

# Lifts

# Framework Agreement

# Contract No. ISD-18-7717

**Document No.** 6183783

Version 1

Transport for NSW  
Principal

Liftronic Pty Ltd  
Contractor

**Contents**

- 1. Definitions and interpretation ..... 1**
  - 1.1 Definitions ..... 1
  - 1.2 Interpretation..... 2
- 2. DSI Contracts ..... 3**
- 3. Operation ..... 3**
  - 3.1 Term..... 3
  - 3.2 Extension ..... 3
  - 3.3 No guarantee of work ..... 5
  - 3.4 No guarantee of exclusivity ..... 5
  - 3.5 No representation ..... 5
- 4. Quotation procedure for New Equipment..... 5**
  - 4.1 Request for quotation ..... 5
  - 4.2 Quotation ..... 5
  - 4.3 Review of quotations ..... 5
  - 4.4 Source of Purchase Orders ..... 6
  - 4.5 Electronic documents ..... 6
  - 4.6 Costs in participating in the quotation procedure ..... 7
- 5. Formation of individual DSI Contracts ..... 7**
- 6. Schedule of Prices ..... 7**
  - 6.1 Review of Rates..... 7
  - 6.2 Discounted rates for New Equipment ..... 8
- 7. KPIs ..... 8**
- 8. Termination..... 9**
  - 8.1 Termination of this Deed ..... 9
  - 8.2 Termination of a DSI Contract ..... 9
- 9. Piggybacking ..... 9**
- 10. General provisions..... 9**
  - 10.1 Notices ..... 9
  - 10.2 Governing law ..... 10
  - 10.3 Jurisdiction ..... 10
  - 10.4 Counterparts ..... 10
  - 10.5 Waiver ..... 11
  - 10.6 Assignment ..... 11
  - 10.7 Consents ..... 11
  - 10.8 Expense ..... 11
  - 10.9 Severance ..... 11
  - 10.10 Indemnities ..... 11
  - 10.11 United Nations Convention not applicable ..... 11
  - 10.12 English language ..... 12
  - 10.13 No partnership, joint venture or other fiduciary relationship ..... 12
  - 10.14 Exchange of information between government agencies ..... 12
  - 10.15 Proportionate liability ..... 12
- Key Details for Framework Agreement ..... 15**
- Annexure A Schedule of Prices ..... 16**
- Annexure B Purchase Order for DSI Contract..... 21**
- Attachment 1 to Purchase Order Special Conditions and specific requirements for the Specification ..... 24**
- Annexure C DSI Contract..... 25**
- Annexure D Appendix ..... 26**



# Framework Agreement

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**Parties**                    **Transport for NSW** ABN 18 804 239 602 of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067 (**Principal**)

**Liftronic Pty Ltd** ABN (99 002 886 213) of 6/153 Beauchamp Rd, Matraville NSW 2036 (**Contractor**)

## Background

- A.            The Principal wishes to engage the Contractor on a standing offer basis for the design, supply and install of new equipment (**New Equipment**) on the terms of the design, supply and install Contract set out in Annexure C (**DSI Contract**).
- B.            The Principal requires the option to novate individual DSI Contracts formed in accordance with this Framework Agreement to other contractors of Transport for NSW who are carrying out design and construct projects which require New Equipment.
- C.            The Contractor has agreed to:
  - (a)            design, supply and install New Equipment on a standing offer basis on the terms of the DSI Contract; and
  - (b)            allow the Principal to novate individual DSI Contracts to the Principal's nominee.

## Agreement

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### 1.            **Definitions and interpretation**

#### 1.1           **Definitions**

In this Deed the following terms have the meaning assigned to them below:

**"Appendix"** means the Appendix set out in Annexure D.

**"Authority"** means a statutory authority, statutory corporation, government or semi-government body, utility service provider or recognised provider of emergency services, including a "public transport agency" (as defined in the Transport Administration Act 1988 (NSW)).

**"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.

**"Commencement Date"** means the date specified in the Key Details for Framework Agreement.

**"Contractor's Activities"** means all activities that the Contractor performs, or is required to perform, to exercise its rights or comply with its obligations under a DSI Contract, including the Specification.

**"Contractor's Representative"** means the person so nominated in the Key Details for this Framework Agreement.

**"Deed"** means this Framework Agreement.

**"DSI Contract"** means a contract formed between the Principal and the Contractor under clause 5 on the terms set out in Annexure C.

"**Initial Term**" has the meaning given in clause 3.1.

"**Key Details for Framework Agreement**" means the particulars to this Deed entitled "Key Details for Framework Agreement".

"**KPIs**" means the key performance indicators listed in Annexure E.

"**KPI Performance Report**" means the report described in clause 7(b).

"**New Equipment**" has the meaning given in the Recitals.

"**Option Period 1**" means a period of 3 years.

"**Option Period 2**" means a period of 2 years.

"**Principal's Representative**" means the person so nominated in the Key Details for this Framework Agreement.

"**Purchase Order**" means a notice titled "Purchase Order" in the form set out in Annexure B.

"**Schedule of Prices**" means the schedule of rates and prices for the Contractor's Activities set out in Annexure A.

"**Special Conditions**" means the special conditions (if any) set out in Attachment 1 to the Purchase Order.

"**Specification**" means the specification set out in Exhibit A to the DSI Contract and any additional requirements set out in a Purchase Order.

"**Term**" means the Initial Term, as extended:

- (a) under clause 3.2(a) by the Principal exercising Option Period 1, and if applicable, Option Period 2; or
- (b) as contemplated by clause 3.2(d).

## 1.2 Interpretation

In this Deed:

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

and unless the context indicates a contrary intention:

- (b) an obligation or 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 Deed, and a reference to the Deed 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 Deed, 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;
- (m) the word "subcontractor" will include suppliers and consultants; and
- (n) to the extent that:
  - (i) any amounts are payable to the Contractor under this Deed by reference to hourly or daily rates; and
  - (ii) the Contractor carries out the Contractor's Activities for an increment of time less than a full hour or day (or for one or more full hours or days plus an increment of time less than a full hour or day) (as applicable),

the Contractor will be entitled to payment in respect of such time on a pro rata basis.

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## 2. DSI Contracts

- (a) The parties agree that the Principal may, at any time until the expiry of the Term, issue a Purchase Order for the design, supply and installation of New Equipment in accordance with the process set out in clause 4 on the terms of the DSI Contract.
- (b) The Schedule of Prices (as adjusted in accordance with this Deed) and the Appendix apply to each DSI Contract formed in accordance with clause 5 of this Deed.

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## 3. Operation

### 3.1 Term

Subject to clause 3.2, this Deed comes into operation upon the Commencement Date and continues until the date which is 5 years from the Commencement Date (**Initial Term**) unless terminated earlier in accordance with this Deed.

### 3.2 Extension

- (a) The Principal may:
  - (i) extend the Initial Term once by Option Period 1; and
  - (ii) if the Principal exercised its right to extend the Initial Term by Option Period 1 in accordance with clause 3.2(a)(i), extend the Term once by Option Period 2,

by giving written notice to the Contractor at least 30 days before the end of the Initial Term or the then current Term (as the case may be).

- (b) Any extension exercised in accordance with clause 3.2 will be on the terms and conditions in effect on, and takes effect from, the end of the then current Term, subject to any amendment to those terms and conditions agreed in writing by the parties (except that this clause 3.2 will not apply to the extended Term once the Term has been extended by Option Period 2).
- (c) Notwithstanding clause 3.1, if after the expiry of the Term:
- (i) the Principal requests the Contractor to provide a quotation for Contractor's Activities by issuing to the Contractor a Purchase Order setting out particulars in respect of the Contractor's Activities;
  - (ii) the Contractor submits a quotation to the Principal in respect of those Contractor's Activities by returning a completed Purchase Order to the Principal; and
  - (iii) the Principal accepts the quotation submitted by the Contractor by issuing to the Contractor a written notice containing the words:

"The Principal accepts your quotation submitted in the Purchase Order which is enclosed/attached",

or words to that effect, and attaching or enclosing the relevant Purchase Order,
- then:
- (iv) a DSI Contract will be formed comprising the documents listed in clause 5(a);
  - (v) that DSI Contract will be valid and binding on the parties; and
  - (vi) each party must comply with the terms of that DSI Contract.
- (d) Without limiting or otherwise affecting this clause 3.2:
- (i) a party may issue the other party with a notice requesting that this Deed continue in operation past the expiration of the then current Term; and
  - (ii) if the party which receives a notice under clause 3.2(d)(i) notifies the other party that it agrees to the operation of this Deed extending past the expiration of the then current Term, this Deed will continue on the terms and conditions in effect on, and takes effect from, the end of the then current Term, subject to:
    - A. without limiting or otherwise affecting any other clause of this Deed, either party may terminate this Deed by providing 30 days' notice; and
    - B. any other amendment to those terms and conditions agreed in writing by the parties.
- (e) Without limiting or otherwise affecting clause 8.2, the Principal and the Contractor agree that the expiry of the Term will not affect the operation of any DSI Contract that has been entered into by the parties prior to the expiry of the Term or any other agreement between the parties.

### **3.3 No guarantee of work**

The Principal is not, by executing this Deed, bound to engage the Contractor to supply any New Equipment.

### **3.4 No guarantee of exclusivity**

The Principal is not, by executing this Deed, restricted in any way from engaging any person to carry out any work or supply any services, goods or materials:

- (a) of any type, including work or supply similar to the Contractor's Activities under a DSI Contract which may be required of the Contractor; or
- (b) at any location where, or in respect of any project that, the Contractor may be required to perform work or to supply services, goods or materials.

### **3.5 No representation**

Clauses 3.3 and 3.4 apply even though the Principal may have provided the Contractor with a forecast or estimate of the work or supply that the Principal may require at any time and the Contractor acknowledges that any forecasts or estimates do not constitute a representation of the work or supply the Principal may require in any period.

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## **4. Quotation procedure for New Equipment**

### **4.1 Request for quotation**

The Principal may, if it wishes the Contractor to submit a quotation for the design, supply and installation of New Equipment, issue to the Contractor a Purchase Order setting out particulars in respect of the Contractor's Activities.

### **4.2 Quotation**

- (a) Within the time specified in the Purchase Order issued by the Principal under clause 4.1 or otherwise requested by the Principal's Representative, the Contractor must:
  - (i) prepare and submit a quotation in accordance with clause 4.2(b); or
  - (ii) notify the Principal's Representative that the Contractor will not submit a quotation in respect of the Purchase Order issued by the Principal under clause 4.1.
- (b) Where the Contractor wishes to submit a quotation in accordance with clause 4.2(a)(i), the Contractor must return to the Principal's Representative a copy of the Purchase Order issued by the Principal under clause 4.1 by:
  - (i) setting out the proposed "Contract Price", calculated in accordance with the Schedule of Prices to the extent it is relevant; and
  - (ii) duly completing all remaining relevant particulars in the Purchase Order; and
  - (iii) the Contractor's Representative executing Part 3 of the Purchase Order.

### **4.3 Review of quotations**

- (a) After receiving a quotation from the Contractor under clause 4.2, the Principal may:



- (i) request the Contractor to submit an amended quotation by setting out the proposed amendments in Part 4 of the Purchase Order and returning that Purchase Order to the Contractor within a specified time;
  - (ii) accept the quotation submitted by the Contractor under clause 4.2 by issuing to the Contractor a written notice containing the words:
    - "The Principal accepts your quotation submitted in the Purchase Order which is enclosed/attached",
    - or words to that effect, and enclosing or attaching the relevant Purchase Order; or
  - (iii) reject the quotation submitted by the Contractor under clause 4.2.
- (b) If the Principal requests the Contractor to submit an amended quotation under clause 4.3(a)(i), the Contractor must, within the time specified in the Principal's request:
- (i) submit an amended quotation that:
    - A. incorporates the amendments requested by the Principal in Part 5 of the Purchase Order; and
    - B. has been executed by the Contractor's Representative in Part 6 of the Purchase Order; or
  - (ii) notify the Principal's Representative that the Contractor will not submit an amended quotation as requested by the Principal under clause 4.3(a)(i).
- (c) Where the Contractor submits an amended quotation under clause 4.3(b)(i), the Principal may:
- (i) accept the amended quotation submitted by the Contractor under clause 4.3(b)(i) by issuing to the Contractor a written notice containing the words:
    - "the Principal accepts your quotation submitted in the Purchase Order which is enclosed/attached",
    - or words to that effect, and enclosing or attaching the relevant Purchase Order; or
  - (ii) reject the quotation submitted by the Contractor under clause 4.3(b)(i).

#### **4.4 Source of Purchase Orders**

The Contractor agrees only to act on Purchase Orders that are received from the email address of the Principal's Representative, or such other email address as may be notified to the Contractor.

#### **4.5 Electronic documents**

- (a) Each party acknowledges that:
  - (i) the Principal may issue a Purchase Order to the Contractor;
  - (ii) the Contractor may submit to the Principal the quotation referred to in clauses 4.2 and 4.3; and
  - (iii) the Principal may issue to the Contractor an acceptance referred to in clause 4.3,

by electronic means, and without any requirement for a signature, in accordance with clause 10.1 of this Deed, and the Principal and the Contractor agree that the issue or submission of such documents electronically (irrespective of whether the relevant document is signed) will be deemed to be of the same effect as if the document had been issued or submitted as a signed hard copy.

- (b) The Contractor must ensure that any documents it provides, including by electronic means, are in the file structure and format for such documents as may be specified by the Principal from time to time. As at the Commencement Date, the Principal requires such documents which are submitted by email to be submitted as an attachment to an email, where the attachment is in .pdf, or where appropriate Excel, Primavera (.xer or .xml) or Microsoft Project (.mpp) format.
- (c) The Principal will not be liable to the Contractor or to any other person for any loss or damage suffered in relation to any document transmitted electronically, including any loss or damage related to or arising out of:
  - (i) the transmission of any harmful code (such as viruses) to the Contractor by electronic mail (including any document attached to electronic mail); or
  - (ii) any failure by the Principal to notify the Contractor that the Principal may have received any harmful code (such as viruses) from the Contractor in any electronic mail (including in any document attached to electronic mail).

#### **4.6 Costs in participating in the quotation procedure**

The Contractor is responsible for all costs it incurs arising out of, or in connection with, the quotation procedure contemplated by this clause 4 and the Contractor is not entitled to make, and the Principal will not be liable upon, any claim in respect of such costs.

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### **5. Formation of individual DSI Contracts**

- (a) For Contractor's Activities for which the Principal accepts a quotation submitted by the Contractor in accordance with clause 4.3(a)(ii) or clause 4.3(c)(i), the Principal and the Contractor will be deemed to have entered into a separate binding contract on the date determined in accordance with clause 5(b), on the terms of the DSI Contract, as particularised by the Purchase Order issued by the Principal under clause 4.1 (including any Special Conditions set out in that Purchase Order and any annexures, schedules, exhibits or attachments to that Purchase Order) and completed by the Contractor pursuant to clause 4.2 and 4.3 (a **DSI Contract**).
- (b) The date on which a DSI Contract under clause 5(a) will be deemed to be formed is the date the Contractor is deemed by clause 10.1 to have received notice of the Principal's acceptance given under clause 4.3(a)(ii) or clause 4.3(c)(i).
- (c) The Principal and the Contractor must carry out their respective obligations under each DSI Contract formed in accordance with clause 5(a) from the date on which the DSI Contract is deemed to be formed under clause 5(b).

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### **6. Schedule of Prices**

#### **6.1 Review of Rates**

If specified in the Key Details for Framework Agreement, the rates and prices in the Schedule of Prices will be adjusted by the method of indexation or adjustment (if any) set out in Part 2 of the Schedule of Prices.

## 6.2 Discounted rates for New Equipment

- (a) The Contractor agrees that any volume discount applicable to New Equipment set out in the Schedule of Prices (**Discount**) will be applied on a cumulative basis in respect of each item of New Equipment procured by way of:
  - (i) a DSI Contract formed in accordance with clause 5;
  - (ii) a contract for New Equipment between Sydney Trains and the Contractor on similar terms to a DSI Contract; and
  - (iii) a contract between the Contractor and any Authority made pursuant to clause 9.
- (b) The Contractor must keep the Principal regularly informed (including at the request of the Principal) of the number of items of New Equipment provided pursuant to:
  - (i) any contract between Sydney Trains and the Contractor on similar terms to a DSI Contract; or
  - (ii) any contract between the Contractor and any Authority made pursuant to clause 9.

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## 7. KPIs

- (a) The Contractor in performing the Contractor's Activities must comply with the KPIs as amended in accordance with this Deed.
- (b) The Contractor must report to the Principal's Representative at the frequency specified in the Key Details for Framework Agreement in the form of a report (**KPI Performance Report**) in a form satisfactory to the Principal which:
  - (i) provides an analysis of the performance of the Contractor in meeting the KPIs;
  - (ii) identifies any non-compliances;
  - (iii) proposes an action plan to remedy non-compliances and implement continuous improvements; and
  - (iv) reports on whether the Contractor has implemented any previous action plan and, if not, the extent of non-compliance.
- (c) The Contractor acknowledges and agrees that:
  - (i) the Principal will review each KPI Performance Report to assess the level of compliance by the Contractor with the KPIs;
  - (ii) it must provide any action plan required by the Principal and must implement and comply with any action plan required by the Principal;
  - (iii) the Principal, acting reasonably, may amend the KPIs provided that the Contractor has been consulted by the Principal in respect of the amended KPIs, including being advised of the reasons for the amendment; and
  - (iv) where the Principal amends the KPIs pursuant to clause 7(c)(iii), the amended KPIs will only apply to any DSI Contract formed after the Principal's written notification to the Contractor of the amendments to the KPIs.

- (d) The Principal and the Contractor must meet at the times specified in the Key Details for Framework Agreement, to monitor and review the Contractor's performance under this Deed, each DSI Contract and, if required by the Principal, the Contractor's compliance with any action plan.

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## **8. Termination**

### **8.1 Termination of this Deed**

The Principal and the Contractor agree that if this Deed is terminated, discharged or becomes frustrated the separate DSI Contracts formed in accordance with clause 5 of this Deed will not be affected and must be fulfilled in accordance with the terms of the relevant DSI Contract, unless the parties otherwise agree in writing. Termination of this Deed will not prevent either party from relying on rights accrued under the Deed prior to such termination.

### **8.2 Termination of a DSI Contract**

The Principal and the Contractor agree that the termination, discharge or frustration of any of the separate DSI Contracts formed in accordance with clause 5 of this Deed will not affect the operation of this Deed or the operation of any other DSI Contract formed in accordance with clause 5 of this Deed. Termination of a DSI Contract will not prevent either party from relying on rights accrued under the DSI Contract prior to termination of the DSI Contract.

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## **9. Piggybacking**

The Contractor acknowledges and agrees that if an Authority (including a "public transport agency" (as defined in the *Transport Administration Act 1988* (NSW)) requests the Contractor to provide works, deliverables, services or other things to it that are the same or similar to the works, deliverables, services or other things required to be provided by the Contractor under this Deed, the Contractor must enter into a separate agreement with the relevant Authority on terms no less favourable than the terms of this Deed, having regard to any necessary changes required to reflect:

- (a) the particulars of the relevant works, deliverables, services or other things that the Contractor will provide to the relevant Authority; and
- (b) that the relevant works, deliverables, services or other things are to be supplied by the Contractor to the relevant Authority,

under the relevant separate agreement.

The Contractor acknowledges and agrees that, notwithstanding the Principal's obligations of confidentiality under this Deed, the DSI Contract or otherwise, Transport for NSW may at any time and without notice to the Contractor provide a copy of this Deed to an Authority for the purposes of that Authority determining whether it wishes to request that the Contractor provide works, deliverables, services or other things to it in accordance with this clause 9.

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## **10. General provisions**

### **10.1 Notices**

All communications (including notices, consents, approvals, requests and demands) including:

- (a) any Purchase Order issued by the Principal pursuant to clause 4.1;
- (b) any quotation submitted by the Contractor pursuant to clause 4.2; and
- (c) any notice of acceptance of a quotation issued by the Principal pursuant to clause 4.3(a)(ii) or clause 4.3(c)(i),

under or in connection with this Deed:

- (d) must be in writing;
- (e) must be signed by the party making the communication or (on its behalf) by any director, secretary, attorney or authorised agent of, that party;
- (f) 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 Principal's nominee) or the Contractor's Representative (as applicable);
- (g) are taken to be received by the addressee:
  - (i) (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;
  - (ii) (in the case of express post sent to an address in another country) on the fourth Business Day after the date of posting;
  - (iii) (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;
  - (iv) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 10.1(f); and
  - (v) (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.

A notice sent by facsimile or electronic mail will be deemed to be in writing for the purposes of this Deed.

## **10.2 Governing law**

This Deed is governed by and must be construed according to the laws of the State of New South Wales.

## **10.3 Jurisdiction**

Each party irrevocably:

- (a) submits to the exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 10.3(a).

## **10.4 Counterparts**

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the Deed of each party who has executed and delivered that counterpart.

## **10.5 Waiver**

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

## **10.6 Assignment**

The Principal may at any time, and without having to obtain the Contractor's approval, assign any right or interest of the Principal under this Deed or create or allow to exist, a security interest over or in respect of the Deed or any right or interest of the Principal under the Deed.

The Contractor cannot assign, novate or otherwise transfer any of its rights or obligations under this Deed without the prior written consent of the Principal.

## **10.7 Consents**

A consent required under the Deed 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 Deed expressly provides otherwise.

## **10.8 Expense**

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

## **10.9 Severance**

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

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

## **10.10 Indemnities**

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiry of the Deed.
- (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 Deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in the Deed.

## **10.11 United Nations Convention not applicable**

The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Deed.

## **10.12 English language**

All communications between the parties and all documentation provided in connection with this Deed must be in the English language.

## **10.13 No partnership, joint venture or other fiduciary relationship**

Nothing in this Deed 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.

## **10.14 Exchange of information between government agencies**

- (a) The Contractor authorises the Principal, its employees and agents to make information concerning the Contractor and the Deed available to NSW government departments or agencies, including:
  - (i) any information provided by the Contractor to the Principal;
  - (ii) any information relating to the Contractor's performance under the Deed; and
  - (iii) the terms of the Deed.
- (b) The Contractor acknowledges and agrees that:
  - (i) 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;
  - (ii) 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
  - (iii) 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 Deed and that it will participate in the Principal's "Contractor Performance Reporting" process.

