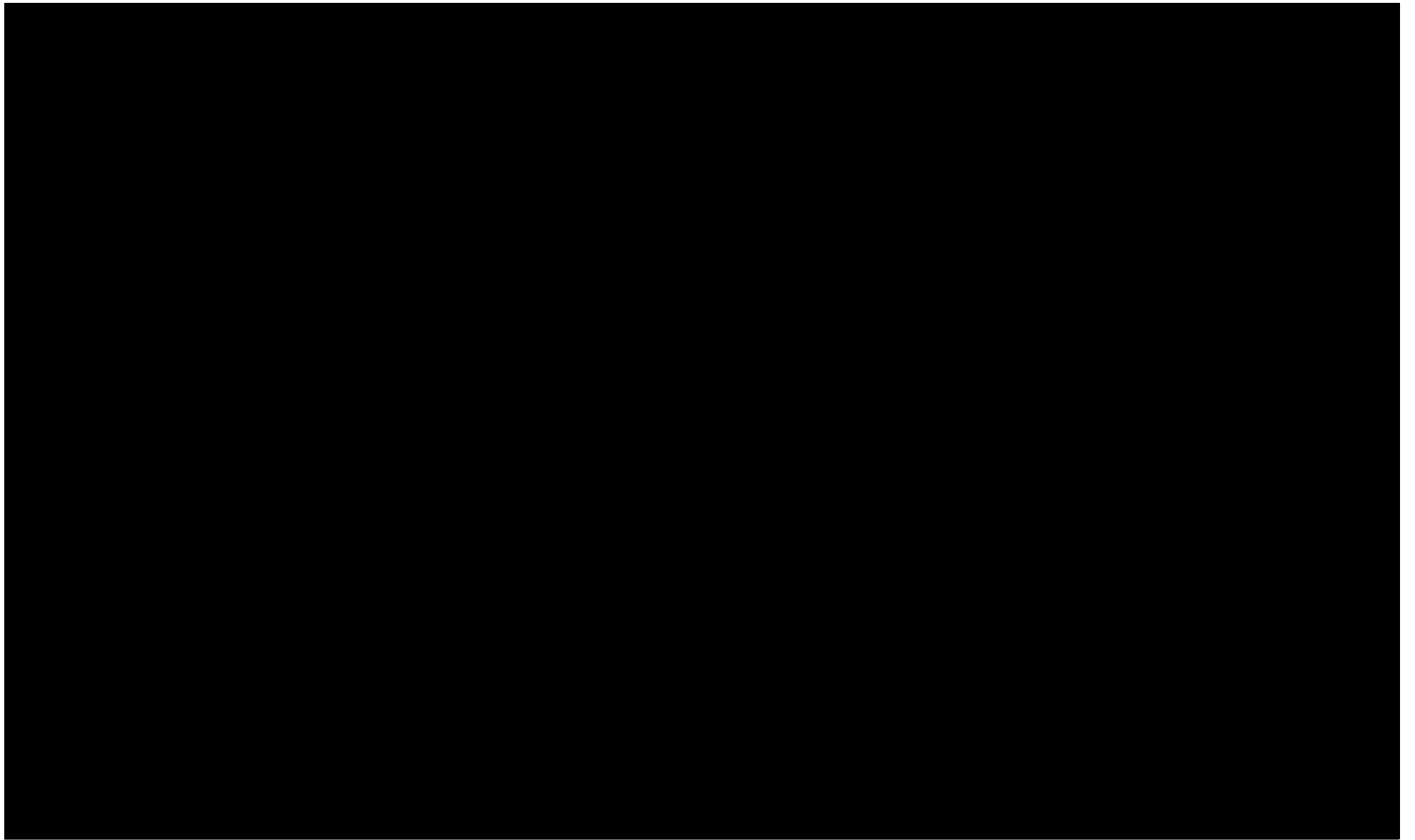
Clause 1 - Definitions and interpretation		
1.	Contract - Other documents forming part of the Contract: (Clause 1.1)	<i>Nil</i>
2.	Contractor's Representative: (Clause 1.1)	[REDACTED]
3.	Principal's Representative: (Clause 1.1)	[REDACTED]
4.	Existing Approvals and other Approvals which the Principal is to obtain: (Clause 15.4(b))	<i>Nil</i>
5.	ASA Authorisation: (Clause 15.5)	Click here to enter text. The Contractor or its Subcontractor is the AEO and the Contractor's or its Subcontractor's ASA Authorisation applies.
6.	Accredited person: (Clause 15.9)	Click here to enter text. If nothing is stated, then the Principal holds the Accreditation.