## **10.15 Proportionate liability**

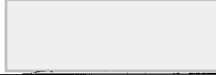
- (a) To the extent permitted by law, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with the Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting paragraph (a), the rights, obligations and liabilities of the Principal and the Contractor under the Deed with respect to proportionate liability are as specified in the Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.
- (c) To the extent permitted by law:
  - (i) the Contractor must not seek to apply the provisions of Part 4 of the Civil Liability Act 2002 (NSW) in relation to any claim by the Principal against the Contractor (whether in contract, tort or otherwise); and

- (ii) if any of the provisions of Part 4 of the Civil Liability Act 2002 (NSW) are applied to any claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part of a claim by the Principal against the Contractor which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the Civil Liability Act 2002 (NSW).



**Executed as a deed**

**Executed under delegated authority for and on behalf of Transport for NSW in the presence of:**



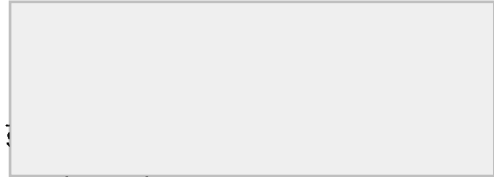
Signature of witness

MATTHEW ROCHE

Full name of witness

18<sup>th</sup> DECEMBER 2018

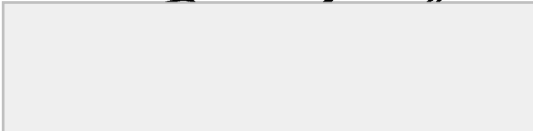
Date



PETER JAMES CHURCH

Full name of authorised officer

**Executed by Liftronic Pty Ltd ABN 99 002 886 213 in accordance with section 127 of the**



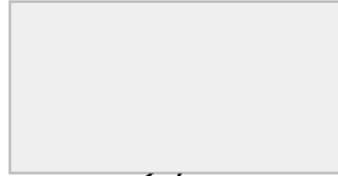
Signature of director

MILAN DEBELAK

Full name of director

17<sup>th</sup> DECEMBER 2018

Date



Signature of company secretary/director

CRAIG JONES

Full name of company secretary/director

## Key Details for Framework Agreement

<b>Clause 1 - Definitions and interpretation</b>		
2.	<b>Commencement Date</b> (Clause 1.1)	6 December 2018
3.	<b>Contractor's Representative:</b> (Clause 1.1)	Name: <input type="text"/> Address: 6/153 Beauchamp Road Matraville NSW 2036 Fax: 02 9666 4507 Email: <input type="text"/>
4.	<b>Principal's Representative:</b> (Clause 1.1)	Name: Peter Church Address: Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067 Fax: 02 9200 0290 Email: peter.church@transport.nsw.gov.au
<b>Clause 6- Schedule of Prices</b>		
5.	<b>Review of Rates:</b> (Clause 6.1)	Review of rates and prices in the Schedule of Prices to be made in accordance with Section 1 of Part 2 of Annexure A.
<b>Clause 7 - KPIs</b>		
6.	<b>Frequency of KPI reporting and times at which Principal and Contractor to meet:</b> (Clause 7)	The Principal and the Contractor must meet once every month or as otherwise agreed in writing by the Principal. The Contractor must provide a KPI Performance Report to the Principal at least three (3) Business Days prior to each meeting between the Contractor and the Principal.

**Annexure A  
Schedule of Prices**

**Part 1 - Schedule of Prices**

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# 1. DESIGN, SUPPLY AND INSTALLATION OF LIFTS

## 1.1 Rates and Prices for standard Lifts

The all-inclusive unit rates (ex. GST) applicable for the design, supply, installation and maintenance services during the Defects Liability Period (including the supply and installation of any necessary spare parts) of each standard lift are set out below:

---

Supply: **Berchtenbreiter GmnH**

**1. 9 Person Lift**

Capacity 9 persons  
Speed 1.0 mps  
Car Size 1100mm wide x 1400mm Front to Back  
Door Opening 900mm x 2100mm high

MRL Lift \$

**2. 13 Person Lift**

Capacity 13 persons  
Speed 1.0 mps  
Car Size 1400mm wide x 1600mm Front to Back  
Door Opening 900 mm x 2100mm high

MRL Lift \$

**3. 17 Person Lift**

Capacity 17 persons  
Speed 1.0 mps  
Car Size 1400mm wide x 1950mm Front to Back  
Door Opening 1000mm x 2100mm high

MRL Lift \$

**4. 21 Person Lift**

Capacity 21 persons  
Speed 1.0 mps  
Car Size 1600mm wide x 2100mm Front to Back  
Door Opening 1000mm x 2100mm high

MRL Lift \$

**5. 24 Person Lift**

Capacity 24 persons  
Speed 1.0 mps  
Car Size 1550mm wide x 2150mm Front to Back  
Door Opening 1100mm x 2100mm high

MRL Lift \$

**6. 27 Person Lift**

Capacity 27 persons  
Speed 1.0 mps  
Car Size 1850mm wide x 2500mm Front to Back  
Door Opening 1100mm x 2100mm high

**MRL Lift** \$

**7. 34 Person Lift**

Capacity 34 persons  
Speed 1.0 mps  
Car Size 2000mm wide x 2450mm Front to Back  
Door Opening 1100mm x 2100mm high

**Current Supply Package MRL Lift** \$

Note: Pricing shall be for Electric Traction Machine Room Less Lifts (MRL) only, where all element of the lift including the drive system shall be contained within the lift shaft.

**1.1.1 Rates and Prices for Optional Items**

The all-inclusive unit rates (ex. GST) applicable for the design, supply, installation and maintenance services during the Defects Liability Period (including the supply and installation of any necessary spare parts) of any of the below optional items are set out below:

**(a) Lift Travel Variation**

Each standard Lift includes provision for a base vertical rise distance of 5600mm (plus or minus 500mm), the unit rate of cost for each increase of 500mm in Lift travel distance against that base will be:

**MRL Lift** \$

The unit rate of reduction in cost for each decrease of 500mm in Lift travel distance against that base will be:

**MRL Lift** \$

**(b) (i) Additional Openings (Rear)**

Each Standard Lift includes provision for one double entry door. The unit rate of cost for each additional double entry door (ie. in addition to the standard of one double entry door) per Lift will be:

**MRL Lift** \$

**(ii) Additional Openings (Adjacent Cantilever Car)**

Each Standard Lift includes provision for one entry door. The unit rate of cost for each additional double entry door (ie. in addition to the standard of one double entry door) per Lift will be: Extra set of car doors

**MRL Lift** \$

**(c) Additional Stops**

Each standard Lift includes provision for two stops. The unit rate of cost for each stop (ie. in addition to the standard two stops) per Lift will be:

**MRL Lift** \$

**(d) Geographical Location**

Each standard Lift includes provision for delivery and installation at any site within a 50 kilometre radius of Central Railway Station. The unit rate of cost per Lift, per kilometre for delivery and installation at sites outside of that radius will be:

**MRL Lift** \$

**(e) Storage Costs**

Should a Lift need to be placed in storage for in excess of a period of one year (from the date of arrival to Sydney Warehouse), the unit weekly rate of cost per Lift for additional storage will be:

<b>MRL Lift</b>	\$	<input type="text"/>
<b>Escalators</b>	\$	<input type="text"/>

**(f) Car Size**

In heavy traffic locations a larger lift (meeting one or other of the specifications indicated below) might be required. The unit rate per Lift for each specification will be as indicated below:

<b>MRL Lift</b>	<b>N/A as indicated in price schedule 1.1</b>
-----------------	---

**(g) Fire Resistance Requirements**

Additional cost to rate the lift car to comply with fire resistance requirements as per section Lift Specification:

<b>MRL Lift</b>	\$	<input type="text"/>	<b>per Landing Door</b>
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**(h) Additional cost for thermographic survey to the maintenance price per lift:**

<b>MRL Lift</b>	\$	<input type="text"/>
-----------------	----	----------------------

**(i) Smoke detector**

Smoke detector to top of lift shaft and cabling to lift control panel for lift stop alarm

<b>MRL Lift</b>	\$	<input type="text"/>	<b>per unit</b>
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**(j) Security Key box**

<b>MRL Lift</b>	\$	<input type="text"/>	<b>per unit</b>
-----------------	----	----------------------	-----------------

## 1.2 Schedule of Rates for the purposes of Variations

The following table sets out staff categories and the relevant hourly rate for each category for the purposes of assessing the value of any Variation.

The Contractor confirms that the rates shall be all-inclusive, comprising all direct and indirect costs, profit and attendance but **excluding GST & the costs of materials**. The rates shall be fixed and not subject to rise and fall in costs. Labour rates tendered for normal time, 1.5 time and double time shall reflect the requirements of the relevant industrial award for each trade. These rates and, if applicable, the pricing arrangements of section 1.3 of this Schedule, shall be used under the Contract to value Variations.


Staff/Labour Category	Hourly Rate (A\$) Excluding GST		
	Normal Time	1.5 Time	Double Time
Project Manager			
Design Manager			
Mechanical Engineer			
Drafter			
Site Supervisor/Foreman			
Electrician / Lift Driver			
Worksite Protection officer			
Labourer			
Safety Officer			

Contractor confirms that all prices, rates, fees and amounts in this section:


- a) are exclusive of GST;
- c) are not subject to exchange rate variations.

### 1.3 Percentage mark-up for other Materials, Plant, Equipment and Subcontractors

For any other labour, material/goods, plant/equipment, subcontracts and professional services that may be required from time to time, other than those included elsewhere in this Schedule, the applicable charges for overheads, profit and attendance to be added to actual direct costs to the Contractor are as follows:

Item	Charges (%)
Materials/Goods	
Plant/Equipment	
Subcontracts/Professional Fees	

### 1.5 Payment Milestones

Payment Milestone	Percentage of Contract Price
After approval of design under clause 6.3	
Deposit to order	
<b>Confirmation of Commencement of manufacture</b>	
<b>Delivery of Equipment to Site</b>	
<b>Completion</b>	
<b>Provision of As-Builts in accordance with clause 8.19</b>	
<b>Expiry of Defects Liability Period</b>	Bank Guarantee
<b>TOTAL</b>	100%



## Part 2 - Adjustment of rates and prices in Schedule of Prices

### 1. Method of adjustment

- (a) Once each year during the Term, either party may provide a notice to the other requesting that any prices in the Schedule of Prices relating to the supply of goods, services or labour be reviewed in accordance with this clause.
- (b) If either party provides a notice under paragraph (a), the parties must meet within 20 Business Days to hold good faith discussions to attempt to agree a revised Schedule of Prices which reflects the Contractor's actual, direct, proven and reasonable increases or decreases in costs.
- (c) If the parties agree to a revised Schedule of Prices, the Schedule of Prices will be deemed to be replaced with the revised Schedule of Prices on and from the date following the yearly anniversary of the Commencement Date (**Rates Adjustment Date**).
- (d) If the parties cannot agree to a revised Schedule of Prices within 35 Business Days of the notice under paragraph (c), the prices in the Schedule of Prices relating to the supply of goods, services or labour will be adjusted on and from the Rates Adjustment Date by the amount given by the following formula (**Rates Adjustment Formula**):

<b>Adjustment Formula (Formula):</b>						
Applicable Proportion in Column 2 x $\left[ \frac{\text{Current Index Number} - \text{Base Index Number}}{\text{Base Index Number}} \right]$						
A	B	1	2	3	4	5
Category of work	Value (if applicable)	Index or Indexes Applicable	Proportion Applicable to each Index	Date for Base Index Number	Date for Current Index Number	Latest Date for Current Index Number
<p>(a) If there is no category of work stated, the category of work shall be the whole of the Contractor's Activities.</p> <p>(b) If any work is not included in a category of work it shall be included in the most closely related category.</p> <p>(c) If provision is not made for the date for a base index number the date shall be the Commencement Date.</p> <p>(d) If provision is not made for the date for the current index number the date shall be the Rates Adjustment Date.</p> <p>(e) If there is no date in Column 5, it shall be the Date of Completion under the DSI Contract as extended from time to time.</p>						

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## 2. Formula

### 2.1 Base index number

"**Base index number**" means the index number appropriate to the index referred to in column 1 of the Formula, applicable to the date in column 3 of the Formula.

### 2.2 Current index number

"**Current index number**" means the index number appropriate to the index referred to in column 1 of the Formula, applicable to the earlier of the date in column 4 or column 5 of the Formula but if the date for the current index number is earlier than the date for the base index number, the date for the current index number shall be the later date.

### 2.3 Preliminary index number

- (a) Where a final index number is not available the preliminary index number or, where there is no preliminary index number, the last available index number, shall be used for calculation. The increase or decrease may be recalculated on the basis of the final index number.
- (b) Notwithstanding the previous paragraph, in respect of index numbers published by the Australian Bureau of Statistics, the first published index number whether or not it is described as "preliminary" shall be used and no recalculation shall be made on the basis of any subsequent revisions to the index number.

### 2.4 Discontinued or altered indexes

If an index number is discontinued or the basis on which an index is calculated is altered there shall be substituted the nearest index consistent with the intention of this provision so as to give effect to it.

### 2.5 Decimal places

If an index number includes more than three decimal places, regard shall not be had to the fourth and following decimal places of the index number.

### 2.6 Applicable cost adjustment indexes - wages and materials

The cost adjustment indexes and applicable proportions to be used in the Formula shall be:

#### <Work Type — Lifts - Manufacture>

- (a) The Labour Index - Average Weekly Earnings, States and Australia (Australian Bureau of Statistics (ABS) Catalogue 6302.0), Table 1, Trend, Males, Full-time Adult, Ordinary-time Earnings, Construction.

Paragraph 2.3(b) shall not apply where the revised number is a number greater than 110% or less than 90% of the first published index number.

The proportion applicable to this index is 0.70.

- (b) The Material Index - Price Index of Materials used in Building Other Than Housing, Six State Capital Cities (ABS Catalogue 6407.0), Table 10, Sydney, Elevators, escalators and travelators, modified by any relevant conversion factor published by the Australian Bureau of Statistics to exclude entirely the effect of any sales tax change.

The proportion applicable to this index is 0.20.

The date in Column 5 of the Formula shall be the date that is 42 days in respect of the Materials Index, and 15 days in respect of the Labour Index, prior to the Date of Completion under the DSI Contract as extended from time to time.

**<Work Type — Lifts — Installation>**

- (c) The Labour Index - Average Weekly Earnings, States and Australia (Australian Bureau of Statistics (ABS) Catalogue 6302.0), Table 1, Trend, Males, Full-time Adult, Ordinary-time Earnings, Construction.

Paragraph 2.3(b) shall not apply where the revised number is a number greater than 110% or less than 90% of the first published index number.

The proportion applicable to this index is 0.90.

- (d) The Material Index - No Material Cost Adjustment is allowable.

The date in Column 5 of the Formula shall be the date that is 15 days prior to the Date of Completion under the DSI Contract as extended from time to time.

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### 3. Exchange rate variation

- (a) The relevant Australian dollar amount of any rate or price which is stated to be subject to a foreign currency adjustment (**Foreign Currency Amount**) will be adjusted in accordance with this clause on the date that the Schedule of Prices is reviewed under this Part 2 (**FX Review Date**).
- (b) The Foreign Currency Amount will be adjusted based on movements in the relevant exchange rate in accordance with the following formula (**Bank Exchange Adjustment Sum**):

<p>Bank Exchange Adjustment Sum = the difference in cost between the Base Exchange Price at Base Date and the Actual Exchange Price.</p>
--

and where:

**Base Date** means the date equivalent to 14 days prior to the Commencement Date.

**Base Exchange Price** means the Australian Dollar (AUD\$) equivalent of the price or cost of the Imported Item (as stated in the Schedule of Prices) at the Base Date converted at the Selling Rate Sydney on the Base Date.

**Actual Exchange Price** means the Australian Dollar (AUD\$) equivalent of the price or cost of the Imported Item (as stated in the Schedule of Prices) converted at the Selling Rate Sydney on the date such payment is made.

**Imported Item** means an item imported (or to be imported) into Australia by the Contractor or if approved by the Principal in writing, its subcontractors, together with such other imported items as may be agreed with the Principal.

**Selling Rate Sydney** means the wholesale market closing spot rate of exchange for the relevant currency as shown by or calculated from the table of exchange rates as published in the Australian Financial Review.

- (c) The Contractor will not be entitled to adjust the rates in the Schedule of Prices under this clause 3 unless:
- (i) the transfer of funds to the overseas supplier takes place within 10 Business Days from the date on which the Imported Item clears Australian Customs; and
  - (ii) the Contractor submits to the Principal's Representative such documents as the Principal's Representative may require, including original documents, verifying all rates and amount so payable, so that the Principal's Representative may check any adjustment to the rates and prices in the Schedule of Prices under this provision.

Where the Contractor refuses to or fails to submit to the Principal's Representative a document required by the Principal's Representative within 14 days of receipt by the Contractor of a written request from the Principal's Representative nominating the documents required to be inspected, the Principal's Representative may thereafter determine the relevant Bank Exchange Adjustment Sum and that assessment shall be final and binding on both parties.

## Annexure B Purchase Order for DSI Contract

Part 1 of the Purchase Order - Identification	
<p>This Purchase Order is issued by the Principal under the Framework Agreement between the Principal and <b>[insert]</b></p> <p><b>DSI Contract No:</b> <b>[insert ISD-XX-XXX]</b></p> <p><b>Purchase Order No:</b> <b>[insert, if nothing stated, refer to the above DSI Contract No]</b></p> <p><b>Contractor response required by:</b> <b>[insert]</b></p>	
Part 2 of the Purchase Order -	
Clause 1 - Definitions and interpretation	
<p><b>Contract - Other documents forming part of the Contract</b> (Clause 1.1)</p>	<p>(None unless otherwise stated)</p>
<p><b>Contract Price:</b> (Clause 1.1)</p>	<p><b>[Contractor to insert.]</b></p> <p><b>This amount must take into account any discount applicable to the price based on the cumulative number of items of Equipment ordered by Transport for NSW, Sydney Trains or another Authority under the piggybacking clause.]</b></p>
<p><b>Date for Completion:</b> (Clause 1.1)</p>	<p>Where there are no Separable Portions, for the Works is:</p> <p>Where there are Separable Portions, for each Separable Portion is:</p> <p><b>Separable Portion    Date for Completion</b></p> <p>If nothing is noted above, the Date for Completion is as set out in the Specification.</p>
<p><b>Main Works Contractor</b> (Clause 1.1)</p>	<p>[insert]</p>
<p><b>Principal's Representative:</b> (Clause 1.1)</p>	<p>Name:</p> <p>Address:</p> <p>Fax:</p> <p>Email:</p>
<p><b>Separable Portions</b> (Clause 1.1)</p>	<p><i>[Describe each Separable Portion of the Works (if any)]</i></p>

<b>Clause 2 - Commencement</b>		
	<b>Date for Commencement on Site:</b> (Clauses 2.1(b) and 2.2(a)(ii))	[insert]
<b>Clause 3 Personnel</b>		
	<b>Key People</b> (clause 3.5)	[insert]
<b>Clause 6 - Design and Documentation</b>		
	<b>Contractor to prepare Design Documentation</b> (Clause 6.2)	Clause 6.2-6.5 apply: yes / no
<b>Clause 7 - Site and information</b>		
	<b>Work health and safety, principal contractor</b> (Clause 7.5(b))	The principal contractor for the purposes of the WHS Legislation is: ..... If nothing is stated, the principal contractor is the Main Works Contractor.
<b>Clause 8 - Construction</b>		
	<b>Existing Approvals and other Approvals which the Principal is to obtain:</b> (Clause 8.3(c))	Environment Protection Licence <i>[Insert any other Approvals that will be obtained by the Principal e.g. a planning approval]</i>
	<b>Work which requires approval to subcontract or which must be let to one of the named Subcontractors:</b> (Clause 8.5)	Work      Subcontractor ..... ..... .....
	<b>Provisional Sum Work</b> (Clauses 1.1 and 8.8)	[insert, or refer to Specification]
	<b>Working hours for Contractor's Activities on Site:</b> (Clause 8.14)	[insert, or refer to Specification]
	<b>Accredited person</b> (clause 8.15)	[insert] If nothing is stated, the Principal holds the rail safety accreditation.