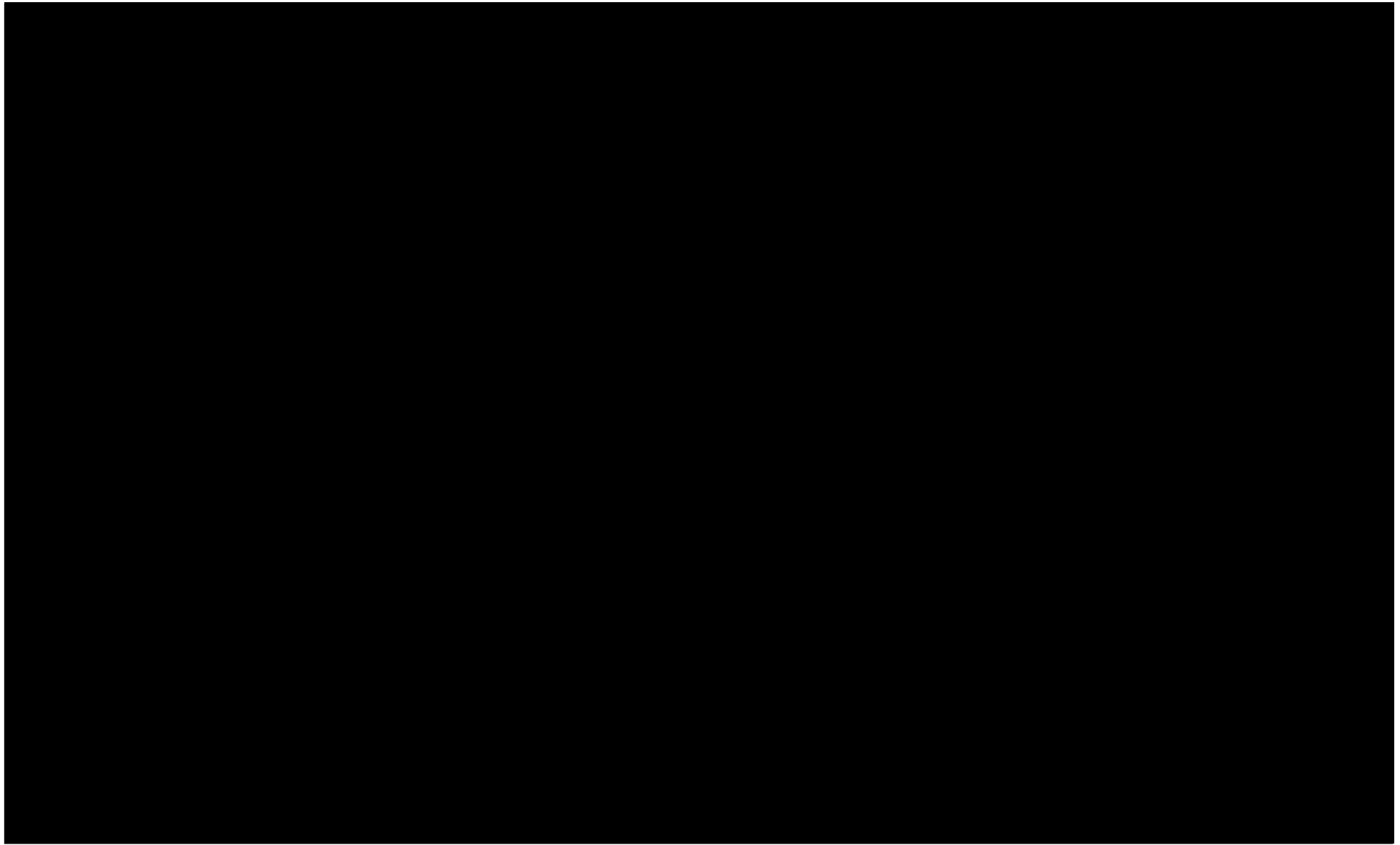
<p>7.</p>	<p>Insurance policies required to be effected by the Contractor: (Clause 17.2)</p>	<p>Public Liability Insurance</p> <p>Amount of cover is either:</p> <ul style="list-style-type: none"> a) \$ [REDACTED]; or b) if the Contractor's Activities involve work in a non-live Rail Corridor - \$ [REDACTED]; or c) if the Contractor's Activities involve work in a live Rail Corridor - \$ [REDACTED], <p>in respect of any one occurrence.</p> <p>Maximum deductible is [REDACTED]</p> <p>Workers Compensation Insurance</p> <p>Amount of cover: The maximum amount required by Law</p> <p>Maximum deductible is not applicable.</p> <p>Professional Indemnity Insurance</p> <p>Amount of cover including provision for at least one automatic reinstatement of the limit of indemnity: \$ [REDACTED] (If no amount is specified, \$ [REDACTED].)</p> <p>Maximum deductible is [REDACTED]</p>
<p>8.</p>	<p>Additional requirements for Public Liability Insurance (Clause 17.2(e))</p>	<p>Public Liability Insurance must extend the benefit of cover to the Principal, NSW Trains, Transport for NSW and RailCorp as insureds in respect of their vicarious liability for the acts or omissions of the Contractor and its Subcontractors.</p>

9.	Limitation of liability (Contractor): (Clause 22.3(a)(ii))	An amount equal to [REDACTED]
10.	Limitation of liability (Principal): (Clause 22.3(c))	An amount equal to [REDACTED] [REDACTED] [REDACTED]

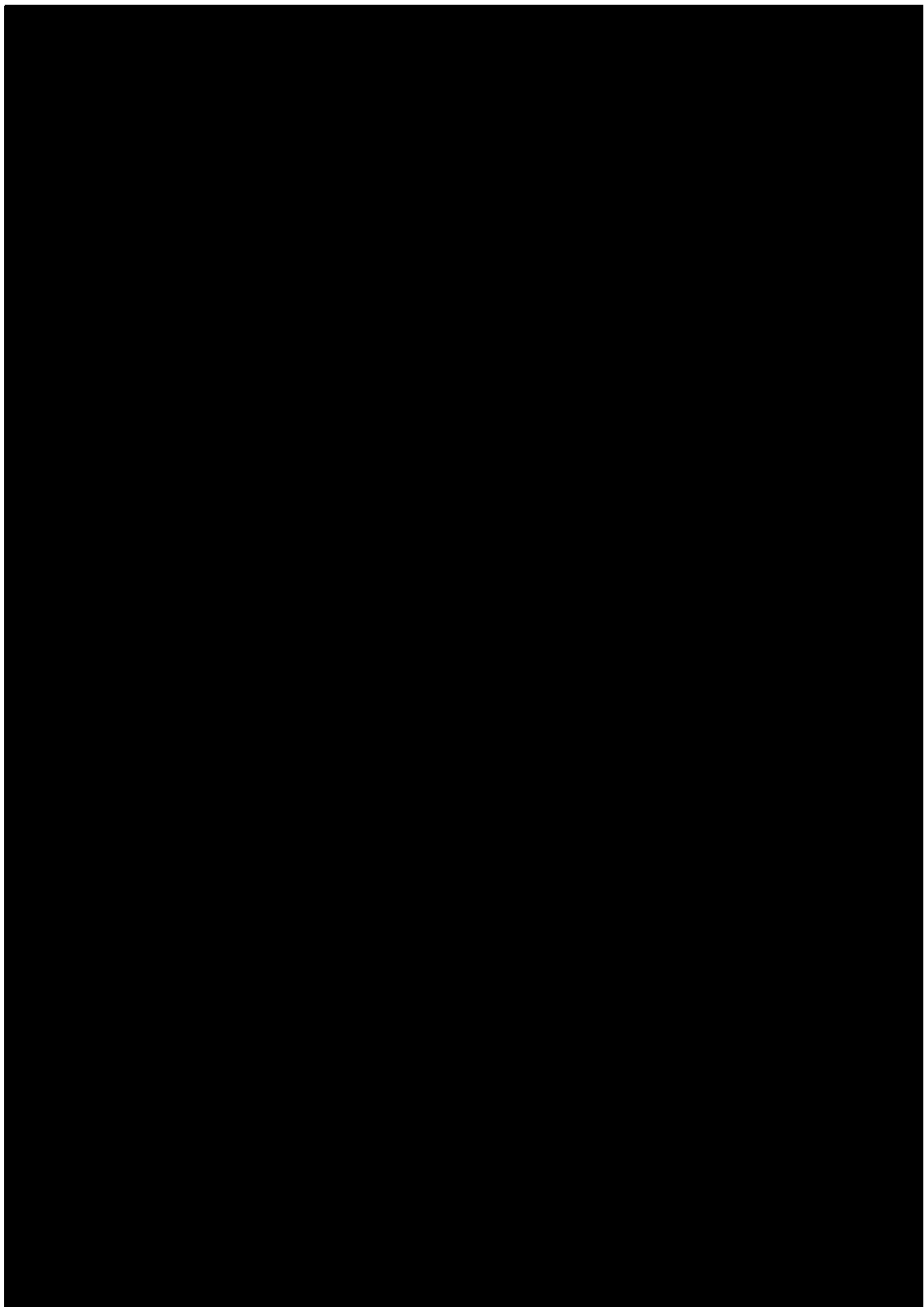
Schedule 2 – Funding Schedule

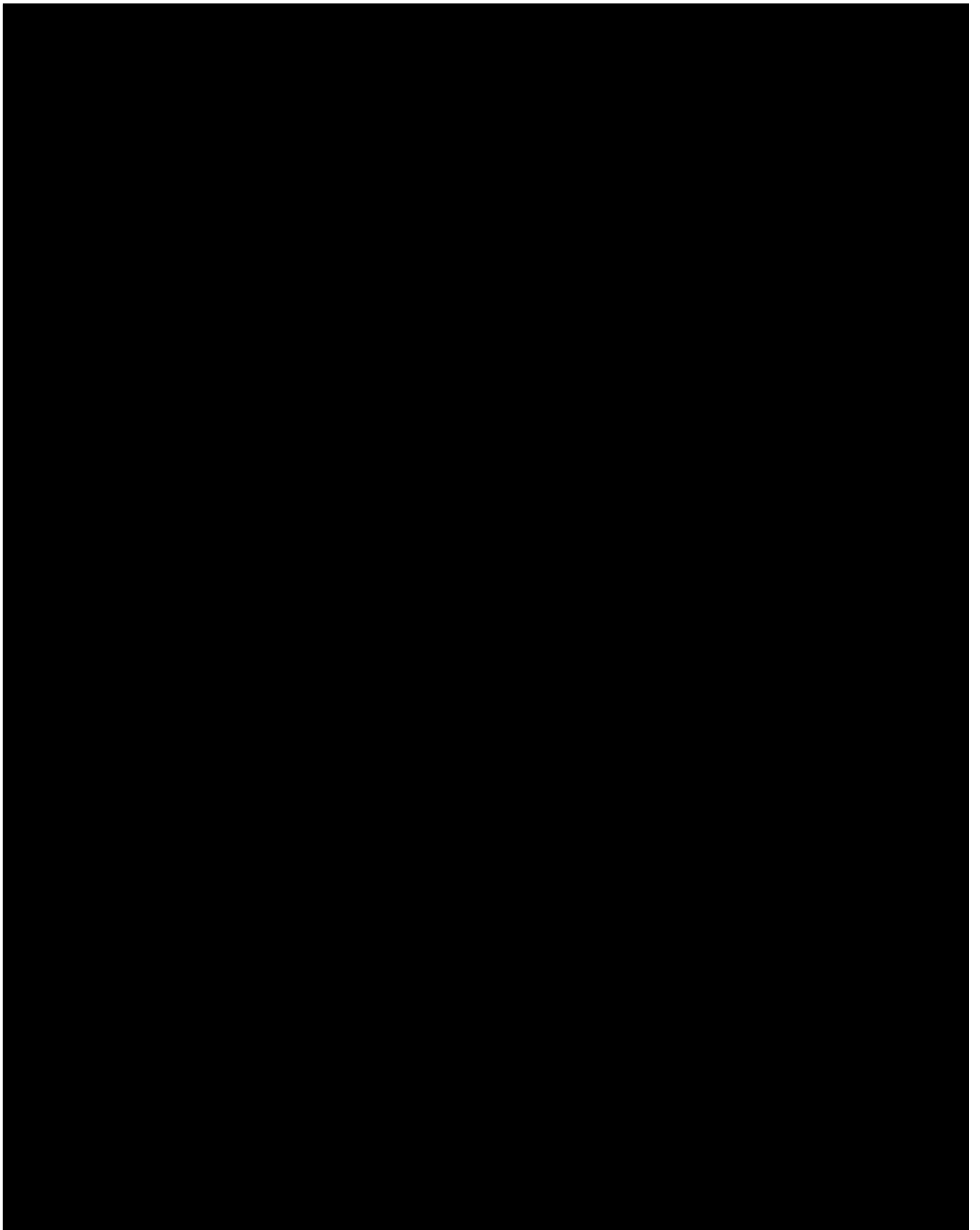
Schedule 2 – Funding Schedule











Schedule 3 System Definition Review requirements

[Redacted]

Part B - Activities

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

Part B – Returnable Documents (Outcomes)

- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]



Schedule 4 – Template form of agreement for the provision of electricity to Designated Locations

Schedule 5 – Tunnel and Duct Licences

1 Attachment 1: Tunnel Licence

2 Attachment 2: Duct Licence

Schedule 6 – Template form of Lease – Mobile Base Stations

Schedule 7 – Template form of property licence – Wi-Fi Equipment Licence

Schedule 8 – Reporting Requirements

Item 1 New Infrastructure Completion Report

Each New Infrastructure Completion Report will be a stand-alone document, which must include at a minimum the following information:

Asset Information Delivery Form



Appendix C13 -
Asset Information De

Item 2 Asset Completion Report

Each Asset Completion Report will be a stand-alone document. At a minimum, each Asset Completion Report must include the following information:

- I. A description of the New Infrastructure asset constructed;
- II. A statement given by the Contractor in which the Contractor warrants, as at the date the statement is made, that coverage for the New Infrastructure as at Completion is as set out in Operational Coverage Map calculated according to the Contractor's desktop predictive methodology. The statement must be made and signed by a person duly authorised to make such a statement on behalf of the Contractor and who occupies a senior executive position within the Contractor's organisation;
- III. In respect of the Mobile Rollout; an approximation of the percentage of the rail line with new or improved in-train mobile phone coverage as a result of the New Infrastructure being completed;
- IV. In respect of the Wi-Fi Rollout, an approximation of the percentage of Stations with new handheld Wi-Fi Coverage as a result of all New Infrastructure on the Station being completed;
- V. For Mobile Coverage; confirmation that Retail Mobile Services are able to be provided from the New Base Stations;
- VI. For Wi-Fi; confirmation that the Transport for NSW Free Station Wi-Fi Service is able to be provided from the New Infrastructure ;
- VII. The type of Backhaul provided at, or in relation to, the New Infrastructure and whether Co-Location is being provided from the New Infrastructure;