**Attachment 1 to Purchase Order**  
**Special Conditions and specific requirements for the Specification**

[insert any special contract conditions, and specific requirements for the design, supply and installation of the equipment (other than as already set out in the general Specification attached to the DSI Contract) eg site location, working hours, specific design requirements]



**Annexure C**  
**DSI Contract**

# Lifts

## Design, Supply and Install Contract

### General Conditions

Document No. 6183991

Version 1

Transport for NSW  
Principal

Liftronic Pty Ltd  
Contractor

**Contents**

- 1. Definitions and interpretation ..... 1**
  - 1.1 Definitions ..... 1
  - 1.2 Interpretation..... 8
  - 1.3 No bias against drafting party..... 9
  - 1.4 Provisions limiting or excluding liability..... 9
  - 1.5 Discretion..... 9
  - 1.6 Authorities ..... 10
  - 1.7 Separable Portions ..... 10
- 2. Parties' obligations ..... 11**
  - 2.1 Contractor's obligations ..... 11
  - 2.2 Principal's obligations ..... 11
  - 2.3 Novation of Contract to an Other Contractor ..... 11
- 3. Personnel ..... 11**
  - 3.1 Principal's Representative ..... 11
  - 3.2 Replacement of Principal's Representative ..... 11
  - 3.3 Principal's Representative's representative ..... 12
  - 3.4 Contractor's Representative ..... 12
  - 3.5 Key people ..... 12
  - 3.6 Removal of persons ..... 12
- 4. Security ..... 13**
  - 4.1 Form of security ..... 13
  - 4.2 Release of security ..... 13
  - 4.3 Replacement security ..... 13
  - 4.4 Interest ..... 14
  - 4.5 PPSA ..... 14
- 5. Risks and insurance ..... 14**
  - 5.1 Risk of Works..... 14
  - 5.2 Contractor's indemnity ..... 15
  - 5.3 Reinstatement..... 15
  - 5.4 Insurance by Principal ..... 15
  - 5.5 Contractor insurance obligations ..... 15
  - 5.6 Period of Insurance..... 16
  - 5.7 Insurers ..... 16
  - 5.8 Insurance obligations..... 17
  - 5.9 Failure to insure ..... 17
  - 5.10 Notice of potential claim ..... 17
  - 5.11 Cross liability..... 17
  - 5.12 Liabilities unaffected ..... 18
- 6. Design and documentation ..... 18**
  - 6.1 Principal's documents ..... 18
  - 6.2 Contractor's design ..... 18
  - 6.3 Principal's Representative may review Design Documentation ..... 18
  - 6.4 No obligation to review ..... 19
  - 6.5 Copies of Design Documentation ..... 19
  - 6.6 Fitness for purpose ..... 19
  - 6.7 Intellectual Property Rights..... 19
  - 6.8 Ownership..... 19
  - 6.9 Licence ..... 20
  - 6.10 Indemnity and infringement ..... 20
  - 6.11 Moral Rights..... 20
  - 6.12 Resolution of ambiguities ..... 20
  - 6.13 Contractor to notify errors ..... 21
  - 6.14 Confidentiality ..... 21
  - 6.15 Media ..... 22
  - 6.16 Survive termination ..... 22

<b>7.</b>	<b>Site and information .....</b>	<b>22</b>
7.1	Contractor to inform itself .....	22
7.2	Site information .....	23
7.3	Site access .....	23
7.4	Contractor's obligation to provide access .....	23
7.5	Work health and safety .....	23
7.6	Non-reliance .....	25
<b>8.</b>	<b>Construction .....</b>	<b>25</b>
8.1	Description of Works .....	25
8.2	All work included .....	25
8.3	Compliance with Law .....	25
8.4	Change in Law .....	26
8.5	Subcontracting .....	26
8.6	Subcontractor warranties .....	26
8.7	Co-operation with Other Contractors .....	27
8.8	Provisional Sum Work .....	27
8.9	Setting out .....	28
8.10	Plant, Equipment and Work .....	28
8.11	Cleaning up .....	28
8.12	The environment .....	28
8.13	Principal may act .....	28
8.14	Working hours .....	28
8.15	Rail safety and Accreditation .....	29
8.16	Policies, Codes and Standards .....	29
8.17	Deed poll .....	29
8.18	Requirements for working in Rail Corridor .....	29
8.19	As built documentation (work as executed) .....	29
8.20	Long service levy .....	31
<b>9.</b>	<b>Quality and Defects .....</b>	<b>31</b>
9.1	Construction .....	31
9.2	Quality assurance .....	32
9.3	Right to inspect .....	33
9.4	Testing .....	33
9.5	Test not passed .....	33
9.6	Further Tests and opening up .....	33
9.7	Costs of testing .....	34
9.8	Defects .....	34
9.9	Correction of Defect .....	34
9.10	Claim for correction of Defect .....	34
9.11	Acceptance of work .....	35
9.12	Extension of Defects Liability Period .....	35
9.13	Legal rights not affected .....	35
<b>10.</b>	<b>Time .....</b>	<b>35</b>
10.1	Progress and time for Completion .....	35
10.2	Programming .....	35
10.3	Contractor not relieved .....	36
10.4	Acceleration chosen by Contractor .....	36
10.5	Delays entitling Claim .....	36
10.6	Extension of time Claim .....	36
10.7	Conditions precedent to extension .....	37
10.8	Extension of time .....	37
10.9	Reduction in extension of time .....	37
10.10	Unilateral extensions .....	37
10.11	Delay costs .....	37
10.12	Suspension .....	38
10.13	Instruction to accelerate .....	38
10.14	Partial acceleration .....	39
10.15	Acceleration .....	39
10.16	Principal's rights to liquidated damages not affected .....	39

<b>11.</b>	<b>Variations .....</b>	<b>39</b>
11.1	Variation price request .....	39
11.2	Variation order .....	40
11.3	Adjustment for Variation .....	40
11.4	Omissions and deletions .....	41
<b>12.</b>	<b>Payment .....</b>	<b>41</b>
12.1	Payment obligation .....	41
12.2	Payment claims .....	41
12.3	Payment statements .....	41
12.4	Conditions precedent .....	42
12.5	Payment .....	43
12.6	Payment on account .....	43
12.7	Unfixed goods and materials .....	43
12.8	Final payment claim and notice .....	44
12.9	Right of set-off .....	44
12.10	Payment of workers and subcontractors .....	44
12.11	Interest .....	45
12.12	SOP Act .....	45
12.13	GST .....	45
<b>13.</b>	<b>Completion .....</b>	<b>46</b>
13.1	Contractor to notify .....	46
13.2	Principal's Representative to inspect .....	46
13.3	Take over upon Completion .....	47
13.4	Liquidated damages .....	47
13.5	General damages if liquidated damages unenforceable .....	47
13.6	Cap on liquidated damages .....	47
<b>14.</b>	<b>Termination .....</b>	<b>47</b>
14.1	Preservation of rights .....	47
14.2	Contractor default .....	48
14.3	Contents of notice of default .....	48
14.4	Termination for insolvency or breach .....	48
14.5	Principal's entitlements after termination .....	48
14.6	Contractor's entitlements after termination .....	49
14.7	Termination for convenience .....	49
14.8	Costs .....	49
<b>15.</b>	<b>Disputes .....</b>	<b>50</b>
15.1	Notice of Dispute .....	50
15.2	Negotiation .....	51
15.3	Expert determination .....	51
15.4	The expert .....	51
15.5	Not arbitration .....	51
15.6	Procedure for determination .....	51
15.7	Disclosure of interest .....	51
15.8	Costs .....	51
15.9	Conclusion of expert determination .....	52
15.10	Agreement with expert .....	52
15.11	Determination of expert .....	52
15.12	Arbitration agreement .....	52
15.13	Executive negotiation .....	52
15.14	Arbitration .....	52
15.15	Survive termination .....	53
15.16	Continuation of Contractor's Activities .....	53
<b>16.</b>	<b>Notices .....</b>	<b>53</b>
16.1	Notice of Variation .....	53
16.2	Notice of other Claims .....	53
16.3	Prescribed notices .....	54
16.4	Continuing events .....	54

16.5	Time bar.....	55
16.6	Other provisions unaffected.....	55
<b>17.</b>	<b>Limitation of liability .....</b>	<b>55</b>
<b>18.</b>	<b>Miscellaneous.....</b>	<b>57</b>
18.1	Address for service .....	57
18.2	Governing law .....	58
18.3	Jurisdiction .....	58
18.4	Waiver.....	58
18.5	Assignment .....	59
18.6	Consents.....	59
18.7	Expense .....	59
18.8	Severance.....	59
18.9	Indemnities .....	59
18.10	United Nations Convention not applicable .....	59
18.11	Taxes .....	59
18.12	No partnership, joint venture or other fiduciary relationship .....	60
18.13	Exchange of information between government agencies .....	60
18.14	Proportionate liability .....	60
	<b>Schedule 1 Key Details .....</b>	<b>61</b>
	<b>Schedule 2 - Deed of Novation.....</b>	<b>66</b>

# General Conditions of Contract

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## 1. Definitions and interpretation

### 1.1 Definitions

In the Contract, unless the context indicates otherwise:

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

**Act of Prevention** means any one of:

- (a) a breach of the Contract by the Principal;
- (b) any other act or omission of the Principal, the Principal's Representative or an Other Contractor engaged by the Principal (not including the Main Works Contractor); or
- (c) a Variation the subject of a Direction by the Principal's Representative.

**Appendix** means the Appendix in Annexure D of the Framework Agreement.

**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 Works or the carrying out of the Contractor's Activities or under any applicable Law, which must be obtained or satisfied to:

- (a) carry out the Contractor's Activities; or
- (b) occupy or use the completed Works or a completed Separable Portion.

**Approved Security** means an unconditional undertaking (duly stamped) on terms, and given by a financial institution, approved by the Principal (and the terms of the unconditional undertaking set out in Schedule 4 of the Appendix are approved by the Principal).

**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).

**Award Date** means the date on which the Purchase Order has been completed and signed by the last party to sign in accordance with the Framework Agreement.

**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.

**Change in Law** means a change in an existing Law or a new Law, but does not include:

- (a) a change in an Approval or a new Approval; or
- (b) a change in an existing Law, or a new Law, relating to taxes.

**Claim** includes any claim for an increase in the Contract Price, for payment of money (including damages) or for an extension of time:

- (a) under, arising out of, or in any way in connection with, the Contract, including any Direction of the Principal's Representative;
- (a) arising out of, or in any way in connection with, the Contractor's Activities, the Works or either party's conduct before the Contract; or

- (b) otherwise at law or in equity, including by statute, in tort (for negligence or otherwise, including negligent misrepresentation) or for restitution.

**Code of Conduct** means the Principal's Code of Conduct which is available, as at July 2018, at <https://www.transport.nsw.gov.au/system/files/media/documents/2018/code-of-conduct.pdf> or upon request from the Principal's Representative, as updated from time to time.

**Completion** means the stage when in respect of the Works or a Separable Portion:

- (a) the Works are, or a Separable Portion is, complete except for minor Defects:
- (i) which do not prevent the Works or the Separable Portion from being reasonably capable of being used for the intended purpose of the Works or the Separable Portion; and
  - (ii) which can be corrected without prejudicing the convenient use of the Works or the Separable Portion;
- (b) those tests which are required by the Contract to be carried out and passed before the Works or the Separable Portion reach Completion have been carried out and passed;
- (c) all documents and other information referred to in the Contract, including all Approvals, which are required for the use, operation and maintenance of the Works or the Separable Portion have been supplied to the Principal's Representative; and
- (d) the Contractor has done everything which the Contract requires it to do as a condition precedent to Completion, including those things described in the Specification.

**Confidentiality Undertaking** means a deed in the form of Schedule 6 of the Appendix.

**Consequential Loss** means any:

- (a) loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect); or
- (b) direct or indirect financing costs,

whether present or future, fixed or unascertained, actual or contingent, but excludes any costs or loss arising out of or in connection with the replacement of rail services with buses.

**Construction Plant Insurance** means a policy of insurance insuring construction plant that is material to the Contractor's ability to perform the Contractor's Activities against loss, theft, damage or destruction.

**Contract** means the contractual relationship between the parties constituted by:

- (a) the Purchase Order;
- (b) these General Conditions of Contract;
- (c) the Key Details as amended (if applicable) by a Purchase Order;
- (d) the Schedules and Appendix to the Contract;
- (e) the Specification; and
- (f) the other documents (if any) referred to in the Key Details.

**Contract Price** means the amount specified in the Key Details as adjusted under the Contract.



**Contractor's Activities** means all things or tasks which the Contractor is, or may be, required to do to comply with its Contract obligations and includes carrying out the Works, Variations, Tests and rectification work.

**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 in accordance with clause 3.5.

**Date for Completion** means the date, or period of time, specified in the Key Details, as adjusted under the Contract.

**Date of Completion** means in respect of the Works or a Separable Portion, the date of Completion set out in a Notice of Completion.

**Defect** means any aspect of the Contractor's Activities, the Works, or any part thereof, which is not in accordance with the requirements of the Contract.

**Defects Liability Period** means the period which commences on the Date of Completion of the Works or a Separable Portion, and which continues for the period described in the Key Details as extended by clause 9.12.

**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 complete any part of the Works which is not fully designed and documented in the Specification.

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

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

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

**Force Majeure Event** means:

- (a) riot, war, invasion or act of foreign enemies, acts of terrorism, or hostilities;
- (b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive assembly or nuclear component;
- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) industrial action in the form of a strike that is not specific to, or caused by, the Contractor; and
- (e) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions, regardless of severity,

but only where such events or circumstances:

- (a) are beyond the reasonable control of the affected party;
- (b) where the affected party is the Contractor, are such that a competent contractor would not have been able to prevent or overcome the effect of such events or circumstances on the performance of the Contractor's obligations under the Contract if it had exercised the care, skill, diligence, prudence and foresight reasonably or ordinarily expected of a competent, qualified, skilled and experienced contractor supplying similar goods and services; and

- (c) are not caused or contributed to in whole or in part by a breach by the affected party of the Contract.

**Framework Agreement** means the contract entitled "Lifts Framework Agreement" (if any) between the Principal and the Contractor to which these General Conditions of Contract are annexed.

**General Conditions of Contract** means these General Conditions of Contract.

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

**GST Legislation** means 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.

**Incoterms 2010** means the publication called the ICC Incoterms published by the International Chamber of Commerce, 2010 Edition.

**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 other person with similar power is appointed to the party;
- (c) the party:
- (i) becomes bankrupt or insolvent;
  - (ii) makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors;
  - (iii) seeks relief from its obligations to creditors under any bankruptcy, insolvency or analogous Law;
  - (iv) files a petition or proposal to take advantage of any act of bankrupt or insolvency;
  - (v) 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
  - (vi) files a petition or otherwise commences any proceeding seeking any 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
- (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** means any patent, registered design, trademark or name, copyright or other protected intellectual property right.

**Key Details** means the particulars which appear in Schedule 1.

**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 any Authority;
- (b) common law;
- (c) Approvals; and
- (d) any other relevant Authority requirements.

**Main Works Contract** means the contract entered into between the Principal and the Main Works Contractor.

**Main Works Contractor** 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.

**Moral Rights** means any of the rights described in Article 6bis of the *Berne Convention for the Protection of Literary and Artistic Works 1886*, being "droit moral" or other analogous rights arising under any applicable Law that exists or may come to exist anywhere in the world.

**Motor Vehicle Insurance** means a policy of insurance covering vehicle third party bodily injury and property damage in respect of all vehicles to be used by the Contractor (whether owned, rented or leased) in connection with the Contractor's Activities.

**Notice of Completion** means a notice under clause 13.2(b) by the Principal's Representative stating that Completion of the Works or a Separable Portion has been achieved.

**Notice of Dispute** has the meaning given in clause 15.1.

**NSW Trains** means the corporation by that name constituted by Part 3C of the Transport Administration Act 1998(NSW).

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

**Other Contractor** means any supplier, contractor, consultant, artist, tradesperson or other person engaged to do work other than the Contractor and its Subcontractors and includes the Main Works Contractor.

**Plant, Equipment and Work** means those things used, or work undertaken, by the Contractor to construct the Works or a Separable Portion but which will not form part of the Works or the Separable Portion.

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

- (a) the Chain of Responsibility Standard, ST-487 as set out in Exhibit B;
- (b) the policies, codes and standards that, as at October 2018, appear on the Railsafe website at <https://railsafe.org.au/>, including but not limited to:
  - (i) the policy entitled "Health and Safety Policy"; and
  - (ii) the applicable specifications on the safety and environment specifications page, available, as at March 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;
- (i) if applicable, the NSW Government Policy on Aboriginal Procurement; and
- (j) any other policies, codes and standards that are notified to the Contractor by the Principal from time to time.

**PPSA** means the Personal Property Securities Act 2009 (Cth) and regulations made under that Act.

**Principal's Representative** means the person so nominated in the Key Details or any other person nominated by the Principal from time to time under clause 3.2 to replace that person.

**Product Liability Insurance** means a policy of product liability insurance in the joint names of the Contractor, the Principal, Sydney Trains, NSW Trains and RailCorp 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 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.

**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.

**Provisional Sum Work** means the work or goods so described in the Key Details for which the sum of money referred to in the Key Details is included in the Contract Price.

**Public Liability Insurance** means a policy of public liability insurance in the joint names of the Contractor, the Principal, Sydney Trains, NSW Trains and RailCorp 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 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.

**Purchase Order** means a "Purchase Order" issued in accordance with the Framework Agreement.

**Qualifying Cause** means:

- (a) an Act of Prevention;
- (b) a Force Majeure Event; or
- (c) a direction to suspend that satisfies clause 10.12(b).

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

**Railway Track or Rail Track or Track or Line** 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).

**Schedule of Prices** has the meaning given in the Framework Agreement.

**Separable Portion** means a separable portion of the Works described in the Key Details.

**Site** means any land made available by the Principal to the Contractor to carry out the Contractor's Activities, if any, including any such land described in the Specification.

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

**Specification** means the general Specification in Exhibit A, and any additional technical requirements for the Works specified in the Purchase Order.

**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).

**Tests** means:

- (a) the tests and procedures specified in the Specification which are to be carried out before Completion;
- (b) any other tests required by the Principal's Representative; and
- (c) any other tests required to ascertain whether the Works or a specified part thereof meet the requirements of the Contract,

and each of them is a Test.

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

**Variation** means, unless otherwise stated in the Contract, any change to the Works including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Works.

**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 7.5, 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.

**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.

**Works** means the physical works which the Contractor must complete and hand over to the Principal, as more particularly described in the Specification.

**Works Insurance** means a policy of insurance to:

- (a) cover the Principal, the Contractor and all Subcontractors for their respective rights, interests and liabilities; and
- (b) insure all the things referred to in clause 5.1 for which the Contractor bears the risk against loss or damage resulting from any insurable event.

## 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;
- (m) the word "subcontractor" will include suppliers and consultants;
- (n) if any term in the Specification refers to a term included in Incoterms 2010, the rules and definitions governing that term in Incoterms 2010 will apply; and
- (o) to the extent that:
  - (i) any amounts are payable to the Contractor under the Contract by reference to hourly or daily rates; and
  - (ii) the Contractor carries out the Contractor's Activities for an increment of time less than a full hour or day (or for one or more full hours or days plus an increment of time less than a full hour or day) (as applicable),

the Contractor will be entitled to payment in respect of such time on a pro rata basis.

### **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 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.

## 1.6 Authorities

- (a) The Contract will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal or any other Rail Transport Agency to exercise any of their respective functions and powers pursuant to any legislation.
- (b) Without limiting clause 1.6(a), anything the Principal or any other Rail Transport Agency do, or fail to do or purport to do, pursuant to their respective functions and powers under any legislation, will be deemed not to be an act or omission by the Principal under the Contract.
- (c) The Contractor:
  - (i) waives any Claims that it may have against the Principal as a result of the exercise by the Principal or any Rail Transport Agency of their respective functions and powers under any legislation; and
  - (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;
    - 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); and
    - C. it bears the full risk of all occurrences of the kind referred to in clause 1.6(c)(ii)B and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

## 1.7 Separable Portions

In the Contract:

- (a) the expressions:
  - (i) Completion;
  - (ii) Date for Completion;
  - (iii) Date of Completion;
  - (iv) Defect;
  - (v) Defects Liability Period; and
  - (vi) Notice of Completion,apply separately to each Separable Portion and references therein to the Works or the Contractor's Activities mean so much of the Works or the Contractor's Activities as are comprised in the relevant Separable Portion; and
- (b) subclauses 5.1 and 5.3 and clauses 2, 9, 10 and 13 apply separately to each Separable Portion and references therein to the Works or the Contractor's Activities mean so much of the Works or the Contractor's Activities as are comprised in the relevant Separable Portion.



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## **2. Parties' obligations**

### **2.1 Contractor's obligations**

The Contractor must:

- (a) immediately commence to carry out the Contractor's Activities;
- (b) subject to clause 2.2(a), commence construction of Works on Site by no later than the date specified in the Key Details; and
- (c) unless otherwise stated, carry out the Contractor's Activities at its cost.

### **2.2 Principal's obligations**

The Principal must, in accordance with the requirements of the Contract:

- (a) give the Contractor sufficient access to the Site to allow it to commence work on the Site on the later of:
  - (i) satisfaction of the conditions of access in the Specification; and
  - (ii) the date specified in the Key Details;
- (b) subject to other provisions of the Contract affecting access, continue to allow the Contractor sufficient access to the Site to enable it to carry out the Contractor's Activities; and
- (c) pay the Contract Price.

### **2.3 Novation of Contract to an Other Contractor**

The Principal may, without the Contractor's prior written consent, assign or novate or otherwise transfer its rights and obligations under this Contract to an Other Contractor, and the Contractor must execute a novation deed substantially in the form of Schedule 2 or any document reasonably required to give effect to such assignment, novation or transfer.

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## **3. Personnel**

### **3.1 Principal's Representative**

The Principal's Representative will give Directions and carry out all its other functions under the Contract as the agent of the Principal (and not as an independent certifier, assessor or valuer).

The Contractor must comply with any Direction by the Principal's Representative given or purported to be given under a provision of the Contract.

Except where the Contract otherwise provides, the Principal's Representative may give a Direction orally but will as soon as practicable confirm it in writing.

### **3.2 Replacement of Principal's Representative**

The Principal may at any time replace the Principal's Representative, in which event the Principal will appoint another person as the Principal's Representative and notify the Contractor of that appointment.

Any substitute Principal's Representative appointed under this clause 3.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

### **3.3 Principal's Representative's representative**

The Principal's Representative may:

- (a) by written notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under the Contract;
- (b) not appoint more than one person to exercise a specific function under the Contract; and
- (c) revoke any appointment under paragraph (a) by notice in writing to the Contractor.

All references in the Contract to the Principal's Representative include a reference to a representative appointed under this clause 3.3.

### **3.4 Contractor's Representative**

The Contractor must ensure that the Contractor's Representative is present on the Site at all times reasonably necessary to ensure that the Contractor is complying with its obligations under the Contract.

A Direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.

Matters within the knowledge of the Contractor's Representative are deemed to be within the knowledge of the Contractor.

If the Principal's Representative makes a reasonable objection to the appointment of a representative by the Contractor, the Contractor must terminate the appointment and appoint another representative, subject again to the reasonable objection of the Principal's Representative.

### **3.5 Key people**

The Contractor must:

- (a) employ those people specified in the Specification, including the Contractor's Representative, in the jobs specified in the Specification;
- (b) subject to paragraph (c), not replace the people referred to in paragraph (a) without the Principal's Representative's prior written approval; and
- (c) if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Principal's Representative of at least equivalent experience, ability and expertise.

### **3.6 Removal of persons**

The Principal's Representative may by notice in writing instruct the Contractor to remove any person from the Site or the Contractor's Activities who in the reasonable opinion of the Principal's Representative is guilty of misconduct or is incompetent or negligent.

The Contractor must ensure that this person is not again employed in the Contractor's Activities.

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## **4. Security**

### **4.1 Form of security**

This clause 4.1 applies where so stated in the Key Details.

The Contractor must provide security in the form of an Approved Security and for the amount set out in the Key Details.

Security must be provided within 10 Business Days of the Award Date.

### **4.2 Release of security**

Subject to its rights to have recourse to the security, the Principal must:

- (a) within 14 Business Days of the issue of a Notice of Completion for the Works or for the last Separable Portion to achieve Completion, release 50% of the security provided under clause 4.1; and
- (b) release the balance of security then held when:
  - (i) the last Defects Liability Period (including any extensions under clause 9.12) has expired;
  - (ii) the Contractor has provided the Principal with the final payment claim required by clause 12.8; and
  - (iii) the Contractor has complied with all of its obligations under the Contract.

If the Principal terminates the Contract pursuant to clause 14.7 then to the extent that the Principal has not had recourse to it, the Principal must release all security then held by it when the Contractor has complied with its obligations under clause 14.8(b).

### **4.3 Replacement security**

- (a) If the Principal holds security provided under clause 4.1 which contains an expiry date which is earlier than the date upon which the Principal is required to return the security to the Contractor, the Contractor must, on or before the date which is 20 Business Days prior to the expiry date for that security, provide the Principal with replacement security in the form of an Approved Security in exchange for the security which is being replaced.
- (b) If paragraph (a) applies in respect of any security and the Principal has not received from the Contractor replacement security in the form of an Approved Security at least 20 Business Days prior to the expiry date for that undertaking then, irrespective of anything contained in, and without limiting the Principal's rights under, the Contract or the security, the Principal may make a demand under the security for the entire amount payable under that security and thereafter retain the proceeds.
- (c) Subject to the Principal's rights under the Contract to use these proceeds, the proceeds from any demand made by the Principal pursuant to paragraph (b) will be paid to the Contractor at the same time as the Principal would have been required to return the security from which the proceeds were obtained.

## 4.4 Interest

The Principal:

- (a) is not obliged to pay the Contractor interest on any Approved Security provided under clause 4.1 including the proceeds of any bank guarantee if it is converted into cash; and
- (b) does not hold the proceeds or money referred to in paragraph (a) on trust for the Contractor.

## 4.5 PPSA

- (a) To the extent the PPSA applies to any goods, materials or other items supplied by the Contractor to Principal the Contractor warrants that:
  - (i) the supply of goods, materials or other items to Principal does not breach any security agreement the Contractor has with a third party; and
  - (ii) the supply of goods, materials or other items to Principal is within the ordinary course of the Contractor's business.
- (b) The Contractor indemnifies the Principal against any claims against, or costs, losses or damages suffered or incurred by the Principal directly or indirectly in connection with any infringement of, or claim in regard to, any third party security agreement or security interest under the PPSA arising as a result of:
  - (i) the Contractor carrying out the Contractor's Activities; or
  - (ii) goods, materials or other items supplied to Principal by the Contractor infringing that third party's rights under the PPSA.

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## 5. Risks and insurance

### 5.1 Risk of Works

The Contractor will bear the risk of and indemnify the Principal against:

- (a) any loss of or damage to:
  - (i) the Works or a Separable Portion;
  - (ii) Plant, Equipment and Work; and
  - (iii) unfixed goods and materials (whether on or off Site), including anything provided by the Principal to the Contractor or brought onto Site by a Subcontractor, used or to be used in carrying out the Contractor's Activities,until:
  - (iv) in the case of loss or damage to the Works or a Separable Portion, a Notice of Completion is issued for the Works or the Separable Portion; and
  - (v) otherwise, a Notice of Completion issues for the Works or the last Separable Portion to reach Completion; and
- (b) after the issue of a Notice of Completion for the Works or a Separable Portion, any loss of or damage to the Works or the Separable Portion arising from any act or omission of the Contractor during the Defects Liability Period or from an event

which occurred prior to the issue of the Notice of Completion for the Works or the Separable Portion.

## **5.2 Contractor's indemnity**

The Contractor will indemnify the Principal against:

- (a) any loss of or damage to property of the Principal (other than property referred to in clause 5.1(a)); and
- (b) any liability to or claims by a third party in respect of loss of or damage to property or injury to or death of persons,

caused by, or arising out of, or in any way in connection with, the Contractor's Activities provided that the Contractor's responsibility to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, Principal's Representative or an Other Contractor engaged by the Principal may have contributed to the loss, damage, injury or death.

## **5.3 Reinstatement**

During the period during which the Contractor bears the risk of loss or damage under clause 5.1, the Contractor must, unless otherwise directed by the Principal's Representative, promptly replace or otherwise make good any loss of, or repair the damage to, the Works or a Separable Portion, any Plant, Equipment and Work or any unfixed goods and materials used or to be used in carrying out the Contractor's Activities. The Contractor will bear the cost of such replacement, making good or repair.

## **5.4 Insurance by Principal**

The Principal must, from the Award Date, effect the insurance (if any) specified in the Key Details and must provide the Contractor with a copy of the relevant insurance policies.

The insurance is subject to the exclusions, conditions and excesses noted on the policies and the Contractor must:

- (a) satisfy itself of the nature and extent of the Principal's insurance;
- (b) if required by the Contractor, take out insurance to:
  - (i) insure any risks not insured by the Principal's insurance; or
  - (ii) cover any such exclusions, conditions or excesses in that insurance,which the Contractor wants to insure against or cover; and
- (c) where it bears the risk of the relevant loss or damage under clause 5.1 or is required to indemnify the Principal under clause 5.2, bear the cost of any excesses in the Principal's insurance.

## **5.5 Contractor insurance obligations**

The Contractor must:

- (a) from the Award Date effect and have in place the following insurance with insurers and on terms satisfactory to the Principal's Representative:
  - (i) Works Insurance;
  - (ii) Public Liability Insurance;

- (iii) Product Liability Insurance;
- (iv) Workers Compensation Insurance;
- (v) Construction Plant Insurance;
- (vi) Motor Vehicle Insurance; and
- (vii) if the Contractor's Activities involve design services or any other professional services, Professional Indemnity Insurance,

for at least the amounts referred to in the Key Details and which note the parties listed in the Key Details as interested parties;

- (b) ensure that if the Contractor's Activities are to be carried out on or near rail, the Public and Product Liability Insurance and Works Insurance does not contain any exclusions or limitations in cover in respect of works conducted on or near rail;
- (c) in relation to the Workers Compensation Insurance ensure that each of its Subcontractors has similar insurance to the Workers Compensation Insurance covering the Subcontractors' employees; and
- (d) provide the Principal's Representative with a copy of any required insurance policy and evidence satisfactory to the Principal's Representative that the policy is current as required by the Principal's Representative from time to time.

## 5.6 Period of Insurance

The insurance which the parties are required to have in place under this clause 5 must be maintained:

- (a) in the case of Works Insurance, until the Contractor ceases to bear the risk of loss of or damage to anything under clause 5.1;
- (b) in the case of Public Liability Insurance, Product Liability Insurance and Workers Compensation Insurance, until the later of:
  - (i) the end of the last Defects Liability Period; and
  - (ii) the date upon which all Defects have been rectified in accordance with the Contract;
- (c) in the case of Construction Plant Insurance, at all times that the relevant items of construction plant are being used or are allocated for use, in connection with the Contractor's Activities or the Works;
- (d) in the case of Motor Vehicle Insurance, at all times that the vehicles are to be used by the Contractor in connection with the Contractor's Activities or are on the Site; and
- (e) in the case of Professional Indemnity Insurance, until the expiration of the period specified in the Key Details following the Date of Completion.

## 5.7 Insurers

The insurance which the Contractor is required to have in place under clause 5.5 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 at least A- from Standard & Poor's or an equivalent rating from another internationally recognised rating agency.

## **5.8 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.

## **5.9 Failure to insure**

If the Contractor fails to:

- (a) provide copies of any insurance policy together with 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 5.4, 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.

## **5.10 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;
- (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.

## **5.11 Cross liability**

Where the Contract requires insurance to be effected in joint names, the party effecting the insurance must ensure that the insurance policy provides that:

- (a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
- (b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured and that failure by any

insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;

- (c) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- (d) a notice to the insurer by one insured will be deemed to be notice by all insured parties.

## **5.12 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).

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## **6. Design and documentation**

### **6.1 Principal's documents**

The Principal must provide to the Contractor the documents and number of copies of those documents specified in the Specification.

### **6.2 Contractor's design**

Clauses 6.2 - 6.5 apply if any design work is required as part of the Works.

The Contractor must:

- (a) design the parts of the Works which the Contract requires it to design and for this purpose prepare all relevant Design Documentation; and
- (b) prepare all Design Documentation required for the performance of the Works.

The Contractor must submit the Design Documentation it prepares to the Principal's Representative in accordance with the program approved by the Principal's Representative under clause 10.2.

### **6.3 Principal's Representative may review Design Documentation**

The Principal's Representative may:

- (a) review any Design Documentation, or any resubmitted Design Documentation, prepared and submitted by the Contractor; and
- (b) within 15 Business Days of the submission by the Contractor of such Design Documentation or resubmitted Design Documentation, reject the Design Documentation if in its reasonable opinion the Design Documentation does not comply with the requirements of the Contract.

If any Design Documentation is rejected, the Contractor must submit amended Design Documentation to the Principal's Representative.

The Contractor must not commence construction of the part of the Works to which any Design Documentation which it has submitted to the Principal's Representative applies, unless the Principal's Representative has had 15 Business Days to review the Design Documentation and has not rejected the Design Documentation.



## **6.4 No obligation to review**

The Principal's Representative does not assume or owe any duty of care to the Contractor to review, or in reviewing, the Design Documentation submitted by the Contractor for errors, omissions or compliance with the Contract.

No review of, comments upon, rejection of, or failure to review or comment upon or reject, any Design Documentation prepared by the Contractor or any other Direction by the Principal's Representative about the Design Documentation will:

- (a) relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Contract or otherwise according to law; or
- (b) prejudice the Principal's rights against the Contractor whether under the Contract or otherwise according to law.

## **6.5 Copies of Design Documentation**

For the purposes of clause 6.2 and 6.3, the Contractor must submit or resubmit to the Principal's Representative, the number of copies specified in the Specification of any Design Documentation.

## **6.6 Fitness for purpose**

The Contractor warrants that:

- (a) any Design Documentation it prepares will be fit for its intended purpose;
- (b) upon Completion the Works or each Separable Portion will, to the extent they are designed by the Contractor, be fit for their intended purpose; and
- (c) documents provided by the Principal under clause 6.1 are accurate and suitable for their purposes under the Contract unless within 10 Business Days of receipt the Contractor gives written notice to the Principal's Representative of any deficiencies in such documents.

## **6.7 Intellectual Property Rights**

The Contractor warrants that neither the Design Documentation nor the Works nor any design, materials, process, method of working or document, provided by the Contractor, will infringe any Intellectual Property Rights.

## **6.8 Ownership**

Ownership of:

- (a) any design, process, method of working or document (including the Design Documentation) prepared by or on behalf of the Contractor for in connection with the Contractor's Activities or provided to the Contractor by or on behalf of the Principal;
- (b) any Intellectual Property Rights in any such design, process, method of working or document; and
- (c) any Intellectual Property Rights in the Works or any part thereof to the extent it incorporates or is based upon any such design, process, method of working or document,

which is first created as part of the Contractor's Activities is and will remain vested in the Principal.

Without limiting the previous paragraph, ownership of any Intellectual Property Rights in or associated with the Works and the Design Documentation will vest in the Principal. The Contractor must do everything necessary to perfect such vesting.

The Principal grants to the Contractor a licence to use the Design Documentation for the Contractor's Activities.

## **6.9 Licence**

The Contractor grants to the Principal a perpetual, irrevocable, royalty-free, assignable licence to use all Intellectual Property Rights in or associated with the Works the ownership of which does not vest in the Principal pursuant to clause 6.8:

- (a) for the installation, use, repair, maintenance, support, operation, modification, upgrade, refurbishment, overhauling, rebuilding, testing, servicing or monitoring the performance of, or performing additions or alterations to, the Works and for this purpose to use and reproduce the Intellectual Property Rights in or associated with the Works in tenders for any such work after the Award Date (whether or not such tenders are issued to the Contractor); and
- (b) which will survive any termination of the Contract.

The Principal may sub-license others to use the Intellectual Property Rights in or associated with the Works licensed to the Principal under the previous paragraph.

## **6.10 Indemnity and infringement**

The Contractor must indemnify the Principal against any claims against, or costs, losses or damages suffered or incurred by, the Principal, arising out of, or in any way in connection with, any actual or alleged infringement of any Intellectual Property Rights in or associated with the Works or any Design Documentation provided by the Contractor or any breach by the Contractor of clause 6.11.

## **6.11 Moral Rights**

The Contractor must, at its own expense, obtain or procure all consents or waivers from any person who has Moral Rights in the Design Documentation and the Works to the extent necessary to ensure that the Principal may do or authorise any acts or omissions consistent with the ownership and licences granted by clauses 6.8 and 6.9 without infringing any Moral Rights.

## **6.12 Resolution of ambiguities**

- (a) The following order of precedence will apply to any ambiguity, discrepancy or inconsistency in the documents which make up the Contract, with those higher in the list having precedence over those lower in the list:
  - (i) the Purchase Order;
  - (ii) the General Conditions of Contract (including the Schedules and Appendix);
  - (iii) any Exhibits to the General Conditions of Contract other than the Specification; and
  - (iv) the Specification.
- (b) If either party discovers any ambiguity, discrepancy or inconsistency in the documents which make up the Contract or between the Contract and any documents provided to the Contractor by or on behalf of the Principal which the Contractor is required by the Contract to use for construction purposes:

- (i) the party must promptly give notice to the other; and
  - (ii) the Principal's Representative must instruct the Contractor as to the course it must adopt within 5 Business Days of the notice under subparagraph (b)(i).
- (c) If compliance with the Principal's Representative's instruction under subparagraph (b)(ii) causes the Contractor to incur more or less cost than a competent and experienced contractor (having the experience of a contractor that is an expert in carrying out work of a nature similar to the Contractor's Activities) could reasonably have anticipated if it had carefully examined the Contract documents on or before the Award Date, then the difference in cost, as determined by the Principal's Representative, will be added to or deducted from the Contract Price (as applicable).
- (d) If any ambiguity, discrepancy or inconsistency exists between the Specification and any part of the Design Documentation (which the Contractor is entitled to use for construction purposes under clause 6.3) then, unless otherwise directed in writing by the Principal's Representative, the Specification will prevail.

### 6.13 Contractor to notify errors

The Contractor shall review any documentation which makes up the Contract, and any revisions of and additions to such documentation issued by the Principal's Representative for the purposes of the Contractor's Activities, for errors, contradictions or deficiency of information and promptly notify the Principal's Representative of any such errors, contradictions or deficiency of which the Contractor becomes aware for the attention and action of the Principal's Representative.

### 6.14 Confidentiality

- (a) The Contractor must, within 5 Business Days of being requested by the Principal to do so, deliver to the Principal a duly executed Confidentiality Undertaking. The execution of the Confidentiality Undertaking will not limit the Contractor's obligations under this clause 6.14.
- (b) The Contractor must, and must ensure its officers and employees and its Subcontractors, keep confidential and not make, or cause to be made, any public announcement, public comment, press release or other disclosure directly or indirectly in connection with the Contractor's Activities or the Contract to any person other than:
- (i) as necessary to perform the Contractor's Activities;
  - (ii) with respect to any matter already within the public domain; or
  - (iii) to comply with any applicable Law or any requirement of any regulatory body (including any relevant stock exchange).
- (c) Without limiting clause 18.13, the Contractor acknowledges that the Principal may disclose the Contract (and information concerning the terms of the Contract) under or in accordance with any one or more of the following:
- (i) the Government Information (Public Access) Act 2009 (NSW) (**GIPA Act**); and
  - (ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability,
- and the Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under this paragraph (c).

- (d) If the Principal is required to include a copy of the Contract in the government contracts register pursuant to the GIPA Act:
- (i) the Principal may disclose the entire Contract;
  - (ii) if the Contractor considers that the Principal should not disclose any other provisions of the Contract on the basis that their disclosure would fall within section 32(1) of the GIPA Act, the Contractor must within 10 Business Days of the Award Date give the Principal written notice of:
    - A. any provisions of the Contract it believes should not be disclosed for the reasons set out in section 32(1) of the GIPA Act; and
    - B. details of:
      - 1) the reasons why the provisions should not been disclosed,
      - 2) whether the provisions can be disclosed at a later date and, if so, when it is likely that they can be disclosed, and
      - 3) a general description of the types of provisions that the Contractor proposes should not be disclosed; and
  - (iii) in complying with its disclosure obligations under the GIPA Act, the Principal will consider, but will not be bound by, any proposal made by the Contractor under paragraph (d)(ii).

## **6.15 Media**

The Contractor must not disclose any information concerning the Contract for distribution through any communications media without the Principal's prior written approval. The Contractor must refer to the Principal any enquiries from any media concerning the Contract.

## **6.16 Survive termination**

Clauses 6.7 to 6.11, 6.14 and 6.15, and the licences granted to the Principal under them, will survive any termination of the Contract.

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# **7. Site and information**

## **7.1 Contractor to inform itself**

The Contractor warrants that it has, and it will be deemed to have, done everything that would be expected of a prudent, competent and experienced contractor in:

- (a) assessing the risks which it is assuming under the Contract; and
- (b) ensuring that the Contract Price contains allowances to protect it against any of these risks eventuating,

and any failure by the Contractor to have done any of those things will not relieve the Contractor of its obligation to carry out and complete the Contractor's Activities in accordance with the Contract.

## 7.2 Site information

The Principal does not warrant, guarantee or make any representation about the accuracy, adequacy, suitability or completeness of any information or data made available to the Contractor as to the existing conditions at the Site and the Contractor acknowledges that such information or data does not form part of the Contract.

## 7.3 Site access

The Principal:

- (a) is not obliged to:
  - (i) provide the Contractor with sole access to the Site; or
  - (ii) carry out any work or provide any facilities to the Contractor (other than as stated in the Contract) which may be necessary to enable the Contractor to obtain adequate access to carry out the Contractor's Activities; and
- (b) may engage Other Contractors to work upon or in the vicinity of the Site at the same time as the Contractor.

## 7.4 Contractor's obligation to provide access

In carrying out the Contractor's Activities, the Contractor must:

- (a) minimise disruption or inconvenience to:
  - (i) the Principal, occupiers, tenants and potential tenants of the Site in their occupation or use of, or attendance upon, any part of the Site; and
  - (ii) others having a right of access to the Site;
- (b) at all reasonable times give the Principal's Representative, the Principal and any person authorised by either the Principal's Representative or the Principal access to the Works, the Site or any areas off-Site where Contractor's Activities are being carried out; and
- (c) provide the Principal and the Principal's Representative with every reasonable facility necessary for the supervision, examination and testing of the Contractor's Activities.

## 7.5 Work health and safety

- (a) In this clause 7.5, the terms 'construction work', 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation.
- (b) The Principal engages the person identified in the Key Details as the principal contractor in respect of any construction work forming part of the Contractor's Activities.
- (c) Where the Principal engages the Contractor as the principal contractor:
  - (i) the Principal authorises the Contractor to have management and control of each workplace at which construction work is to be carried out and to discharge the duties of a principal contractor, under the WHS Legislation;

- (ii) the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation; and
- (iii) the Contractor's engagement and authorisation as principal contractor will continue:
  - A. until the Date of Completion of the Works (or the Date of Completion of each Separable Portion, as applicable); and
  - B. while ever any rectification work that is "construction work" is carried out during the Defects Liability Period,

unless sooner revoked by the Principal terminating the Contract pursuant to any provision of the Contract or according to Law.

- (d) Where the Contractor is not engaged as the principal contractor, the Contractor must comply with the reasonable directions of the principal contractor in relation to any construction work forming part of the Contractor's Activities.
- (e) As a condition precedent to the Principal's obligation under the Contract to provide the Contractor with access to, or possession of the 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).
- (f) 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.
- (g) Without limiting its obligations, the Contractor must:
  - (i) comply, and must ensure that its Subcontractors and any other person engaged by the Contractor for the purposes of the Contract comply, with the WHS Legislation (including its obligation under the WHS Legislation to consult, co-operate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter);
  - (ii) if requested by the Principal's Representative or required by WHS Legislation, demonstrate compliance with the WHS Legislation, including providing evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety matters;
  - (iii) 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;
  - (iv) 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
  - (v) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation.
- (h) To the extent not prohibited by Law, the Contractor indemnifies the Principal against any claims against, or loss suffered or incurred by, the Principal arising out of or in connection with the failure of the Contractor to discharge the duties imposed on a principal contractor under the WHS Legislation (if the Contractor has been engaged as principal contractor) or otherwise comply with this clause 7.5.

## 7.6 Non-reliance

The Contractor:

- (a) warrants that it did not in any way rely upon:
  - (i) any information, data, representation, statement or document made by or provided to the Contractor by the Principal, the Principal's Representative or anyone else on behalf of the Principal; or
  - (ii) the accuracy, adequacy, suitability or completeness of any such information, data, representation, statement or document,for the purposes of entering into the Contract, except to the extent that any such information, data, representation, statement or document forms part of the Contract;
- (b) warrants that it enters into the Contract based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that the Principal has entered into the Contract relying upon the warranties in paragraphs (a) and (b).

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## 8. Construction

### 8.1 Description of Works

Subject to clause 6.12, the Contractor must construct the Works in accordance with:

- (a) the Specification;
- (b) any Design Documentation prepared by the Contractor in accordance with the requirements of the Contract, and which the Contractor is entitled to use for construction purposes under clause 6.3;
- (c) any Direction of the Principal's Representative given or purported to be given under a provision of the Contract, including any Variation directed by the Principal's Representative by a document titled "Variation Order"; and
- (d) the other requirements of the Contract (including any performance guarantees or other performance levels or performance requirements stated in the Contract).

### 8.2 All work included

The Contractor warrants that it has, and it will be deemed to have, allowed for the provision of all Plant, Equipment and Work, materials and other work necessary for the Contractor's Activities, whether or not expressly mentioned in the Specification or any Design Documentation.

Any such Plant, Equipment and Work, materials and other work:

- (a) must be undertaken and provided by the Contractor; and
- (b) forms part of the Contractor's Activities and will not entitle the Contractor to make a Claim except as otherwise provided for in the Contract.

### 8.3 Compliance with Law

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

- (a) comply with all applicable Law;

- (b) without limiting paragraph (a), comply with the Principal's Environment Protection Licence;
- (c) obtain all Approvals except for those specified in the Key Details which were either obtained prior to the Award Date or will be obtained after the Award Date by the Principal;
- (d) 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; 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 Works.