- VIII. A list of the collocating MNOs that have entered into a colocation agreement with the Contractor on the New Base Station
- IX. The Operational Coverage Map for the New Base Station, in a form acceptable for publication by the Commonwealth and State Government;
- X. An as-built drawing of the New Infrastructure;
- XI. The latitude and longitude of the Site where the New Infrastructure is located and

Schedule 9 – Rollout Schedule

Schedule 10 – Form of Invoice

Schedule 11 –Insurance warranties and representations

Appendix

Appendix to Central Coast Mobile Coverage and Station Wi-Fi Funding Project Agreement

Version: 2.0
Date: July 2018

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Schedule 1 - Policies, Codes and Standards

All clause references in this Schedule are references to clauses in this Schedule unless otherwise indicated.

Capitalised terms in this Schedule have the same meaning as in the General Conditions.

Any reference in this Schedule to a policy, guideline or other document is a reference to such policy, guideline or document as updated or replaced from time to time.

This Schedule applies without limiting any of the Contractor's obligations under the General Conditions.

1. **Ariba Network**

The Contractor acknowledges that:

- (a) the Principal generally conducts business with contractors electronically, including by transacting and exchanging data with contractors for the purposes of:
 - (i) creating purchase orders and for the acknowledgement of the receipt of purchase orders;
 - (ii) processing invoices and payments;
 - (iii) conducting spend analyses; and
 - (iv) supplier management;
- (b) as at the date of the Contract, the Principal uses:
 - (i) the Ariba Spend Management™; and
 - (ii) the Ariba Contractor Network™,(collectively, **Ariba**) as the platform for transacting and exchanging data with panel contractors;
- (c) if the Contractor is requested by the Principal to register as a "supplier" on Ariba, the Contractor must, at its own cost, do all things necessary to give effect to such request; and
- (d) the Principal may from time to time, in its absolute discretion, nominate a platform or tool other than Ariba as the platform for transacting and exchanging data with panel contractors, in which case, the Contractor must do all things required by the Principal, at its own cost, to enable transactions and the exchange of data to be undertaken using such other platform or tool.

2. **Contractor's compliance with Government Policies and Agreements**

- (a) The Contractor acknowledges that when selecting the Contractor, the Principal, as a NSW Government authority, was obliged to consider the Contractor's compliance with the Policies, Codes and Standards.
- (b) The Contractor warrants that any information it provided to the Principal in its tender proposal in respect of its compliance with the requirements of the documents listed in clause 2(a) will remain true for the duration of the Contract.

3. Corruption Prevention

- (a) The Contractor warrants and represents to the Principal that:
- (i) it has not, and none of its Personnel have, engaged in any corrupt conduct at any time prior to the Award Date; and
 - (ii) it will not, and will ensure that its Personnel do not, at any time engage in any corrupt conduct.
- (b) Without limiting or otherwise restricting any other rights of the Principal under the Contract, if:
- (i) the Contractor or any of its Personnel are at any time found to have engaged in corrupt conduct; or
 - (ii) the Contractor is at any time found to have breached the warranty and representation given in clause 3(a),
- the Principal may terminate the Contract with immediate effect by giving written notice to the Contractor.
- (c) In this clause 3, terms which are defined in the *Independent Commission Against Corruption Act 1988 (NSW) (ICAC Act)* have the meaning given in the ICAC Act.

4. NOT USED

5. Safety Management

- (a) The Contractor must provide its safe work method statements (as defined in the WHS Legislation) to the Principal's Representative within 10 Business Days of the date of the Contract.
- (b) If at any time the Contractor becomes aware of any health or safety hazard in relation to the Contractor's Activities either prior to or after performing the Contractor's Activities, the Contractor must, in addition to its hazard identification and reporting obligations under section 2 of the document entitled "General Safety specification for contractors" (available from the RailSafe website or by contacting the Principal's Representative) (**Safety Specification**), promptly review the Contractor's Activities and immediately suspend provision of any Contractor's Activities where there is a possibility of injury to persons or damage to property.

6. Work Health and Safety

- (a) The Contractor must establish, implement and maintain for the duration of the Contract, a work health and safety management system (**WHS Management System**) which:
- (i) complies with paragraph (d) of the definition of Policies, Codes and Standards;
 - (ii) complies with the WHS Legislation;
 - (iii) reflects the Principal's minimum requirements set out in the Principal's safety management system described in paragraph (a); and

- (iv) includes an ongoing commitment to the training of its Personnel.
- (b) If clause 3(a) includes conflicting obligations, the obligation which imposes the highest standard of health and safety applies.
- (c) The Contractor must:
 - (i) ensure that all of its Personnel comply with the WHS Management System (including identifying and exercising all necessary precautions for the health and safety of all persons undertaking any part of the Contractor's Activities); and
 - (ii) monitor the compliance of its Personnel with the WHS Management System and the relevant sections of the Principal's safety management system described in paragraph (a).
- (d) As required by the Principal, the Contractor must provide to the Principal's Representative in a format acceptable to the Principal:
 - (i) acknowledgement of any changes to rail network documents such as rules, procedures, standards, manuals and other documents; and
 - (ii) evidence that any initiatives or changes referred to in clause 6(d)(i) have been communicated to its Personnel.
- (e) The Contractor acknowledges and agrees that:
 - (i) the Principal's Representative may in its absolute discretion, direct changes to the WHS Management System;
 - (ii) in the event that the Principal's Representative gives a Direction in accordance with clause 6(e)(i), the responsibility of the Contractor under the Contract will not be relieved or reduced nor will the Principal be made responsible to the Contractor as a result of issuing that Direction except to the extent that it gives rise to a Variation; and
 - (iii) in the event that the Principal discovers a non-compliance or breach of any safety requirement including, but not limited to, a breach of clause 5 or this clause 6, the Principal may immediately suspend the work associated with the non-compliance or breach. The suspension will not be lifted until the unsafe practice is removed or the breach rectified. All direct costs under this clause will be borne by the Contractor.

7. Environmental management

7.1 NOT USED

7.2 Responsible management of substances:

The Contractor must:

- (a) not discharge, without lawful authority, any substance that could be harmful to the environment;
- (b) prevent the unlawful discharge, leakage or spillage of substances;
- (c) immediately report any leakage or spillage of any harmful substance at the Principal's premises to the Principal and any relevant Authority;

- (d) take immediate action to contain the leakage or spillage and minimise environmental damage and clean the area affected by the discharge of any substance discharged by the Contractor or its Personnel while undertaking the Contractor Activities (unless otherwise directed by the Principal's Representative or any relevant Authority);
- (e) comply with any direction in relation to environmental protection that may be given by any relevant Authority or the Principal; and
- (f) pay all costs associated with the remediation and clean up of any substances that the Contractor or its Personnel discharges while undertaking the Contractor Activities, including payment of fines and labour costs and any investigation to delineate the extent of any leakage or spillage.