#### **8.4 Change in Law**

If there is a Change in Law after the Award Date and:

- (a) the Change in Law could not reasonably have been anticipated at the Award Date; and
- (b) compliance with the Change in Law by the Contractor:
  - (i) has a direct adverse effect on the Contractor in performing the Contractor's Activities; and
  - (ii) directly results in an increase in the Contractor's costs of performing the Contractor's Activities,

then the additional costs necessarily and reasonably incurred by the Contractor in complying with the Change in Law, as determined by the Principal's Representative, will be added to the Contract Price.

#### **8.5 Subcontracting**

The Contractor:

- (a) must not subcontract the whole of the Contractor's Activities;
- (b) must not subcontract any work without the prior written approval of the Principal's Representative, other than to the Subcontractors specified in the Key Details;
- (c) will be fully responsible for the Contractor's Activities despite subcontracting the carrying out of any part of the Contractor's Activities; and
- (d) 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 Contractor's Activities.

#### **8.6 Subcontractor warranties**

The Contractor must, as a condition precedent to Completion of the Works or any Separable Portion, procure and provide the Principal with those warranties described in the Specification from the relevant Subcontractor undertaking or supplying the work or item the subject of the warranty.

These warranties:

- (a) must be in the terms prescribed in Schedule 7 of the Appendix; and



- (b) will not derogate from any rights which the Principal may have against the Contractor in respect of the subject matter of these warranties.

## **8.7 Co-operation with Other Contractors**

The Contractor must:

- (a) permit Other Contractors to carry out their work;
- (b) fully co-operate with Other Contractors;
- (c) carefully co-ordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors; and
- (d) carry out the Contractor's Activities so as to avoid interfering with, disrupting or delaying the work of Other Contractors.

## **8.8 Provisional Sum Work**

- (a) For each item of Provisional Sum Work, the Principal's Representative will give the Contractor an instruction either deleting that item of Provisional Sum Work from the Contract or requiring the Contractor to proceed with the relevant work.

If any item of Provisional Sum Work is deleted from the Contract:

- (i) the Contract Price will be reduced by the amount allowed for the item of Provisional Sum Work in the Key Details;
  - (ii) the Principal may engage an Other Contractor to carry out the item of Provisional Sum Work; and
  - (iii) the Principal will not be liable upon any claim by the Contractor arising out of, or in any way in connection with, the deletion of the item of Provisional Sum Work.
- (b) If the Contractor is instructed to proceed with an item of Provisional Sum Work, the Contractor will progressively prepare the Design Documentation for the item of Provisional Sum Work. The Contractor must inform the Principal's Representative when the Design Documentation is being discussed at design and other meetings and the Principal's Representative may attend all meetings.
  - (c) Where the Contractor is instructed to proceed with an item of Provisional Sum Work, it must, unless otherwise directed by the Principal's Representative, be carried out under subcontracts to be let after a competitive tender by the Contractor in accordance with such procedure as may be required by the Principal's Representative.
  - (d) If the Contractor enters into a subcontract for an item of Provisional Sum Work:
    - (i) the Contract Price will, if the amount tendered by the tenderer with whom the Contractor is instructed to enter into the subcontract is more or less than the amount allowed in the Key Details for that item of Provisional Sum Work, be adjusted by the amount of the difference, with no further allowance for overhead and profit except as set out in clause 8.8(f); and
    - (ii) any Variation to that work will be dealt with under clause 11.
  - (e) If the Principal's Representative directs that an item of Provisional Sum Work is not to be put out to tender in accordance with clause 8.8(c), the Contract Price will be adjusted for the item of Provisional Sum Work by the difference between:

- (i) the amount allowed for the item of Provisional Sum Work in the Key Details; and
- (ii) either:
  - A. an amount agreed between the Contractor and the Principal's Representative; or
  - B. if they fail to agree, an amount determined by the Principal's Representative under clause 11.3(b) or 11.3(c)(ii) as if the item of Provisional Sum Work were a Variation.
- (f) If, after each and every item of Provisional Sum Work has been deleted under clause 8.8(a), put out to tender under clause 8.8(c) or priced under clause 8.8(f), the total net increase to the Contract Price after all adjustments under clauses 8.8(a), 8.8(c) and 8.8(e) exceeds 20% of the total amount allowed in the Key Details for Provisional Sum Work, the Contract Price will be further increased by the percentage set out in the Key Details of the amount by which the total net increase to the Contract Price exceeds 20% of the total amount allowed in the Key Details.

## **8.9 Setting out**

The Contractor must set out the Works in accordance with the requirements of the Contract.

## **8.10 Plant, Equipment and Work**

The Contractor must not remove from the Site any Plant, Equipment and Work without the Principal's Representative's prior written approval except for the purpose of achieving Completion as contemplated under clause 8.11(b).

## **8.11 Cleaning up**

In carrying out the Contractor's Activities, the Contractor must:

- (a) keep the Site and the Works clean and tidy and free of refuse; and
- (b) as a condition precedent to Completion of the Works or a Separable Portion, remove all rubbish, materials and Plant, Equipment and Work from the part of the Site relevant to the Works or the Separable Portion.

## **8.12 The environment**

The Contractor must ensure that in carrying out the Contractor's Activities it does not pollute, contaminate or otherwise damage the environment.

## **8.13 Principal may act**

The Principal may, either itself or by a third party, carry out an obligation under the Contract which the Contractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Contract.

The costs, expenses and damages suffered or incurred by the Principal in so carrying out such an obligation will be a debt due from the Contractor to the Principal.

## **8.14 Working hours**

Unless otherwise agreed between the Contractor and the Principal's Representative, the hours of work applicable to the Contractor's Activities to be carried out on Site are those set out in the Key Details.

## 8.15 Rail safety and Accreditation

- (a) The Contractor warrants that it 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.

## 8.16 Policies, Codes and Standards

- (a) The Contractor must ensure that the Contractor and its personnel and Subcontractors:
  - (i) are aware of, and comply with:
    - A. the Code of Conduct; and
    - B. the Policies, Codes and Standards; and
  - (ii) act at all times professionally and appropriately, and in a manner that will not cause harm to the reputation of the Principal.
- (b) For the purposes of clause 8.16(a), any reference to "NSW government sector employees" or "Transport for NSW employees" in the Policies, Codes and Standards is to be read as a reference to the Contractor's employees

## 8.17 Deed poll

The Contractor must, within 5 Business Days of the Award Date, provide to the Principal an executed deed poll in favour of RailCorp, NSW Trains and Sydney Trains in the form set out in Schedule 2 to the Appendix to the Contract.

## 8.18 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 to the Appendix to the Contract.

## 8.19 As built documentation (work as executed)

- (a) Whether or not the Contractor has been supplied with detailed site surveys of the Site (**DSS Plans**) by the Principal, where required by the Principal, the Contractor must, at no cost to the Principal, supply to the Principal draft and final DSS Plans, which must be in accordance with this clause 8.19.

- (b) DSS Plans provided by the Contractor, or for the purposes of this clause 8.19 must, at a minimum:
- (i) incorporate all work as executed information for the Works, together with any further Site information or any other Site survey information discovered during the Works;
  - (ii) show all new works, utilities and services relating to the Works or the Contractor's Activities;
  - (iii) show all changes to ground levels;
  - (iv) identify all utilities and services that have been made redundant and left on the Site, and identify any other utilities and services, whether abandoned or working, discovered during the Contractor's Activities;
  - (v) be provided in hard copy together with soft copy electronic files in Adobe Acrobat and CAD formats specified by the Principal;
  - (vi) be provided together with a traceable change register;
  - (vii) be compliant with the current versions of the following standards/guidelines, as updated from time to time:
    - A. MN A 00491 DSS Accurate Field Drawing (Sydney Trains);
    - B. PR A 00492 DSS Data Capture (Sydney Trains);
    - C. PR A 00494 DSS Work as Executed Procedure (Sydney Trains);
    - D. SP A 00496 DSS Specification for Collection of Services Data (Sydney Trains);
    - E. MN A 00497 DSS Code and Layer Definition for Services Identification (Sydney Trains);
    - F. GL A 00511 Plan Symbols & Interpretation (Sydney Trains);
    - G. the Principal's DSS CAD Template (Sydney Trains);
    - H. TMG 1440 Requirements for the locating of Underground Services in the Rail Corridor (ASA/RailCorp); and
    - I. ESC 540 Service Installations within the Rail Corridor (ASA/RailCorp);
  - (viii) incorporate all compliant work as executed detailed site survey information from any third party controllers or users of the relevant DSS Plans, including the Principal, Subcontractors, and any other persons/organisations or other third party projects;
  - (ix) be signed by professional competent persons acceptable to the Principal attesting that the DSS Plans submitted are a true and accurate record of the entire Works completed by the Contractor and are drafted to the standards required by the Contract; and
  - (x) comply with the requirements of the Contract in all respects.
- (c) All DSS Plans must be provided to the Principal's Representative by the times required by the Principal in accordance with the Contract.

- (d) The Principal may, but has no obligation to, review the DSS Plans.
- (e) The Contractor must, at its cost, attend to all amendments and changes to any draft DSS plans as required by the Principal within 14 Business Days after any request for amendment. The review and amendment process will continue until such time as the Principal requires no further amendments. The Contractor's obligations under this clause are not affected by Completion of the Works.
- (f) The Principal's Representative does not assume or owe any duty of care to the Contractor to review, or in reviewing, the DSS Plans submitted by the Contractor for errors, omissions or compliance with the Contract.
- (g) No review of, comments upon, rejection of, or failure to review or comment upon or reject, any DSS Plans prepared by the Contractor or any other Direction by the Principal's Representative about the DSS Plans will:
  - (i) relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Contract or otherwise according to law; or
  - (ii) prejudice the Principal's rights against the Contractor whether under the Contract or otherwise according to law.
- (h) The Principal's exercise of (or failure to exercise) any of its rights under this clause 8.19 will not preclude the Principal from subsequently asserting that a DSS Plan does not comply with the requirements of the Contract.
- (i) The Principal may, at its cost and at any time conduct audits of the Contractor's process for the preparation of DSS Plans undertaken by the Contractor to assess the Contractor's compliance with this clause. The Contractor must provide all necessary assistance and information reasonably requested by the Principal for the purposes of this audit contemplated by this clause. In the event an audit identifies that the Contractor's processes for the preparation of DSS Plans are not in accordance with the Contract, the Contractor must, at its costs, rectify any DSS Plans affected by the process so that they meet the requirements of the Contract.
- (j) The Contractor must implement handover protocols acceptable to the Principal for DSS Plans and electronic CAD files, and comply with these protocols, by no later than the Date for Completion.

## **8.20 Long service levy**

Without limiting subclause 8.3, before commencing the Contractor's Activities, the Contractor must:

- (a) pay to the Building and Construction Industry Long Service Payments Corporation or the Corporation's agent the amount of the long service levy payable in respect of the building and/or construction work under the Building and Construction Industry Long Service Payments Act 1986 (NSW); and
- (b) produce to the Principal the documentary evidence of payment of the levy.

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## **9. Quality and Defects**

### **9.1 Construction**

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

- (a) use good workmanship:

- (i) of the standard prescribed in the Contract, and to the extent it is not so prescribed, or a standard consistent with best industry standards for work of a nature similar to the Works; and
- (ii) which is fit for its purpose;
- (b) use good new materials:
  - (i) which comply with the requirements of the Contract, and to the extent not fully described in the Contract, which are consistent with the best industry standards for work of a nature similar to the Works; and
  - (ii) of merchantable quality, which are fit for their purpose and consistent with the nature and character of the Works;
- (c) use care, skill, judgment and diligence to the standard prescribed in the Contract, and to the extent it is not so prescribed, of a standard consistent with the best industry standards for work of a nature similar to the Contractor's Activities;
- (d) carry out the Contractor's Activities in a manner that is safe to both people and the environment, in accordance with Law and best industry standards for work of a nature similar to the Contractor's Activities;
- (e) minimise any disruption, interference or inconvenience to the Principal or its personnel, including the Principal's operations, or any Other Contractors;
- (f) ensure that the Contractor's officers, employees, agents or Subcontractors engaged in carrying out the Contractor's Activities are suitably qualified and competent; and
- (g) comply with the requirements of the Contract.

## 9.2 Quality assurance

The Contractor:

- (a) must implement the quality assurance system ISO 9001 (2008) and in accordance with AS 1735;
- (b) must allow the Principal's Representative access to the quality system of the Contractor and its Subcontractors so as to enable monitoring and quality auditing; and
- (c) will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise by Law as a result of:
  - (i) the implementation of, and compliance with, the quality assurance requirements of the Contract;
  - (ii) any Direction by the Principal's Representative concerning the Contractor's quality assurance system or its compliance or non compliance with that system;
  - (iii) any audit or other monitoring by the Principal's Representative, or anyone else acting on behalf of the Principal, of the Contractor's compliance with the quality assurance system; or
  - (iv) any failure by the Principal's Representative, or anyone else acting on behalf of the Principal, to detect any Defect including where any such failure arises from any negligence on the part of the Principal's Representative or other person.

### **9.3 Right to inspect**

The Principal's Representative may at any time inspect the Contractor's Activities.

The Contractor acknowledges that:

- (a) the Principal's Representative owes no duty to the Contractor to:
  - (i) inspect the Contractor's Activities; or
  - (ii) review construction for errors, omissions or compliance with the requirements of the Contract if it does so inspect; and
- (b) no inspection of the Contractor's Activities or review of construction by the Principal's Representative will in any way lessen or otherwise affect:
  - (i) the Contractor's obligations whether under the Contract or otherwise by Law; or
  - (ii) the Principal's rights against the Contractor whether under the Contract or otherwise by Law.

### **9.4 Testing**

The Contractor must carry out all Tests required by the Contract.

All Tests are to be carried out in accordance with any procedure:

- (a) set out in the Contract which may apply to the Tests; or
- (b) if no procedure exists, as reasonably directed by the Principal's Representative.

### **9.5 Test not passed**

If the Works fail any Test, the Contractor must:

- (a) promptly remedy the cause of the failure within the timeframe specified by the Principal's Representative;
- (b) give the Principal's Representative notice of the cause and the remedial action taken; and
- (c) reschedule, re-perform and report on results of the Test until the Test is passed.

Neither the carrying out of a Test nor the issue of a Test report or certificate will release the Contractor from any of its responsibilities, obligations or liabilities under the Contract (including the repair or replacement or both of any part of the Works damaged during the course of any Test).

### **9.6 Further Tests and opening up**

At any time before the expiry of the Defects Liability Period, the Principal's Representative may direct the Contractor:

- (a) to repeat any Test already carried out (whether or not the Test was previously passed);
- (b) to carry out a Test not otherwise required by the Contract; or
- (c) to open up or uncover any part of the Works for inspection or testing,

and the Contractor must comply with any such direction as soon as practicable and must reinstate and make good any part of the Works so tested, inspected, opened up or uncovered.

## **9.7 Costs of testing**

If:

- (a) the Principal's Representative directs the Contractor to carry out a Test (including a retest) or to open up or uncover any part of the Works for inspection or testing, and that Test or that opening up or uncovering:
  - (i) is not otherwise required by the Contract; or
  - (ii) does not relate to a Defect in respect of which the Principal's Representative gave an instruction under clause 9.8; and
- (b) the results of the Test or the opening up or uncovering show the work is in accordance with the Contract,

the reasonable additional costs necessarily incurred by the Contractor in complying with the Direction, as determined by the Principal's Representative, will be added to the Contract Price.

## **9.8 Defects**

- (a) Subject to paragraph (b), the Contractor must correct all Defects.
- (b) If, prior to the expiry of the Defects Liability Period for the Works or a Separable Portion, the Principal's Representative discovers or believes there is a Defect, the Principal's Representative may give the Contractor an instruction specifying the Defect and doing one or more of the following:
  - (i) requiring the Contractor to correct the Defect, or any part of it, and specifying the time within which this must occur; or
  - (ii) advising the Contractor that the Principal will accept the work, or any part of it, despite the Defect.

## **9.9 Correction of Defect**

If an instruction is given under clause 9.8(b)(i), the Contractor must correct the Defect:

- (a) within the time specified in the Principal's Representative's instruction; and
- (b) if after Completion, at times and in a manner which cause as little inconvenience to the occupants or users of the Works or the Separable Portion as is reasonably possible.

## **9.10 Claim for correction of Defect**

Where an instruction is given under clause 9.8(b)(i):

- (a) the Contractor will only be entitled to make a Claim for correcting a Defect (or the relevant part of it) if the Defect (or the relevant part of it) is something for which the Contractor is not responsible; and
- (b) where the Contractor is so entitled to make a Claim, the work involved in the correction of the Defect (or the relevant part of it) will be treated as if it were a Variation the subject of a Direction by the Principal's Representative and clause 11.3 applied.



## **9.11 Acceptance of work**

If:

- (a) an instruction is given under clause 9.8(b)(ii); and
- (b) the Contractor is responsible for the Defect (or the relevant part of it),

the Contract Price will be reduced by the amount determined by the Principal's Representative which represents the cost of correcting the Defect (or the relevant part of it).

## **9.12 Extension of Defects Liability Period**

If:

- (a) the Principal's Representative gives the Contractor an instruction under clause 9.8(b)(i) during the Defects Liability Period; and
- (b) the Contractor is responsible for the Defect (or the relevant part of it),

the Defects Liability Period will be extended for the work required by the instruction for a period of 12 months, commencing upon completion of the correction of the Defect (or the relevant part of it).

## **9.13 Legal rights not affected**

Neither the Principal's rights, nor the Contractor's liability, whether under the Contract or otherwise according to law in respect of Defects, whether before or after the expiry of the Defects Liability Period, will be affected or limited by:

- (a) the rights conferred upon the Principal or Principal's Representative by this clause 9 or any other provision of the Contract;
- (b) the failure by the Principal or the Principal's Representative to exercise any such rights; or
- (c) any instruction of the Principal's Representative under clause 9.8.

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# **10. Time**

## **10.1 Progress and time for Completion**

The Contractor must:

- (a) regularly and diligently progress the Contractor's Activities with due expedition and without delay; and
- (b) achieve Completion of the Works or each Separable Portion by the relevant Date for Completion.

## **10.2 Programming**

The Contractor must:

- (a) within 10 Business Days of the Award Date, submit to the Principal's Representative a program of the Contractor's Activities which must contain the details required by the Contract or which the Principal's Representative otherwise reasonably directs;
- (b) update the program periodically at least at intervals of no less than monthly to take account of:

- (i) changes to the program;
  - (ii) delays which may have occurred, including any for which the Contractor is granted an extension of time under clause 10.8; and
  - (iii) extensions of time granted by the Principal's Representative under clause 10.10; and
- (c) give the Principal's Representative copies of all programs for its approval.

### **10.3 Contractor not relieved**

Any review of, comments upon or approval of, or any failure to review or comment upon, a program by the Principal's Representative will not:

- (a) relieve the Contractor from or alter its liabilities or obligations under the Contract, especially (without limitation) the obligation to achieve Completion of the Works or each Separable Portion by the relevant Date for Completion;
- (b) evidence or constitute the granting of an extension of time or an instruction by the Principal's Representative to accelerate, disrupt, prolong or vary any, or all, of the Contractor's Activities; or
- (c) affect the time for the carrying out of the Principal's or Principal's Representative's Contract obligations.

### **10.4 Acceleration chosen by Contractor**

If the Contractor chooses to accelerate progress:

- (a) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the Contractor to achieve Completion of the Works or each Separable Portion by the relevant Date for Completion; and
- (b) the time for the carrying out of the Principal's or the Principal's Representative's obligations will not be affected.

### **10.5 Delays entitling Claim**

If the Contractor is, or is likely to be, delayed in achieving Completion of the Works or a Separable Portion by a Qualifying Cause in a manner which will prevent it from achieving Completion of the Works or the Separable Portion by the Date for Completion unless that date is extended, the Contractor may claim an extension of time.

### **10.6 Extension of time Claim**

To claim an extension of time under clause 10.5 the Contractor must:

- (a) within 10 Business Days of the commencement of the occurrence causing the delay submit a written claim to the Principal's Representative for an extension to the relevant Date for Completion which:
  - (i) gives detailed particulars of the delay and the occurrence causing the delay; and
  - (ii) states the number of days extension of time claimed together with the basis of calculating that period, including evidence that the Contractor has been or will be delayed in achieving Completion in the manner set out in clause 10.7(c); and
- (b) if the effects of the delay continue beyond the period of 10 Business Days after the commencement of the occurrence causing the delay and the Contractor wishes to

claim an extension of time in respect of the further delay, submit a further written claim for an extension to the Principal's Representative:

- (i) every 10 Business Days after the first written claim until 5 Business Days after the end of the effects of the delay; and
- (ii) containing the information required by paragraph (a).

## **10.7 Conditions precedent to extension**

It is a condition precedent to the Contractor's entitlement to an extension of time that:

- (a) the Contractor must give the written claims required by clause 10.6 as required by that clause;
- (b) the cause of the delay was beyond the reasonable control of the Contractor; and
- (c) the Contractor must have actually been delayed in achieving Completion of the Works or a Separable Portion by a Qualifying Cause in a manner which will prevent it from achieving Completion of the Works or the Separable Portion by the relevant Date for Completion unless that date is extended.

## **10.8 Extension of time**

Subject to clause 10.9, if the conditions precedent in clause 10.7 have been satisfied, the Date for Completion will be extended by a reasonable period determined by the Principal's Representative and notified to the Principal and the Contractor within 15 Business Days of the Contractor's written claim under clause 10.6(a), but where further claims are submitted under clause 10.6(b), then within 15 Business Days of the last of those claims.

## **10.9 Reduction in extension of time**

The Principal's Representative will reduce any extension of time it would otherwise have notified to the Principal and the Contractor under clause 10.8 to the extent that the Contractor:

- (a) contributed to the delay; or
- (b) failed to take all steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.

## **10.10 Unilateral extensions**

Whether or not the Contractor has made, or is entitled to make, a claim for an extension of time under this clause 10, the Principal's Representative may, in its absolute discretion at any time and from time to time by written notice to the Contractor and the Principal, unilaterally extend the Date for Completion.

The power to extend any Date for Completion under this clause 10.10:

- (a) may only be exercised by the Principal's Representative and the Principal's Representative is not required to exercise its discretion under this clause 10.10 for the benefit of the Contractor; and
- (b) is not a Direction which can be the subject of a dispute pursuant to clause 15 or in any other way opened up or reviewed by any other person (including any expert, arbitrator or court).

## **10.11 Delay costs**

- (a) The Contractor will not be entitled to make any Claim against the Principal for delay or disruption costs arising out of or in any way in connection with delay or disruption

in the execution or completion of the Contractor's Activities, however that delay or disruption may have been caused, other than under this clause 10.11.

- (b) Subject to clause 10.11(e), where an extension of time has been granted under clause 10.8 for delay caused by a breach of Contract by the Principal, the Principal will pay the Contractor such reasonable extra costs (if any) as are necessarily incurred by the Contractor as a result of that delay as determined by the Principal's Representative. The Contractor must take reasonable steps to mitigate the extra costs incurred by it as a result of the delay.
- (c) The extra costs payable to the Contractor under this clause 10.11 are not to include any profit, loss of profit or offsite overheads.
- (d) Any delay or disruption costs payable under this clause will be a limitation upon the Principal's liability to the Contractor in respect of any Claim by the Contractor for any loss suffered or incurred by the Contractor arising out of or in any way in connection with any delay and disruption which the Contractor suffers or encounters in carrying out the Contractor's Activities as a result of a breach of Contract by the Principal.
- (e) The Principal's liability to the Contractor under clause 10.11 is limited to:
  - (i) the amount per day; and
  - (ii) the total aggregate amount,stated in the Key Details.

## 10.12 Suspension

The Principal's Representative may instruct the Contractor to suspend and, after a suspension has been instructed, to re commence, the carrying out of all or a part of the Contractor's Activities.

The Contractor can only suspend the Contractor's Activities in accordance with clause 14.4.

If a suspension under this clause 10.12 or under clause 14.4 arises as a result of:

- (a) the Contractor's failure to carry out its obligations in accordance with the Contract, the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension; or
- (b) a cause other than the Contractor's failure to carry out its obligations in accordance with the Contract:
  - (i) an instruction to suspend under this clause 10.12 or a suspension under clause 14.4 will entitle the Contractor to be paid by the Principal the reasonable extra costs necessarily incurred by the Contractor as a result of the suspension as determined by the Principal's Representative;
  - (ii) the Contractor must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
  - (iii) the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension other than under this paragraph (b).

## 10.13 Instruction to accelerate

If the Contractor gives the Principal's Representative a Claim under clause 10.6, the Principal's Representative may:

- (a) instruct the Contractor to accelerate the Contractor's Activities by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay including, if required, in order to achieve Completion of the Works or the Separable Portion by the relevant Date for Completion; and
- (b) give such an instruction whether or not the cause of delay for which the Contractor has given its Claim under clause 10.6 otherwise entitles the Contractor to an extension of time to any relevant Date for Completion.

#### **10.14 Partial acceleration**

If the Principal's Representative gives the Contractor an instruction to accelerate under clause 10.13 requiring it to accelerate the Contractor's Activities and it only applies to part of the delay, the Contractor's entitlement to any extension of time which it otherwise would have had will only be reduced to the extent to which the instruction to accelerate requires the Contractor to accelerate to overcome the delay.

#### **10.15 Acceleration**

If the Principal's Representative gives an instruction to the Contractor under clause 10.13:

- (a) the Contractor must accelerate the Contractor's Activities to overcome or minimise the extent and effect of some or all of the delay as instructed, including, if required, in order to achieve Completion of the Works or the Separable Portion by the relevant Date for Completion;
- (b) if the Contractor would, but for the instruction, have been entitled to an extension of time to the relevant Date for Completion for the cause of delay, the Contractor will be entitled to be paid:
  - (i) the extra costs reasonably incurred by it and directly attributable to accelerating the Contractor's Activities; and
  - (ii) that percentage of the amount under sub-paragraph (i) stipulated in the Key Details; and
- (c) subject to clause 10.14, the Contractor will not be entitled to make any Claim against the Principal, arising out of, or in any way in connection with, the cause of delay and the instruction other than for the amount which is payable by the Principal under this clause 10.15.

#### **10.16 Principal's rights to liquidated damages not affected**

The Principal's rights to liquidated damages under clause 13.4 for a failure by the Contractor to achieve Completion of the Works or a Separable Portion by any relevant Date for Completion are not affected by the Principal's Representative giving the Contractor an instruction to accelerate under clause 10.13.

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## **11. Variations**

### **11.1 Variation price request**

At any time prior to the Date of Completion of the Works or a Separable Portion (but without limiting clauses 5.3 and 9.7), the Principal's Representative may issue a document titled "Variation Price Request" to the Contractor which will set out details of a proposed Variation which the Principal is considering.

Within 10 Business Days of the receipt of a "Variation Price Request" the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out:

- (a) the adjustment to the Contract Price to carry out the proposed Variation; and

- (b) the effect which the proposed Variation will have on the then approved program, including the relevant Date for Completion.

## 11.2 Variation order

Whether or not the Principal's Representative has issued a "Variation Price Request" under clause 11.1, the Principal's Representative may at any time prior to the Date of Completion of the Works or the Separable Portion (but without limiting clause 5.3), instruct the Contractor to carry out a Variation by a written document titled "Variation Order" in which the Principal's Representative will state one of the following:

- (a) the proposed adjustment to the Contract Price as set out in the Contractor's notice under clause 11.1 (if any) is agreed and the Contract Price will be adjusted accordingly; or
- (b) any adjustment to the Contract Price will be determined under clauses 11.3(b) and 11.3(c).

No Variation will invalidate the Contract irrespective of the nature, extent or value of the works the subject of the Variation.

## 11.3 Adjustment for Variation

Subject to clause 16.1, the Contract Price will be adjusted for all Variations which have been the subject of a Direction by the Principal's Representative by:

- (a) where clause 11.2(a) applies, the agreed amount; or
- (b) an amount determined by the Principal's Representative using any rates or prices which appear in the Schedule of Prices to the extent they are applicable to, or it is reasonable to use them for valuing the Variation, to which will be added:
  - (i) the following percentage or percentages of the amount determined:
    - A. where the adjustment to the Contract Price is to be an increase, those percentages specified in the Key Details for non time related overheads and profit; or
    - B. where the adjustment to the Contract Price is to be a decrease, the percentage specified in the Key Details for overheads and profit; and
  - (ii) any reasonable costs and expenses incurred by the Contractor arising from the Variation delaying the Contractor; or
- (c) to the extent paragraph (b) does not apply, a reasonable amount:
  - (i) to be agreed between the parties; or
  - (ii) failing agreement, determined by the Principal's Representative, to which will be added:
    - (iii) the following percentage or percentages of the amount determined:
      - A. where the adjustment to the Contract Price is to be an increase, those percentages specified in Schedule 2 for non-time related overheads and profit; or
      - B. where the adjustment to the Contract Price is to be a decrease, the percentage specified in Schedule 2 for overheads and profit; and

- (iv) any reasonable costs and expenses incurred by the Contractor arising from the Variation delaying the Contractor

## **11.4 Omissions and deletions**

If a Variation the subject of a Direction by the Principal's Representative omits or deletes any part of the Works or a Separable Portion, the Principal may thereafter either perform this work itself or employ or engage Other Contractors to perform the omitted or deleted work.

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## **12. Payment**

### **12.1 Payment obligation**

Subject to clause 12.9 and to any other right to set-off which the Principal may have, the Principal must pay the Contractor:

- (a) the Contract Price; and
- (b) any other amounts which are payable by the Principal to the Contractor under the Contract.

### **12.2 Payment claims**

The Contractor must give the Principal's Representative claims for payment on account of the Contract Price and any other amounts payable by the Principal to the Contractor under the Contract:

- (a) after achievement of the payment milestones set out in the Schedule of Prices;
- (b) subject to clause 12.4:
  - (i) on the 21st day of each month after the Award Date or where that day is not a Business Day, the next Business Day, for all work performed up to the last day of the previous month; and
  - (ii) at the time required by clause 12.8;
- (c) in such form which the Principal's Representative reasonably requires; and
- (d) which are based on the Schedule of Prices to the extent such prices are relevant; and
- (e) subject to clause 12.13(f), which are accompanied by a valid tax invoice complying with the requirements of the GST Legislation in the amount stated in the payment claim.

The Contractor cannot include in any payment claim under this clause 12.2, a Claim which is barred by clause 16.5.

The Contractor agrees with the Principal that a payment claim submitted to the Principal's Representative under this clause 12.2 is received by the Principal's Representative as agent for the Principal.

### **12.3 Payment statements**

- (a) The Principal's Representative must within 10 Business Days of receiving a payment claim under clauses 12.2 or 12.8 give the Contractor, on behalf of the Principal, a payment statement which states:
  - (i) the value of the work completed in accordance with the Contract;

- (ii) the amount already paid to the Contractor;
  - (iii) the amount the Principal is entitled to retain, deduct, withhold or set-off under the Contract;
  - (iv) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Contractor on account of the Contract Price and otherwise under the Contract and which the Principal proposes to pay to the Contractor; and
  - (v) if the amount in paragraph (d) is less than the amount claimed in the payment claim:
    - A. the reason why the amount in paragraph (d) is less than the amount claimed in the payment claim; and
    - B. if the reason for the difference is that the Principal has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off payment.
- (b) If the amount which the Principal proposes to pay the Contractor in a payment statement is less than the amount claimed in a payment claim, the Contractor agrees to withdraw the tax invoice (if any) submitted with the payment claim and issue a tax invoice in the amount stated in the relevant payment statement by not later than 2 Business Days following the date that the Contractor receives the relevant payment statement. Any invoice issued pursuant to this clause:
- (i) will not constitute a payment claim; and
  - (ii) for the avoidance of doubt, the withdrawal or issue of a tax invoice by the Contractor under this clause 12.3(a)(ii) will not constitute acceptance by the Contractor of the reasons given by the Principal under clause 12.3(a)(v).

The issue of a payment statement by the Principal's Representative does not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Works covered by the payment statement has been satisfactorily carried out in accordance with the Contract.

Failure by the Principal's Representative to set out in a payment statement an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under the Contract.

## 12.4 Conditions precedent

The Contractor is not entitled to give the Principal a payment claim under clause 12.2 or 12.8, and the Principal is not obliged to make any payment under clause 12.5, unless the Contractor has provided the Principal's Representative with:

- (a) any Approved Security required under clause 4;
- (b) any evidence of any insurance taken out by the Contractor which is required under the Contract; and
- (c) a duly executed Confidentiality Undertaking as required by clause 6.14;
- (d) any programs required under clause 10.2; and
- (e) documents showing compliance by the Contractor with clause 12.10.



## 12.5 Payment

- (a) Subject to clause 12.9, the Principal must pay the Contractor the amount set out as payable in the payment statement within 15 Business Days of receipt by the Principal's Representative of the payment claim under clause 12.2 or 12.8.
- (b) If a payment statement issued under this clause shows an amount owing by the Contractor to the Principal, the Contractor must pay the Principal that amount within 5 Business Days of receipt by the Contractor of the payment statement.
- (c) Upon the Principal paying to the Contractor the amount payable pursuant to a payment statement, all Works (or part thereof), plant, equipment, materials or other goods for which an amount is included in the payment statement will become the property of the Principal free of any security interest regardless of whether or not the Works (or part thereof), plant, equipment, materials or other goods have been incorporated into Works or delivered to the Principal.

## 12.6 Payment on account

Any payment statement or payment of moneys is not:

- (a) evidence of the value of work or that work has been satisfactorily carried out in accordance with the Contract;
- (b) an admission of liability; or
- (c) 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.

## 12.7 Unfixed goods and materials

Unfixed goods and materials will not be included in the value of work in a payment statement under clause 12.3 unless:

- (a) the Contractor gives the Principal's Representative with its payment claim under clause 12.2:
  - (i) Approved Security equal to the payment claimed for the unfixed goods and materials; and
  - (ii) such evidence as may be required by the Principal's Representative that title to the unfixed goods and materials will vest in the Principal upon payment;
- (b) the unfixed goods and materials are clearly marked as the property of the Principal and are on the Site or available for immediate delivery to the Site; and
- (c) the unfixed goods and materials are properly stored in a place approved by the Principal's Representative.

Upon payment of a payment statement which includes unfixed goods and materials, title in the unfixed goods and materials will vest in the Principal.

If the Contractor has given the Principal additional security for payment for unfixed goods and materials, the Principal must release it to the Contractor once those goods and materials are incorporated into the Works.

## 12.8 Final payment claim and notice

Within 20 Business Days after the end of the last Defects Liability Period the Contractor must give the Principal's Representative:

- (a) a payment claim which must include all amounts which the Contractor claims from the Principal on account of the Contract Price or otherwise under the Contract; and
- (b) notice of any other amounts which the Contractor claims from the Principal,

in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which occurred prior to the expiry of the last Defects Liability Period.

The payment claim and notice required under this clause 12.8 are in addition to the other notices which the Contractor must give to the Principal's Representative under the Contract in order to preserve its entitlements to make any such Claims.

Without limiting the previous paragraph, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 16.5.

After the date for submitting the payment claim and notice under this clause 12.8 has passed, the Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which occurred prior to the expiry of the last Defects Liability Period except for any Claim included in a payment claim or notice under this clause 12.8 which is given to the Principal's Representative within the time required by, and in accordance with the terms of, clause 12.8.

## 12.9 Right of set-off

The Principal may deduct from any moneys otherwise due to the Contractor and from any security held by the Principal:

- (a) any debt or other moneys due from the Contractor to the Principal; and
- (b) any claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise,

whether under the Contract, any other contract or agreement or otherwise at law, whether or not relating to the Works.

This clause does not affect the right of the Principal to recover the debt, the monies claimed or any balance after exercising any rights under this clause by any other means available under the Contract or at law.

## 12.10 Payment of workers and subcontractors

The Contractor is not entitled to give the Principal a payment claim under clause 12.2 or 12.8, and the Principal is not obliged to make any payment under clause 12.4, unless the Contractor has provided the Principal's Representative with:

- (a) a statutory declaration in the form of Schedule 8 of the Appendix, together with any supporting evidence which may be reasonably required by the Principal's Representative, duly signed by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that, except to the extent disclosed in the statutory declaration (such disclosure to specify all relevant amounts and Subcontractors) all Subcontractors have been paid all moneys due and payable to them in respect of the Contractor's Activities;
- (b) a written statement for the purposes of, and which complies with section 127 of the *Industrial Relations Act 1996* (NSW), section 175B of the *Workers Compensation*

*Act 1987 (NSW)* and section 31H of the *Pay-Roll Tax Act 1971 (NSW)*, which is in the form of Schedule 8 of the Appendix, each of which cover the period covered by the relevant payment claim; and

- (c) copies of all relevant certificates of currency in respect of workers compensation insurance which the Contractor has in place in connection with the Contractor's Activities.

Clauses 12.10(b) and 12.10(c) above will only apply in respect of any part of the Contractor's Activities carried out in New South Wales.

## 12.11 Interest

The Principal will pay simple interest at the 90 day bank bill rate on any amount which has been set out as payable by the Principal's Representative in a payment statement under clause 12.3, but which is not paid by the Principal within the time required by the Contract. This will be the Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing money.

## 12.12 SOP Act

To the extent that the SOP Act applies to the Contract:

- (a) the Contractor agrees with the Principal that the date prescribed in clause 12.2(a) as the date on which the Contractor must make a payment claim is, for the purposes of section 8 of the Act, the "reference date" (as defined in the Act);
- (b) the Contractor agrees that the amount set out in the payment statement in respect of clause 12.3(a)(iv) above is, for the purposes of sections 9 and 10 of the Act, the amount of the "progress payment" (as defined in the Act) calculated in accordance with the terms of the Contract which the Contractor is entitled to in respect of the Contract in respect of the payment claim in response to which that payment statement was issued; and
- (c) for the purposes of section 17(3) of the Act, the Contractor irrevocably chooses LEADR & IAMA, as the "authorised nominating authority" (as that term is defined in the Act) for any adjudication application it may make under the Act in respect of the subject matter of the Contract.

## 12.13 GST

- (a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in the Contract are exclusive of GST.
- (b) If GST is or becomes payable on a supply made by a party (**Supplier**) under or in connection with the Contract, including the Contractor's Activities, the party providing consideration for the supply (**Recipient**) must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.
- (c) Any amount payable under clause 12.13(b) will be paid to the Supplier at the same time as the consideration for the supply is paid to the Supplier.
- (d) If any party is required under the Contract to reimburse or pay to the other party an amount (other than any payment on account of the Contract Price) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.

- (e) Notwithstanding any other provision of the Contract, where the Recipient is the Supplier, it will not be obliged to pay any amount in respect of GST to the Principal (whether under this clause 12.13 or otherwise) in respect of a taxable supply made by the Principal unless and until the Principal issues to the Contractor, a tax invoice that complies with the GST Legislation in respect of that taxable supply.
- (f) If required by the Principal at any time or from time to time, the Contractor agrees to enter into a "Recipient Created Tax Invoice" (**Recipient Created Tax Invoice**) arrangement with the Principal in accordance with this clause 12.13 and the Contractor and the Principal acknowledge and agree that:
  - (i) the Principal can issue tax invoices in respect of the Contractor's Activities carried out by the Contractor under this Contract;
  - (ii) the Contractor will not issue tax invoices in respect of the Contractor's Activities; and
  - (iii) both parties will be registered for GST when they enter into this Contract and that each will notify the other party if it ceases to be registered or if it ceases to satisfy any of the requirements of the GST Act Classes of Recipient Created Tax Invoices Determination (No. 1) 2000 (**Determination**).
- (g) The Principal will not issue a document that would otherwise be a Recipient Created Tax Invoice on or after the date when the Principal or the Contractor no longer comply with any of the requirements of the Determination.
- (h) If the GST payable in relation to a supply made by the Supplier under the Contract varies from the additional amount paid by the other party under this clause 12.13 in respect of that supply, then the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate).
- (i) In this clause 12.13:
  - (i) terms defined in GST Legislation have the meaning given to them in GST Legislation; and
  - (ii) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.

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## **13. Completion**

### **13.1 Contractor to notify**

The Contractor must give the Principal's Representative written notice 28 Business Days, and then again 14 Business Days, before it anticipates achieving Completion of the Works or a Separable Portion.

### **13.2 Principal's Representative to inspect**

The Principal's Representative must:

- (a) promptly, and in any event no later than 10 Business Days after receiving the Contractor's second written notice under clause 13.1 or a notice under the final paragraph of this clause 13.2 (as the case may be), inspect the Works or a Separable Portion; and
- (b) if satisfied that Completion has been achieved, issue a notice to the Principal and the Contractor:

- (i) stating the date upon which the Principal's Representative determines Completion was achieved; and
- (ii) containing a list of any minor Defect of the type described in paragraph (a) of the definition of **Completion** in clause 1.1; or
- (c) if not satisfied that Completion has been achieved, issue a notice so advising the Contractor and the Principal.

If the Principal's Representative issues a notice under paragraph (c) the Contractor must proceed to bring the Works or the Separable Portion to Completion and thereafter when it considers it has achieved Completion it will give the Principal's Representative written notice to that effect after which this clause 13.2 will reapply.

### **13.3 Take over upon Completion**

Upon the issue of a Notice of Completion:

- (a) the Contractor must hand over the Works or the Separable Portion to the Principal; and
- (b) the Contractor must correct all minor Defects listed in the Notice of Completion as soon as possible after the Date of Completion.

### **13.4 Liquidated damages**

If the Date of Completion of the Works or a Separable Portion has not occurred by the Date for Completion for the Works or the Separable Portion the Contractor must pay liquidated damages at the rate specified in the Key Details for every day after the Date for Completion until the Date of Completion or until the Contract is terminated, whichever occurs first.

The amount payable under this clause 13.4 will be a debt due from the Contractor to the Principal.

This amount is an agreed genuine pre-estimate of the Principal's damages if the Date of Completion does not occur by the Date for Completion.

### **13.5 General damages if liquidated damages unenforceable**

If the liquidated damages under clause 13.4 are found to be a penalty, or if clause 13.4 is found to be void or unenforceable for any reason (whether in whole or in part), then the Contractor will be liable to pay unliquidated damages at law for the breach for which the liquidated damages under clause 13.4 would have been payable had the relevant liquidated damages or clause not been a penalty or not been void or unenforceable.

### **13.6 Cap on liquidated damages**

The Contractor's total aggregate liability to the Principal under clauses 13.4 and 13.5 is limited to the amount stated in the Key Details.

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## **14. Termination**

### **14.1 Preservation of rights**

Subject to clause 14.6, nothing in clause 12.13 or in this clause 14 or that a party does or fails to do pursuant to this clause 14 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.

## **14.2 Contractor default**

The Principal may give a written notice under clause 14.3 to the Contractor, if the Contractor:

- (a) does not commence the Contractor's Activities in accordance with the requirements of the Contract;
- (b) suspends the Contractor's Activities in breach of clause 10.12 or otherwise does not regularly and diligently progress the Contractor's Activities with due expedition and without delay;
- (c) fails to provide security as required by clause 4.1;
- (d) fails to effect, have in place or otherwise maintain or provide evidence of, insurance as required by clause 5.4;
- (e) fails to use the materials or standards of workmanship required by the Contract;
- (f) does not comply with any Direction of the Principal's Representative made in accordance with the Contract;
- (g) abandons the Contractor's Activities or otherwise plainly demonstrates the intention not to continue performance of its obligations under the Contract;
- (h) is in substantial breach of any applicable Law; or
- (i) is otherwise in substantial breach of the Contract.

## **14.3 Contents of notice of default**

A notice under this clause 14.3 must state:

- (a) that it is a notice under clause 14.3;
- (b) the breach relied upon; and
- (c) that the Principal requires the Contractor to remedy the breach within 10 Business Days, or such longer time as may be specified by the Principal.

## **14.4 Termination for insolvency or breach**

If:

- (a) an Insolvency Event occurs to the Contractor, or where the Contractor comprises 2 or more persons, to any one of those persons; or
- (b) the Contractor does not remedy a breach of Contract the subject of a notice under clause 14.3 within the period required by the notice under clause 14.3,

then the Principal may by written notice to the Contractor terminate the Contract.