7.3 Contractor's waste obligations

The Contractor must:

- (a) comply with Laws specifically in relation to the handling, classification, transportation, tracking and disposal of all waste generated as part of the Contractor's Activities;
- (b) prior to disposing of any waste generated as part of the Contractor's Activities obtain the Principal's written approval in relation to every facility or premises at which the Contractor intends to dispose of that waste and then only dispose of that waste to the facility or premises approved by the Principal;
- (c) in relation to every premises to which waste generated as part of the Contractor's Activities is transported, provide the Principal's Representative with a proper, accurately completed approved notice in accordance with Section 143 of the *Protection of the Environment Operations Act*;
- (d) obtain and maintain a waste tracking log and disposal dockets and submit the log and dockets, along with all other chain of custody documentation required by Laws relating to the environment, to the Principal's Representative within 3 Business Days after each individual disposal so as to enable the Principal's Representative to verify that the above requirements have been met; and
- (e) take full responsibility for disposal of all waste generated as part of the Contractor's Activities and pay all fees and charges associated with assessment, classification, transport, tracking and disposal of that waste including any waste levy.

7.4 NOT USED

8. Chain of responsibility legislation

- (a) Without limiting or otherwise restricting any of the Contractor's responsibilities or obligations under or in connection with the Heavy Vehicle Law, to the extent heavy vehicles are used in the performance of the Contractor's Activities, the Contractor:
 - (i) acknowledges that it is a primary duty holder under the COR Laws with responsibility for developing COR Systems;
 - (ii) must ensure that:
 - A. any heavy vehicles are appropriately maintained with loads that do not exceed vehicle mass or dimension limits and are appropriately secured;

- B. operators carrying freight containers have a valid Container Weight Declaration; and
 - C. drivers do not exceed speed limits or regulated driving hours, do not drive while impaired by fatigue and observe minimum rest requirements;
- (iii) must proactively provide reasonable assistance to the Principal's Representative to enable the Principal (and any of the Principal's Personnel) to satisfy its duties and responsibilities under the COR Laws;
 - (iv) must obtain and maintain, and ensure that each of its Personnel obtains and maintains, all approvals required to enable the applicable activity, function or task to be undertaken lawfully;
 - (v) must undertake any audits or monitoring as requested by the Principal's Representative to demonstrate compliance with this clause; and
 - (vi) warrants that it is familiar with and has the capability and resources to comply with the COR Laws and ensure that its Personnel comply with all COR Laws.
- (b) Where used in this clause 8:
- (i) **"Container Weight Declaration"** has the meaning given in the Heavy Vehicle Law;
 - (ii) **"COR Laws"** means any section of the Heavy Vehicle Law under which the Contractor is "a party in the chain of responsibility" (within the meaning given to that term under the Heavy Vehicle Law);
 - (iii) **"COR Systems"** means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance with the COR Laws;
 - (iv) **"Heavy Vehicle Law"** means the:
 - A. Heavy Vehicle National Law (NSW) within the meaning of that term under the Heavy Vehicle (Adoption of National Law) Act 2013 (NSW); and
 - B. regulations in force under the Heavy Vehicle National Law (NSW) as applied (with modifications) under the Heavy Vehicle (Adoption of National Law) Act 2013 (NSW) as amended, reproduced or updated from time to time; and
 - (v) terms which are defined in the Heavy Vehicle Law have the meaning given in the Heavy Vehicle Law.

9. Aboriginal Participation in Construction

Where the NSW Government Policy on Aboriginal Participation in Construction (May 2015) (**Policy**) is applicable to the Contractor's Activities, the Contractor must:

- (a) comply with the requirements of the Policy;
- (b) within 60 days of the Award Date, provide to the Principal an "Aboriginal Participation Plan" in accordance with the Policy; and

- (c) provide to the Principal an "Aboriginal Participation Report" every 3 months in the form required by the Policy.

Schedule 2 NOT USED

Schedule 3 - Principal's requirements for working in the Rail Corridor

All clause references in this Schedule are references to clauses in this Schedule unless otherwise indicated.

Capitalised terms in this Schedule have the same meaning as in the General Conditions, unless defined below.

1. Working in the Rail Corridor

1.1 Definitions

In this clause:

Approved Suppliers of Protection Officers means the list of suppliers of Protection Officers maintained by the Principal, details of which can be obtained by contacting the Principal.

Controlled Signal Blocking has the meaning given in the RailSafe Network Rules.

Danger Zone has the meaning given in the RailSafe Network Rules.

Local Possession Authority has the meaning given in the RailSafe Network Rules.

No Authority Required has the meaning given in the RailSafe Network Rules.

Principal's Safety Management System means the sections of the Principal's safety management system which are relevant to the Contractor's Activities, found at <http://railsafe.org.au/sms-documents> and <https://www.transport.nsw.gov.au/about-us/who-we-are/sydney-trains/contractors> as amended from time to time, or as otherwise notified by the Principal to the Contractor.

Possession has the meaning given in the RailSafe Network Rules.

Possession Protection Officer has the meaning given in the RailSafe Network Rules.

Protection Officer has the meaning given in the RailSafe Network Rules.

RailSafe Network Procedures means the Network Procedures which can be obtained from the RailSafe website at <https://railsafe.org.au/procedures> or by contacting the Principal.

RailSafe Network Rules means the Network Rules which can be obtained from the RailSafe website at <https://railsafe.org.au/> or by contacting the Principal.

Railway has the meaning given in the Rail Safety National Law.

Railway Operations has the meaning given in the Rail National Law.

Running Line has the meaning given in the Rail Safety National Law.

Track Occupancy Authority has the meaning given in the RailSafe Network Rules.

Track Work Authority has the meaning given in the RailSafe Network Rules.

Worksite has the meaning given in clause 1.5(b).