## **14.5 Principal's entitlements after termination**

Subject to clause 14.1, if:

- (a) the Principal terminates the Contract under clause 14.4; or
- (b) the Contractor repudiates the Contract and the Principal otherwise terminates the Contract,

then:

- (c) the Principal will:
  - (i) be entitled to take over and use, or require the Contractor to remove from the Site, the Plant, Equipment and Work and all materials, equipment and other things intended for the Works;
  - (ii) not be obliged to make any further payments to the Contractor, including any money the subject of a payment claim under clause 12.2 or 12.8 or a payment statement under clause 12.3; and
  - (iii) be entitled to recover from the Contractor any costs, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination; and
- (d) the Contractor must immediately hand over to the Principal all copies of:
  - (i) documents provided by the Principal under clause 6.1; and
  - (ii) any Design Documentation prepared by the Contractor to the date of termination (whether complete or not).

#### **14.6 Contractor's entitlements after termination**

If the Principal repudiates the Contract and the Contractor otherwise terminates the Contract, the Contractor will:

- (a) be entitled to claim damages; and
- (b) not be entitled to a quantum meruit.

This clause 14.6 will survive any termination of the Contract.

#### **14.7 Termination for convenience**

Without prejudice to any of the Principal's other rights, the Principal may:

- (a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate the Contract effective from the time stated in the Principal's notice or if no such time is stated, at the time the notice is given to the Contractor; and
- (b) thereafter, at its absolute discretion, complete the uncompleted part of the Works either itself or by engaging Other Contractors.

#### **14.8 Costs**

If the Principal terminates the Contract under clause 14.7, the Contractor:

- (a) will be entitled to payment of the following amounts as determined by the Principal's Representative:
  - (i) for work carried out prior to the date of termination the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a payment claim for the Contract value of work carried out prior to the date of termination, provided that ownership of all goods and materials included in the value of work will vest in the Principal, free of any security interest, upon payment;
  - (ii) the cost of goods or materials reasonably ordered by the Contractor for the Plant, Equipment and Work for which the Contractor is legally bound to pay provided that:

- A. the value of the goods or materials is not included in any previous payment by the Principal or the amount payable under sub paragraph (i); and
  - B. ownership in the goods and materials will vest in the Principal, free of any security interest, upon payment; and
- (iii) the amount (if any) specified in the Key Details,
- but in no case will the total amount payable to the Contractor under the Contract (including under this clause 14.8) be more than the Contract Price; and
- (b) must:
- (i) take all steps possible to mitigate the costs referred to in subparagraphs (a)(i) and (a)(iii); and
  - (ii) immediately:
    - A. deliver all items in which ownership has passed to the Principal under the Contract; and
    - B. hand over to the Principal all copies of:
      - 1) documents provided by the Principal under clause 6.1; and
      - 2) Design Documentation prepared by the Contractor to the date of termination (whether complete or not).

The amount to which the Contractor is entitled under this clause 14.8 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of the Contract and the Contractor may not make any Claim against the Principal arising out of, or in any way in connection with, the termination of the Contract other than for the amount payable under this clause 14.8.

This clause 14.8 will survive the termination of the Contract by the Principal under clause 14.7.

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## 15. Disputes

### 15.1 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 Works 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 15.

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) particulars of the party's reasons for being dissatisfied; and
- (c) the position which the party believes is correct.



## **15.2 Negotiation**

The Principal's Representative and the Contractor's Representative (or their nominees) must, within 5 Business Days of a notice being given under clause 15.1, meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference.

## **15.3 Expert determination**

Whether or not negotiations have taken place under clause 15.2, the dispute or difference must, if it is not resolved within 10 Business Days after a notice is given under clause 15.1, be submitted to an expert determination.

## **15.4 The expert**

The expert determination under clause 15.2 is to be conducted by an independent industry expert appointed by the President for the time being of the Institute of Arbitrators & Mediators, Australia (unless the parties agree otherwise).

## **15.5 Not arbitration**

An expert determination conducted under this clause 15 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

## **15.6 Procedure for determination**

The expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner he or she thinks fit;
- (c) conduct any investigation which he or she considers necessary to resolve the dispute or difference;
- (d) examine such documents, and interview such persons, as he or she may require; and
- (e) make such directions for the conduct of the determination as he or she considers necessary.

## **15.7 Disclosure of interest**

The expert must:

- (a) disclose to the parties any interest he or she has in the outcome of the determination; and
- (b) not communicate with one party to the determination without the knowledge of the other.

## **15.8 Costs**

Each party will:

- (a) bear its own costs in respect of any expert determination; and
- (b) pay one half of the expert's costs.

## **15.9 Conclusion of expert determination**

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 15 within 20 Business Days from the acceptance by the expert of his or her appointment.

## **15.10 Agreement with expert**

The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.

The parties must enter into an agreement with the appointed expert on the terms set out in Schedule 9 of the Appendix or such other terms as the parties and the expert may agree.

## **15.11 Determination of expert**

The determination of the expert:

- (a) must be in writing;
- (b) will be:
  - (i) substituted for the relevant Direction of the Principal's Representative; and
  - (ii) final and binding,unless a party gives notice of appeal to the other party within 15 Business Days of the determination; and
- (c) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.

## **15.12 Arbitration agreement**

If notice of appeal is given under clause 15.11 or

the expert fails to notify the parties of his or her decision within the time required by clause 15.9, the dispute or difference must be determined by arbitration in accordance with the following clauses.

## **15.13 Executive negotiation**

If

a notice of appeal is given under clause 15.11,

the dispute or difference is to 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.

## **15.14 Arbitration**

If the persons described in the Key Details cannot resolve, or agree upon a procedure to resolve, the dispute or difference within 15 Business Days after the giving of the notice under

clause 15.1 or clause 15.11 (whichever is the later), or within such longer period of time as these persons may agree in writing, the dispute or difference will be referred to arbitration.

The arbitration will be conducted before a person to be:

- (a) agreed between the parties; or
- (b) failing agreement within 20 Business Days after the giving of the notice under clause 15.1 or clause 15.11 (whichever is the later), appointed by the person specified in the Key Details.

To the extent that they are not inconsistent with the Contract, the Rules for the Conduct of Commercial Arbitration of The Institute of Arbitrators and Mediators Australia will apply to the arbitration.

The seat of the arbitration will be Sydney, Australia.

The arbitrator will have power to grant all legal, equitable and statutory remedies and to open up, review and substitute any determination of an expert under clause 15.11.

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).

### **15.15 Survive termination**

This clause 15 will survive any termination of the Contract.

### **15.16 Continuation of Contractor's Activities**

Despite the existence of a dispute or difference between the parties, the Contractor must:

- (a) continue to carry out the Contractor's Activities; and
- (b) otherwise comply with its obligations under the Contract.

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## **16. Notices**

### **16.1 Notice of Variation**

If the Contractor considers that a Direction by the Principal's Representative which is not expressed to be a "Variation Order" under clause 11.1, constitutes or involves a Variation, the Contractor must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the Direction:

- (a) within 5 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction, give notice to the Principal's Representative that it considers the Direction constitutes or involves a Variation;
- (b) within 15 Business Days of giving the notice under paragraph (a), submit a written claim to the Principal's Representative which includes the details required by clause 16.3(b); and
- (c) continue to carry out the Contractor's Activities in accordance with the Contract and all Directions of the Principal's Representative, including any Direction in respect of which notice has been given under this clause 16.1.

### **16.2 Notice of other Claims**

Except for Claims for:

- (a) an extension of time under clause 10.6;
- (b) a Variation instructed in a "Variation Order" under clause 11.2 or to which clause 16.1 applies; or
- (c) payment under clause 12.2 or 12.8 on account of the original Contract Price specified in the Key Details,

the Contractor must give the Principal's Representative the notices required by clause 16.3 if it wishes to make a Claim against in the Principal in respect of any Direction by the Principal's Representative or any other fact, matter or thing (including a breach of the Contract by the Principal) under, arising out of, or in any way in connection with, the Contract or the Contractor's Activities, including anything in respect of which:

- (d) it is otherwise given an express entitlement under the Contract; or
- (e) the Contract expressly provides that:
  - (i) specified costs are to be added to the Contract Price; or
  - (ii) the Contract Price will be otherwise increased or adjusted, as determined by the Principal's Representative.

### **16.3 Prescribed notices**

The notices referred to in clause 16.2 are:

- (a) a written notice within the time specified in the Key Details of the first occurrence of the Direction or other fact, matter or thing upon which the Claim is based, expressly specifying:
  - (i) that the Contractor proposes to make a Claim; and
  - (ii) the Direction or other fact, matter or thing upon which the Claim will be based; and
- (b) a written Claim within the time specified in the Key Details of giving the written notice under paragraph (a), which must include:
  - (i) detailed particulars concerning the Direction or other fact, matter or thing upon which the Claim is based;
  - (ii) the legal basis for the Claim, whether based on a term of the Contract or otherwise, and if based on a term of the Contract, clearly identifying the specific term;
  - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
  - (iv) details of the amount claimed and how it has been calculated.

### **16.4 Continuing events**

If the Direction or fact, matter or thing upon which the Claim under clause 16.1(b) or clause 16.2 is based or the consequences of the Direction or fact, matter or thing are continuing, the Contractor must continue to give the information required by clause 16.3(b) every 20 Business Days after the written Claim under clause 16.1(b) or 16.3(b) (as the case may be) was submitted or given to the Principal's Representative, until after the Direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

## 16.5 Time bar

If the Contractor fails to comply with clauses 16.1, 16.2, 16.3 or 16.4:

- (a) the Principal will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Contractor; and
- (b) the Contractor will be absolutely barred from making any Claim against the Principal,

arising out of, or in any way in connection with, the relevant Direction or fact, matter or thing (as the case may be) to which clause 16.1 or 16.2 applies.

## 16.6 Other provisions unaffected

Nothing in clauses 16.1, 16.2, 16.3, 16.4 or 16.5 will limit the operation or effect of any other provision of the Contract which requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

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## 17. Limitation of liability

- (a) Subject to clause 17(b):
  - (i) neither party will be liable to the other for any Consequential Loss howsoever arising; and
  - (ii) the Contractor's aggregate liability to the Principal in contract, tort (including negligence) or otherwise under the Contract is limited to the amount stated in the Key Details.
- (b) Clause 17(a) does not limit the Contractor's liability in respect of:
  - (i) liability which cannot be limited at Law;
  - (ii) liability under clause 5.2, 6.7 - 6.11, 13.4 and 13.5;
  - (iii) fraud, wilful misconduct or criminal conduct by the Contractor or any of its Subcontractors or personnel;
  - (iv) liability to the extent to which the Contractor is (or will be) entitled to be indemnified pursuant to an insurance policy in respect of that liability;
  - (v) liability for which, but for a failure by the Contractor to comply with its obligations under the Contract or under an insurance policy required under the Contract, the Contractor would have received payment or been indemnified under an insurance policy effected in accordance with the Contract; or
  - (vi) the Contractor's abandonment of its obligations under the Contract.
- (c) In determining whether an insurance policy extends to cover:
  - (i) the Contract in respect of any matters referred to in clause 17(a) and the liability (if any) of the Contractor arising out of or in connection with the matter; or
  - (ii) the amount recovered or recoverable by the Contractor under an insurance policy in connection with a matter referred to in clause 17(a),

(together the **Determinable Matters**), the limitation on the Contractor's liability pursuant to clause 17(a) will be disregarded and it must be assumed that the

Contractor has paid in full the amount of its liability to the Principal (unlimited by clause 17(a)) in a manner which entitles the Contractor to claim under the relevant insurance policy.

- (d) The Contractor waives and disclaims any right or entitlement it may now or in the future have, but for clause 17(c), to:
- (i) not disregard clause 17(a), in connection with any determination of the Determinable Matters; or
  - (ii) do any of the following:
    - A. claim or assert (including by way of defence, counter-claim or third party proceeding); or
    - B. instigate, participate in, consent to, or lend its name to, any action or proceedings of any kind under which it is claimed or asserted (including by way of defence, counter-claim or third party proceeding),
- that clause 17(a) is not to be disregarded in connection with the determination of the Determinable Matters.
- (e) The parties agree that clauses 17(c) and 17(d) may be pleaded in bar to any Claim or assertion by:
- (i) the Contractor; or
  - (ii) any insurer;
- in any Claim to the effect that clause 17(a) is not to be disregarded as provided in clause 17(c).
- (f) If for any reason in relation to any Determinable Matter:
- (i) clauses 17(c) to 17(e) (or any of them) are unenforceable, void, voidable or illegal, then for the purpose of determining the Determinable Matters, clause 17(a) will be of no force or effect and will be treated as if they were severed from, and had never been terms of, the Contract; and
  - (ii) the Contractor, or an insurer is for any reason not obliged to disregard, or is for any reason entitled to have regard to, clause 17(a) in determining the Determinable Matters, then for the purpose of determining the Determinable Matters, clause 17(a) will be treated as if it were severed from and had never been terms of, the Contract and as of no force or effect whatsoever as against the person(s) who is so not obliged, or who is so entitled.
- (g) Subject to clause 17(h), the Principal's aggregate liability to the Contractor in contract, tort (including negligence) or otherwise under the Contract is limited to the amount stated in the Key Details.
- (h) Clause 17(g) does not limit the Principal's liability in respect of:
- (i) liability which cannot be limited at Law; or
  - (ii) fraud, wilful misconduct or criminal conduct by the Principal or any of its personnel.

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## 18. Miscellaneous

### 18.1 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) must be signed by the party making the communication or (on its behalf) by any director, secretary, attorney or authorised agent of, that party;
  - (iii) subject to clause 18.1(a)(ii), 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
  - (iv) 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 18.1(a)(iii); 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 10, 11, 12, 14, 15 or 16 or concerning a claim for payment (including any communication in respect of the SOP Act); or
  - (ii) the Principal sends a notice under clause 11.2, 14.2, 14.3, 14.4, 14.7 or 15.1;

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 18.1(a)(iii).

- (c) For the avoidance of doubt:

- (i) no notice referred to in clause 18.1(b) will be effective until it has been delivered, posted or sent by fax in accordance with clause 18.1(b); and
  - (ii) if a notice referred to in clause 18.1(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 18.1(b) applies, the relevant notice will be taken to have been received on the date determined in accordance with clause 18.1(a)(iv)A, 18.1(a)(iv)B, 18.1(a)(iv)C or 18.1(a)(iv)D (as the case may be).
- (e) The Contractor must ensure that any documents it provides, including by electronic means, are in the file structure and format for such documents as may be specified by the Principal from time to time. As at the Award Date, the Principal requires such documents which are submitted by email to be submitted as an attachment to an email, where the attachment is in .pdf, or where appropriate Excel, Primavera (.xer or .xml) or Microsoft Project (.mpp) format.
- (f) The Principal will not be liable to the Contractor or to any other person for any loss or damage suffered in relation to any document transmitted electronically, including any loss or damage related to or arising out of:
- (iii) the transmission of any harmful code (such as viruses) to the Contractor by electronic mail (including any document attached to electronic mail); or
  - (iv) any failure by the Principal to notify the Contractor that the Principal may have received any harmful code (such as viruses) from the Contractor in any electronic mail (including in any document attached to electronic mail).

## **18.2 Governing law**

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

## **18.3 Jurisdiction**

Subject to clause 15.14, each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the 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 18.3(a).

## **18.4 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under 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.

## **18.5 Assignment**

Without limiting clause 2.3, the Principal may at any time, and without having to obtain the Contractor's approval, assign any right or interest of the Principal under the Contract or create or allow to exist, a security interest over or in respect of the Contract or any right or interest of the Principal under the Contract.

The Contractor cannot assign, novate or otherwise transfer any of its rights or obligations under the Contract without the prior written consent of the Principal.

## **18.6 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.

## **18.7 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.

## **18.8 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.

## **18.9 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.
- (c) A party must pay on demand any amount it must pay under an indemnity in the Contract.

## **18.10 United Nations Convention not applicable**

The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Contract.

## **18.11 Taxes**

Without limiting clause 8.3, 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.

## **18.12 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.

## **18.13 Exchange of information between government agencies**

- (a) The Contractor authorises the Principal, its employees and agents to make information concerning the Contractor available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the Contractor to the Principal and any information relating to the Contractor's performance under the Contract.
- (b) The Contractor acknowledges and agrees that:
  - (i) 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;
  - (ii) 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
  - (iii) 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.

## **18.14 Proportionate liability**

- (a) To the extent permitted by Law, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with the Contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting paragraph (a), the rights, obligations and liabilities of the Principal and the Contractor under the Contract with respect to proportionate liability are as specified in the Contract and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.
- (c) To the extent permitted by Law:
  - (i) the Contractor must not seek to apply the provisions of Part 4 of the Civil Liability Act 2002 (NSW) in relation to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
  - (ii) if any of the provisions of Part 4 of the Civil Liability Act 2002 (NSW) are applied to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part of a claim by the Principal against the Contractor which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the Civil Liability Act 2002 (NSW).

**Schedule 1  
Key Details**

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**Clause 1 - Definitions and Interpretation**

**Contract - Other documents forming part of the Contract:** As set out in the Purchase Order  
(Clause 1.1)

**Contract Price:** As set out in the Purchase Order  
(Clause 1.1)

**Contractor's Representative:**   
(Clause 1.1)  
Address: 6/153 Beauchamp Road Matraville NSW 2036  
Fax:   
Email:

**Date for Completion:** As set out in the Purchase Order  
(Clause 1.1)

**Defects Liability Period:** 12 months  
(Clause 1.1)

**Main Works Contractor** As set out in the Purchase Order.  
(Clause 1.1)

**Principal's Representative:** As set out in the Purchase Order.  
(Clause 1.1)

**Separable Portions of the Works:** As set out in the Purchase Order  
(Clause 1.1)

**Clause 2 - Commencement**

**Date for Commencement on Site:** As set out in the Purchase Order  
(Clauses 2.1(b) and 2.2(a)(ii))

**Clause 3 - Personnel**

**Contractor's key people:** Person Position  
(Clause 3.5)  
As set out in the Purchase Order

## Clause 4 - Security

**Amount of Security to be Provided by the Contractor:**  
(Clause 4.1)

Clause 4.1 applies: yes

### Amount of security

Two Approved Securities, each for an amount representing % of the Contract Price.

## Clause 5 - Risks and insurance

**Insurance policies required to be effected by the Contractor:**  
(Clause 5.5(a))

### Works Insurance

Amount of Cover is the sum of:

- (a) the Contract Price;
- (b) % of the Contract Price to cover the costs of demolition and removal of debris;
- (c) % of the Contract Price to cover the Principal's consultant fees;
- (d) the full reinstatement value of materials or things to be supplied by the Principal; and
- (e) % of the total of the amounts in (a) to (d) to cover escalation costs.

Sydney Trains, RailCorp, NSW Trains and Transport for NSW to be covered as third party beneficiaries within the class of persons constituting the 'insured'.

### Public and Product Liability Insurance

Amount of Cover: \$  in respect of any one occurrence, with an excess of not greater than \$

Sydney Trains, RailCorp, NSW Trains and Transport for NSW to be covered as third party beneficiaries within the class of persons constituting the 'insured'.

### Workers Compensation Insurance

Amount of Cover: the maximum amount required by Law

### Construction Plant Insurance

Amount of Cover: The full replacement or reinstatement market value of the construction plant.

### Motor Vehicle Insurance

Amount of Cover: Combined limit of not less than \$

### Professional Indemnity Insurance

Amount of Cover: \$  in respect of any one

occurrence, and \$ [ ] in the annual aggregate

**Period for Maintenance of Professional Indemnity Insurance:** 7 years  
(Clause 5.6(e))

**Clause 6 - Design and Documentation**

**Contractor to prepare Design Documentation:** As set out in the Purchase Order  
(clause 6.2)

**Clause 7 - Site and Information**

**Work health and safety, principal contractor** As set out in the Purchase Order.  
(Clause 7.5(b))

**Clause 8 - Construction**

**Existing Approvals and other Approvals which the Principal is to obtain:** As set out in the Purchase Order  
(Clause 8.3(c))

**Work which requires approval to subcontract or which must be let to one of the named Subcontractors:** As set out in the Purchase Order  
(Clause 8.5)

**Provisional Sum Work** As set out in the Purchase Order  
(Clauses 1.1 and 8.8)

**Percentage for additional profit and attendance for Provisional Sum Work exceeding provisional sum allowance by [ ] %** [ ] %  
(Clause 8.8(f))  
.....  
.....

**Working hours for Contractor's Activities on Site:** As set out in the Purchase Order  
(Clause 8.14)

**Accredited person** As set out in the Purchase Order  
(Clause 8.15)

**Deed Poll** Deed poll in favour of RailCorp, NSW Trains and Sydney Trains is required: yes  
(Clause 8.17)

**Clause 9 - Quality**

**Period by which Defects Liability Period will be extended following rectification of a Defect:** 12 months  
(Clause 9.12)

## Clause 10 - Time

**Cap on delay costs**  
(Clause 10.11)

\$  per day

% of the Contract Price in the aggregate

**Percentage of extra costs reasonably incurred due to Acceleration:**  
(Clause 10.15(b)(ii))

%

## Clause 11 - Variations

**Percentage adjustments for valuing a Variation:**  
(Clause 11.3(b) and 11.3(c))

(a) For non time related overheads and profit where the adjustment is to be an increase:

% of the amount determined.

(b) For overheads and profit where the adjustment is to be a decrease:

% of the amount determined.

## Clause 13 - Completion

**Liquidated Damages payable by Contractor when Date of Completion occurs after Date for Completion:**  
(Clause 13.4)

Where there are no Separable Portions, for the Works is:

\$  per week (or part thereof, calculated on a pro-rata basis).

Where there are Separable Portions, as specified in a Purchase Order

**Cap on liquidated damages:**

(Clause 13.6)

% of the Contract Price

## Clause 14 - Termination

**Amount payable upon termination for convenience of the Principal:**  
(Clause 14.8(a)(iii))

Nil

## Clause 17 - Limitation of liability

### Limitation of liability (Contractor): (Clause 17(a)(ii))

An amount equal to the greater of:

- a) \$  or
- b) the sum of:
  - i) the Contract Price as adjusted from time to time, including on account of any Variations; plus
  - ii) any other amounts paid or payable by the Principal to the Contractor under or in connection with the Contract, including any delay costs under clause 10.11 and any suspension costs under clause 10.12.

### Limitation of liability (Principal): (Clause 17(g))

An amount equal to :

- a) the Contract Price as adjusted from time to time, including on account of any Variations; plus
- b) any other amounts paid or payable by the Principal to the Contractor under or in connection with the Contract, including any delay costs under clause 10.11 and any suspension costs under clause 10.12.)