1.2 General requirements

The Contractor must comply with the document entitled "General Safety Specification for Contractors" which can be obtained from the Railsafe website or by contacting the Principal's Representative (**Safety Specification**) which sets out the specific occupational health and safety requirements of the Contract, including such matters as safety requirements for carrying out work in the Rail Corridor and the Principal's policies with regard to drugs, alcohol and fatigue management.

1.3 Working in the Rail Corridor

- (a) The RailSafe Network Rules and RailSafe Network Procedures prescribe the rules and procedures for carrying out work in the Rail Corridor.
- (b) The Contractor must comply with, and must ensure that its Personnel and visitors comply with, the RailSafe Network Rules and RailSafe Network Procedures.
- (c) This Schedule does not limit or otherwise restrict the Contractor's obligation to comply with the RailSafe Network Rules and RailSafe Network Procedures.

1.4 Method of working in the Danger Zone

- (a) Without limitation, the RailSafe Network Rules prescribe:
 - (i) that work in the Danger Zone must be carried out only by using one of the following five methods:
 - A. Local Possession Authority;
 - B. Track Occupancy Authority;
 - C. Track Work Authority;
 - D. Controlled Signal Blocking; or
 - E. No Authority Required; and
 - (ii) mandatory minimum safety measures for each method.
- (b) If the Contractor is to provide the Contractor's Activities in the Danger Zone, the Contractor must carry out work in the Danger Zone using the method(s) notified by the Principal's Representative to the Contractor's Representative no later than 24 hours prior to the commencement of the relevant Contractor's Activities.

1.5 Working hours

- (a) Subject to the other provisions of this Schedule (including those relating to Possessions), the hours of work applicable to the Contractor's Activities to be carried out in the Rail Corridor and the Danger Zone will be notified by the Principal's Representative to the Contractor's Representative no later than 24 hours prior to the commencement date of the relevant Contractor's Activities.
- (b) The Principal does not guarantee access or Possessions for any sites at which the Contractor's Activities are to be carried out (**Worksite**) for the whole of the working hours notified by the Principal's Representative to the Contractor's Representative under clause 1.5(a).

1.6 Removal of 1500V electrical supply

The hours, times and locations during which the 1500V supply will be removed by the Principal will be notified by the Principal's Representative to the Contractor's Representative no later than 24 hours prior to the commencement date of the relevant Contractor's Activities.

1.7 Possessions

- (a) Possessions are closures and/or occupation of defined portions of one or more Running Lines to allow work to be carried out in the Danger Zone using either a Local Possession Authority or a Track Occupancy Authority. Subject to the requirements of this Schedule, the Principal's Representative will notify the Contractor's Representative of any Possessions no later than 24 hours prior to the commencement date of the relevant Contractor's Activities.
- (b) The Contractor:
- (i) acknowledges that any Possession arranged by the Principal is not necessarily available for the sole purpose of allowing the Contractor's Activities to proceed in the Danger Zone;
 - (ii) acknowledges that the Principal does not guarantee Possessions for the whole of the Danger Zone working hours notified by the Principal's Representative to the Contractor's Representative under clause 1.5(a);
 - (iii) warrants that it shall, if directed by the Principal's Representative, coordinate the Contractor's Activities with:
 - A. Other Contractors engaged by the Principal to carry out work in the Danger Zone during the Possession(s); and
 - B. the Principal's Personnel operating and maintaining the Railway;
 - (iv) warrants that it shall comply with, and ensure that its Personnel comply with, any Direction that may be given by the Possession Protection Officer or any Protection Officer (whether engaged by the Contractor or the Principal), including a Direction to attend a safety briefing (or "Toolbox Talk") or to suspend work;
 - (v) warrants that it shall take all necessary steps to ensure that the Contractor's Activities in the Danger Zone are carried out utilising the specified methods and the arranged Possession(s) pursuant to clauses 1.4 and 1.7 respectively;
 - (vi) warrants that, unless otherwise approved by the Principal, it shall not carry out any of the Contractor's Activities in a way which may result in disruption or alteration of the Principal's Railway Operations;
 - (vii) acknowledges that the Principal may alter or cancel any Possession and as a result of this action the Principal's Representative may direct the Contractor to suspend the Contractor's Activities;
 - (viii) acknowledges that Possessions are difficult to obtain and are normally planned up to 12 months ahead of required dates, and as such arranged Possessions must be fully utilised; and
 - (ix) indemnifies the Principal against any damage, expense, loss or liability suffered or incurred by the Principal arising out of or in connection with:

- A. the under utilisation of any Possession during which the Contractor's Activities were, or ought to have been, carried out; or
- B. any disruption to the Principal's Railway Operations caused by a negligent act or omission of the Contractor or its Personnel relating to a Possession.

1.8 Protection Officers

- (a) All Worksites in the Rail Corridor must have a Protection Officer whose primary duty is to keep the Worksite and workers safe. The Contractor must (unless otherwise directed by the Principal) provide sufficient Protection Officers, possessing the Principal issued certificate of competency, to:
 - (i) assess the work to be carried out by the Contractor for safety and its potential to intrude on the Danger Zone;
 - (ii) ensure a safe place exists or can be created in the Danger Zone;
 - (iii) prepare Worksite protection plans;
 - (iv) ensure all work is carried out safely and in accordance with the RailSafe Network Rules and RailSafe Network Procedures; and
 - (v) keep records about Worksite protection arrangements.
- (b) When carrying out work in the Rail Corridor the Contractor must comply with, and must ensure that each of its Personnel complies with, any direction that may be given by a Protection Officer.
- (c) The Contractor must procure Protection Officers from one of the Principal's Approved Suppliers of Protection Officers and must not, without the Principal's written permission, provide or deploy a Protection Officer provided by any other supplier.

1.9 Clearances and other requirements

The Contractor must ensure that, when working in the Rail Corridor:

- (a) if specified in the Safety Specification or the Principal's Safety Management System, demarcation fencing (for example, star picket and plastic tape) is erected, as the minimum requirement, to indicate the horizontal boundary of the Danger Zone;
- (b) no metal object (including metal ladders, tapes, rules and scaffolding) is used or comes within six metres of the 1500V overhead wiring or equipment;
- (c) no person, plant or other object comes within one metre of the 1500V overhead wiring or equipment;
- (d) no structure that may affect entry to or egress from the Rail Corridor, or may obstruct the view of a train driver, is erected;
- (e) artificial lighting is not used to illuminate the place of work unless the Principal or the Possession Protection Officer approves the type and placement of the lighting;
- (f) level crossings are not constructed unless the Principal or the Possession Protection Officer gives the Contractor written permission; and

- (g) each of the Contractor's Personnel:
 - (i) wears high visibility safety clothing (including an orange coloured safety vest with retro reflective strips); and
 - (ii) does not wear any red or green coloured clothing.

1.10 "Kick off" meeting

The Contractor's nominated safety Personnel must attend and participate in a "kick off" meeting to be held prior to the commencement of work at the Worksite. This meeting will be conducted by the Principal's Representative and attended by other stakeholders nominated by the Principal's Representative. The purpose of the meeting will be to discuss safety issues associated with the Worksite and the Contractor's Activities and to ensure that the Contractor understands its safety management obligations including its obligations to:

- (a) in consultation with the Principal, identify hazards associated with the Worksite and the Contractor's Activities to be carried out by the Contractor, assess the associated risks and either eliminate the risks or develop measures to effectively control the risks;
- (b) prepare safety management plans and safe work method statements; and
- (c) ensure that each of its Personnel:
 - (i) holds any required qualification or certificate of competency;
 - (ii) receives any required health assessment; and
 - (iii) is provided with all required safety induction training.

During the "kick off" meeting the Principal will provide the Contractor's nominated safety Personnel with initial induction training including an overview of the Code of Conduct and relevant policies with which the Contractor and its Personnel.

1.11 Rail industry worker training

The Contractor must, before the Principal will provide the Contractor with access to the Rail Corridor, provide to the Principal satisfactory evidence that each of the Contractor's Personnel entering the Rail Corridor whose work will require them to intrude into the Danger Zone has:

- (a) completed and satisfied the requirements in the TLIF2080 Safely Access the Rail Corridor course (as updated or replaced from time to time) or an equivalent course as approved by the Principal in writing;
- (b) been issued a Rail Industry Worker (RIW) card (as updated or replaced from time to time), and
- (c) satisfied any other requirements relating to rail safety induction as notified by the Principal to the Contractor.

1.12 Pre-work safety briefing

The Contractor must conduct pre-work safety briefings for all of its Personnel on a Worksite daily at the commencement of each shift and whenever work conditions change. During the pre-work safety briefings the Contractor must discuss:

- (a) any Worksite specific hazards;

- (b) safe work method statements setting out the risk assessments and controls associated with the work activities scheduled during the day or shift;
- (c) the Worksite protection in place and the boundaries of such protection;
- (d) the times at which protection will be in place;
- (e) the signals which will be given when it is necessary to clear the Railway Tracks;
- (f) the location of safe places / refuges to be used when required to clear the Railway Tracks; and
- (g) access and egress to the Worksite.

Schedule 4 NOT USED

Schedule 5 NOT USED

Schedule 6 NOT USED

Schedule 7 NOT USED

Schedule 8 NOT USED

Schedule 9 NOT USED

Schedule 10 NOT USED

Schedule 11 NOT USED

Schedule 12 - Subcontractor's Statement

SUBCONTRACTOR'S STATEMENT REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION (Note 1 - see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 *Payroll Tax Act 2007* (NSW), and s127 *Industrial Relations Act 1996* (NSW) where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: {.....} ABN: {.....}

(Business name)

of {.....}

(Address of Subcontractor)

has entered into a contract with {.....} ABN: {.....}

(Business name of principal contractor)

(Note 2)

Contract number/identifier

{.....}

(Note 3)

This Statement applies for work between: {...../...../.....} and {...../...../.....} inclusive,

(Note 4)

subject of the payment claim dated: {...../...../.....}

I, {.....} a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt

employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. **(Note 6)**

(b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated [...../...../.....] **(Note 7)**

(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**

(d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007* (NSW), the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**

(e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**

(f) Signature Full name [.....]

(g) Position/Title [.....] Date [...../...../.....]

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987* (NSW).

Notes

1. This form is prepared for the purpose of section 175B of the Workers Compensation Act 1987 (NSW), Schedule 2 Part 5 Payroll Tax Act 2007 (NSW) and section 127 of the Industrial Relation Act 1996 (NSW). If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called the **subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees / workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of section 127 of the Industrial Relations Act 1996 (NSW), a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the Industrial Relations Act 1996 (NSW) defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the Industrial Relations Act 1996 (NSW) states '*to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.*'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.

10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Schedule 12 Wi-Fi Schedule

Schedule 13 - Backhaul Requirements

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

i. [REDACTED]

ii. [REDACTED]

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