## Clause 18 - Miscellaneous

### Address and facsimile number, for the giving or serving of notices, upon: (Clause 18.1(a)(iii))

#### Principal

The Principal's Representative, as set out in the Purchase Order.

#### Contractor

Name:

Address: 6/153 Beauchamp Road Matraville NSW  
2036

Fax:

Email:

**Schedule 2 - Deed of Novation**

**Deed of Novation made at** \_\_\_\_\_ **on** \_\_\_\_\_

**Parties** **Transport for NSW ABN 18 804 239 602** of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067(**Retiring Party**)  
[ \_\_\_\_\_ ] **ABN** [ \_\_\_\_\_ ] of [ \_\_\_\_\_ ]  
**(Continuing Party)**  
[ \_\_\_\_\_ ] **ABN** [ \_\_\_\_\_ ] of [ \_\_\_\_\_ ]  
**(Substitute Party)**

**Recitals**

- A. The Retiring Party and the Continuing Party are parties to the Contract.
- B. The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Contract on the terms and conditions of this deed.
- C. The Continuing Party has agreed to the novation of the Contract on the terms and conditions of this deed.

**This deed provides**

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**1. Definitions and interpretation**

**1.1 Definitions**

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears.

In this deed:

**Claim** means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

**Contract** means the agreement between the Retiring Party and the Continuing Party described in the Schedule.

**Contract Guarantees** means the guarantees issued or required to be issued under the Contract in respect of the performance by a party to the Contract, by a bank or insurer and, where required by the Contract, by a Related Entity of that party.

**Effective Date** means *[Insert date]*.

**GST** means the Goods and Services Tax as defined in the A New Tax System (Goods and Services) Act 1999 (Cth).

**Liability** means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.

**Related Entity** has the meaning ascribed to that term in section 9 of the Corporations Act 2001 (Cth).

**1.2 Interpretation**

In this deed:



- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) an obligation or a liability assumed by, or a right conferred on, 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 that 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 an additional trustee;
- (e) a reference to a document (including this deed) 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 this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **"includes"** in any form is not a word of limitation; and
- (k) a reference to **"\$"** or **"dollar"** is to Australian currency.

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## 2. Condition precedent to novation

Clause 3 of this deed shall have no force and effect until the Effective Date.

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## 3. Novation

### 3.1 Novation

- (a) The parties novate the Contract so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract.
- (b) Any reference in the Contract to the Retiring Party shall be read as a reference to the Substitute Party.

### 3.2 Assumptions of rights and obligations

- (a) The Substitute Party:
- (i) will be bound by and shall comply with the terms of the Contract as amended by this deed, and shall enjoy the rights and benefits conferred on the Retiring Party under the terms of the Contract; and
- (ii) will assume the obligations and Liability of the Retiring Party under the terms of the Contract,

in all respects as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party.

- (b) The Continuing Party will comply with the terms of the Contract on the basis that the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.

### **3.3 Release by Continuing Party**

- (a) The Continuing Party releases the Retiring Party from:
  - (i) any obligation or Liability under or in respect of the Contract; and
  - (ii) any action, claim and demand it has against the Retiring Party under or in respect of the Contract.
- (b) This release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and Liability of the Retiring Party under the terms of the Contract.

### **3.4 Release by Retiring Party**

The Retiring Party releases the Continuing Party from:

- (a) any obligation or Liability under or in respect of the Contract; and
- (b) any action, Claim and demand it has, or but for this clause would have had against the Continuing Party under or in respect of the Contract,

except that nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract.

### **3.5 Insurance**

As from the Effective Date:

- (a) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Contract; and
- (b) the Continuing Party must take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under the terms of the Contract, the Substitute Party is named in place of the Retiring Party as required by the Contract.

### **3.6 Replacement of Contract Guarantees**

The Continuing Party and the Substitute Party must replace or procure the replacement of any Contract Guarantees with guarantees on similar terms in favour of:

- (a) in the case of the Continuing Party, the Substitute Party; and
- (b) in the case of the Substitute Party, the Continuing Party.

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## **4. Overriding effect**

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract to the Substitute Party.

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## **5. Representations and warranties**

### **5.1 Authority**

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

### **5.2 Authorisations**

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

### **5.3 Binding obligations**

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

---

## **6. Duties, costs and expenses**

### **6.1 Stamp duty**

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).

### **6.2 Costs**

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

### **6.3 GST**

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;
- (b) the party receiving the payment will provide a tax invoice compliant with GST Legislation; and
- (c) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

---

## **7. General**

### **7.1 Governing law**

This deed is governed by and must be construed according to the laws of the applicable State or Territory set out in the Schedule.

### **7.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the applicable State or Territory set out in the Schedule, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7.2(a).

### **7.3 Amendments**

This deed may only be varied by a document signed by or on behalf of each party.

### **7.4 Waiver**

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

### **7.5 Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

### **7.6 Severance**

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

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

### **7.7 Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

### **7.8 Assignment**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.

**Schedule**

**Contract**  
(clause 1.1)

.....  
.....

**State or Territory**  
(clauses 7.1 and 7.2)

State of New South Wales

**Executed** as a deed.

**Executed** by **[Retiring Party and ABN]** in accordance with s 127 of the Corporations Act 2001 (Cth):

---

Signature of Director

---

Name of Director in full

**Executed** by **[Continuing Party and ABN]** in accordance with s 127 of the Corporations Act 2001 (Cth):

---

Signature of Director

---

Name of Director in full

**Executed** by **[Substitute Party and ABN]** in accordance with s 127 of the Corporations Act 2001 (Cth):

---

Signature of Director

---

Name of Director in full

---

Signature of Company Secretary/other Director

---

Name of Company Secretary/other Director in full

---

Signature of Company Secretary/other Director

---

Name of Company Secretary/other Director in full

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Signature of Company Secretary/other Director

---

Name of Company Secretary/other Director in full

**Exhibit A - Specification**

# Lifts

# Specification

**ISD-18-7717**

Document No: 6172630

**Version: 3**

Transport for NSW  
Principal

Liftronic Pty Ltd  
Contractor



# Table of Contents

Introduction .....	6
Compliance with Codes, Standards and Laws .....	9
<b>1. Design Requirements .....</b>	<b>10</b>
1.1. Lift Design Report .....	10
1.2. Project Drawings .....	10
1.2.1. General Arrangement Drawings .....	11
1.2.2. Main Works Contractor Drawings .....	11
1.2.3. Mechanical Drawings .....	11
1.2.4. Electrical Drawings .....	12
1.2.5. Coordination of Drawings .....	12
1.3. Design Calculations .....	12
1.4. Samples .....	12
<b>2. General requirements .....</b>	<b>13</b>
2.1. Scope of Lift Works .....	13
2.2. Description of Building and Lift Provision .....	13
2.3. Design Intent .....	13
2.4. Waterproofing .....	14
2.5. Plant Operating Hours .....	15
2.6. Accessibility .....	15
2.7. Transfer of Mobility Impaired Persons .....	15
2.8. Heavy goods, heavy equipment and mobile plant loading .....	15
2.9. Security .....	15
2.10. Vandal and misuse resistance .....	15
2.11. Energy Consumption .....	16
<b>3. Performance requirements .....</b>	<b>16</b>
3.1. Special considerations .....	16
3.2. Power Supply Conditions .....	16
3.3. Standby Battery System .....	17
3.3.1. Batteries .....	17
3.3.2. Battery Charger .....	17
3.4. Stray Current Mitigation .....	17
3.5. Ride Comfort, Noise and Vibration .....	17
3.5.1. General .....	17
3.5.2. Noise Levels on Lift Lobbies .....	18
3.5.3. Lift Vibration .....	18
3.5.4. Noise and Vibration Performance Table .....	18
<b>4. Technical requirements .....</b>	<b>19</b>
4.1. Schedules .....	19
4.2. Electrical and Wiring Installation .....	19
4.2.1. General .....	19

4.2.2.	Wiring .....	19
4.2.3.	Steel Conduit and Trunking .....	19
4.2.4.	Machinery Space Lighting and Power .....	19
4.2.5.	Lift Well Lighting .....	19
4.2.6.	Car Lighting .....	19
4.2.7.	Car Top Lighting .....	20
4.3.	Lift Car Ventilation and Air Conditioning .....	20
4.4.	Lift Shaft Ventilation .....	20
4.4.1.	Operation .....	20
4.4.2.	Fan(s) .....	21
4.4.3.	Filter .....	21
4.4.4.	Louvre .....	21
4.5.	Painting .....	21
4.5.1.	General .....	21
4.5.2.	Special Paint Requirements .....	21
4.6.	Guides Rails and Brackets .....	21
4.6.1.	General .....	21
4.6.2.	Fixings .....	21
4.6.3.	Guide Rail Construction .....	22
4.6.4.	Guide Fixing Pitches .....	22
4.7.	Buffers .....	22
4.8.	Guarding and Screening .....	22
4.8.1.	Well Screening Construction .....	22
4.8.2.	Counterweight Screens .....	22
4.8.3.	Well Flushing .....	22
4.9.	Lift Pits .....	22
4.9.1.	Emergency Stopping Devices .....	22
4.9.2.	Socket Outlets .....	23
4.9.3.	Pit Access Ladders .....	23
4.10.	Lift Drives .....	23
4.10.1.	General .....	23
4.10.2.	Harmonic Spectrum Data .....	23
4.10.3.	Lift Motors .....	23
4.11.	Machines .....	23
4.11.1.	General Provisions .....	23
4.11.2.	Gearless MRL Machines .....	23
4.12.	Suspension and Compensation Ropes .....	23
4.13.	Car Slings .....	24
4.14.	Guide Shoes .....	24
4.14.1.	General .....	24
4.14.2.	Roller Guides .....	24
4.15.	Over Speed Governors and Safety Gears .....	24
4.16.	Counterweights .....	24

4.17.	Car Walls, Floors and Ceilings .....	24
4.17.1.	Platform Isolation.....	25
4.17.2.	Protective Drapes.....	25
4.18.	Lift Car Roof Equipment.....	25
4.18.1.	Maintenance Control Units .....	25
4.18.2.	Roof Safety Hooks.....	25
4.18.3.	Guard Rail On Car Top.....	25
4.18.4.	Socket Outlet.....	25
4.18.5.	Emergency Communication Units.....	25
4.19.	Automatic Horizontal Sliding Doors .....	26
4.19.1.	Door Operators.....	26
4.19.2.	Passenger Protection System .....	26
4.19.3.	Door Sills, Guides and Suspension .....	26
4.19.4.	Mechanical Car Door Locking.....	26
4.19.5.	Landing Door and Door Frames .....	26
4.19.6.	Car Door.....	27
4.20.	Controllers .....	27
4.20.1.	Construction .....	27
4.20.2.	Interference .....	27
<b>5.</b>	<b>Operational and control requirements .....</b>	<b>28</b>
5.1.	General.....	28
5.2.	Exclusive Service .....	28
5.3.	Automatic Re-levelling .....	28
5.4.	Call Registered Indicator.....	28
5.5.	Dual Push Button Illumination .....	28
5.6.	Car Arrival Gongs .....	28
5.7.	Car Operating Panels.....	28
5.7.1.	General items.....	28
5.7.2.	Requirements.....	29
5.8.	Landing Operating Panels.....	29
5.8.1.	General items.....	29
5.8.2.	Requirements.....	30
5.9.	Exclusion of Door Close Button.....	30
5.10.	Door Open Button .....	30
5.11.	Car Arrival Indicator .....	30
5.12.	Out of Service Function.....	30
5.12.1.	Out of Service Key Switch .....	30
5.12.2.	Out of Service Indicator .....	30
5.13.	Fire Service Operation .....	31
5.14.	Electronic Passenger Detector .....	31
5.15.	Emergency Battery Drive (UPS/APS).....	31
5.16.	Emergency Manual Operation.....	32
5.17.	False Car Call Cancel .....	32

5.18.	Motor Start Counter.....	32
5.19.	Overload Control.....	32
5.20.	Voice Announcement in Lift Car.....	32
5.21.	Water Sensor in Pit.....	32
5.22.	Shaft Fan Sensors.....	32
	5.22.1. Fan Filter Blocked Sensor.....	32
	5.22.2. Fan Motor Thermal Overload Sensor.....	33
<b>6.</b>	<b>Interfacing System Requirements.....</b>	<b>33</b>
6.1.	CCTV Camera in the Car.....	33
6.2.	Alarms and Communication Systems.....	33
	6.2.1. Emergency Alarm Devices.....	33
	6.2.2. Hand-set Free Emergency Phone Systems.....	33
6.3.	Remote Alarm and Monitoring System.....	34
6.4.	Traffic Handling and Diagnostic Data.....	34
6.5.	Communication Junction Box.....	34
<b>7.</b>	<b>Equipment Workmanship and Materials.....</b>	<b>35</b>
7.1.	General.....	35
7.2.	Fixing Devices.....	35
7.3.	Fabrication.....	35
7.4.	Accuracy and Compliance.....	35
7.5.	Workmanship.....	36
	7.5.1. Appearance.....	36
	7.5.2. Firmness and Solidity.....	36
7.6.	Materials.....	36
	7.6.1. Castings, Extrusions or Profiles.....	36
	7.6.2. Sealant.....	36
	7.6.3. Glass.....	37
	7.6.4. Security Film on Glass.....	37
	7.6.5. Safety Stickers on Glass Doors.....	38
<b>8.</b>	<b>Commissioning requirements.....</b>	<b>39</b>
8.1.	Inspections and Tests.....	39
	8.1.1. Factory Test.....	39
	8.1.2. Site Acceptance Tests.....	39
	8.1.3. Test Certificates.....	40
	8.1.4. Testing Personnel and Equipment.....	40
	8.1.5. Putting Into Service.....	40
8.2.	Operating and Maintenance Manual.....	41
8.3.	Hazard and Risk Assessment (AEA National Code of Practice).....	41
8.4.	Maintenance Spares.....	41
	<b>Appendix A – Schedules.....</b>	<b>43</b>

## **Introduction**

This Specification describes the performance criteria for Lifts including design, construction, installation, testing and commissioning, and hand over of the Works. This Specification is set out as described below.

- Section 1 is an Introduction.
- Section 2 outlines the standards to which the Lift is to be designed, manufactured, installed and commissioned.
- Section 3 confirms the design process to be applied to integrate the Lift into the design of the building or facility.
- Section 4 confirms general performance requirements of the completed installation.
- Section 5 confirms performance criteria which the final installation must satisfy.
- Section 6 confirms specific technical requirements of the installation and refers to the technical requirements set out in the Schedules (Appendix B).
- Section 7 confirms the required operational and control functionality.
- Section 8 confirms the interfacing system requirements and aspects of the build quality which the final installation must satisfy
- Section 9 confirms aspects of the build quality of the Lift.
- Section 10 confirms general commissioning requirements to be undertaken by the Contractor and Main Works Contractor.

Appendix A contains a suite of Schedules which are completed by the Principal's Representative as part of the Services Brief to the designers. The Schedules are to be used to define the specific requirements of individual projects.

The Contractor and the Main Works Contractor must refer to Engineering Guidance Note GN 13-005 for guidance on the application of this generic lift standard.

Lift Works to be carried out by the Main Works Contractor:

Requirements
Provision of a suitable storage space on site which is protected from weather, for the Contractor to store their lift equipment.
All builders work such as cutting away, new lift structure including the foundation system, painting, steel works and making good.
Dust proofing of lift well walls pit and ceiling; to include 2 coats of oil proof floor paint to the lift pit and walls up to the height of the first landing sill and 2 coats of dust inhibiting emulsion to the walls and ceiling of the lift well.
Provision and installation of all primary supporting steelwork, to include well dividing beams and landing entrance support steelwork.
The Main Works Contractor shall demonstrate in the Lift Design Report that the risks associated with any potential water ingress have been mitigated.
Provision and installation of all secondary steelwork to include machine beams and any fixing brackets between lift equipment and primary steelwork including any safe working load signage.
Provision and fixing of structural fixing bolts.
Installation of inserts/ unistruts to be supplied by the Contractor
Provision of grilles or gratings to ventilation apertures, pit sumps, or any other opening in the lift well.
Ensure lift sills are compatible with finished floor datum levels.
Temporary guarding of lift well openings during construction (cage type doors locking arrangement).
Provision of access doors and trap doors with locks to AS 1735.
Provision, erection and striking of all scaffolding as required for installation purposes.
Provision and maintenance of temporary lighting and power for mechanical tools, testing and equipment, and other such items (also check if this requires to be 3 phase and provide suitably)
The provision of an electrical supply, terminating in the form of a circuit breaker to each machine.
The building surrounds at the landing must be designed to ensure that the lift landing area and control cabinets are adequately protected from water from wind driven rain.
Provision and installation of interconnecting communications wiring, supports and restraint between the lift machinery spaces, the lift control panel and the communications equipment room.
Provision of the necessary functionality and performance to relay the Contractor's contracted maintenance and emergency information to the Contractor's remote facility
The provision and installation of well dividing screens, voids screens and other such items.
Relay of fire and smoke detection alarm from the lift controller to remote location (i.e. alarm within the Station Manager's Office or as specified by the Principal's Representative).
Landing Entrance Architrave and doors reveal – confirmed by Architect and implemented by the Main Works Contractor to co-ordinate with the Contractor
The provision of a temperature controlled mechanical ventilation of the lift shaft to the criteria identified in this specification. Provision of localised manual over-ride of the ventilation system for use by maintenance personnel.
The provision of weather and vermin proof ventilation louvers.
Adequate drains in front of the lift landings including any door thresholds.
The provision of a ramp to the lift sill where the lift door is exposed at street level. The ramp shall be sufficient to prevent the ingress of stormwater to the lift pit.
Where lift equipment such as lift control panel and landing controls are located externally (i.e. the top floor of a multi-level car park) provide shelter from wind-blown rain.

## Lift Works to be carried out by the Contractor

<b>Requirements</b>
Provide design input and review feedback as necessary to the Main Works Contractor.
Offsite manufacturing and supply of all lift car equipment to the site.
Arrange for site visits to co-ordinate storage of equipment, staging and any site meetings.
Rubbish removal and general house-keeping of the lift equipment storage area on the site.
Assemble and commission the lift car equipment within the lift shaft.
The provision and installation of lift pit water sensor.
Provision and installation of pit access ladders.
The provision and installation of machinery space lighting.
The provision and installation of a fire detector in the lift shaft complete with power connection to the lift controller.
The installation of a mounting bracket for installation of CCTV. The mounting bracket shall be provided by the appropriate party responsible for CCTV installations.
Where lift equipment such as lift control panel and landing controls are located externally (i.e. the top floor of a multi-level car park) provide adequately IP rated equipment.
Provision of a remote alarm at a location nominated by the Principal's Representative.

## **Compliance with Codes, Standards and Laws**

Except where enhanced by this Specification and any other related documents submitted with the Specification, the equipment and installation shall conform with the requirements of all relevant codes and standards issued by recognised codes and standards bodies and comply with all Laws for the location where the installation shall take place.

This Specification is based on Australian Standards and New South Wales Laws. The relevant codes, standards and Laws shall include, but are not limited to, the following as applicable to the equipment specified:

- AS 1428.2: Design for Access and Mobility; Part Two: Enhanced and Additional Requirements – Buildings and Facilities;
- AS 1428.2: sets out requirements for the design of buildings and facilities for access for people with disabilities;
- AS 1735: Lifts, Escalators and Moving Walks;
- AS 1735.1 sets out the general requirements for Lift installations;
- AS 1735.2 sets out the requirements for electric passenger and goods lifts;
- AS 1735.12 sets out particularly required facilities in lifts for persons with disabilities;
- AS 4431. Guidelines for Safe Working on New Lift Installations in New Constructions;
- National Construction Code

Other relevant codes and standards include:

- AS/NZS 3000: Electrical Installations (known as the Australian/New Zealand Wiring Rules). Wiring requirements for lift installations;
- AS/NZS 3008: Electrical Installations – Selection of Cables;
- Work Health and Safety Act 2011;
- Sydney Trains Engineering Standard – Stations and Buildings - Station Design Standard Requirements
- Disability standards for Accessible Public Transport – 2002.

The Contractor and the Main Works Contractor shall bring to the attention of the Principal's Representative any requirements imposed by this Contract that creates non-compliance with a recognised standard.

Reference to standards and codes of practice shall mean the edition current one month prior to the Award Date, incorporating all amendments.

Certificates of compliance with the relevant standards and Laws shall be provided by the Contractor. Any subsequent changes in the relevant standards that impact upon the Specification shall be brought to the attention of the Principal's Representative.



## **1. Design Requirements**

The following Design deliverables shall be provided by the Main Works Contractor;

- Preliminary Design Review – Generic Lift Design Drawings;
- Critical Design Review – Detailed Design Drawings; and
- Critical Design Report - Lift Design Report.

It is noted that a Lift Design Report may not need to be a standalone document as such, provided that the details are captured in Mechanical Design Report as required under the Design Deliverables required under the Works Brief (Exhibit to the Main Works Contract)

The Contractor must provide the Main Works Contractor any information it requires to prepare and provide any documents or reports that it is required to prepare or provide under this Specification.

If requested, the Contractor must attend design development meetings and review Design Drawings,

### **1.1. Lift Design Report**

The Main Works Contractor shall provide a Lift Design Report to confirm the proposed design. The Lift Design Report shall be reviewed by the Principal's Representative as part of the Engineering Assurance Process. The Lift Design Report shall include:

- The Scope of Works;
- Relevant Standards, Codes and Guidelines;
- Design Criteria, Design Assumptions and Operational Parameters;
- Confirmation of resolution of particular Design Issues (i.e. Power Supply Conditions);
- Address all design issues as listed in the Table of Contents;
- Confirmation of design co-ordination with the designers of structure, architecture and systems (i.e. confirmation of liaison with Fire Safety Engineer to confirm lift operation in the event of fire alarm in or adjacent to the lift shaft);
- The report shall include designer nominated hold & witness points to be included within the Inspection & Test Plan for the construction of the lift shafts and the installation of the lifts and commissioning;
- Compliance sign-off of Designers, Checkers and Verifiers;
- Schedule of Design Documents; and
- Design Drawings.

The Lift Design Report will support the Main Works Contractor's Authorised Engineering Organisation (AEO) Systems Assurance process and comply with the Principal's requirements as expressed in the Main Works Contract.

### **1.2. Project Drawings**

The Main Works Contractor shall provide "For Construction" and "As Built" versions of:

- General arrangement drawings;
- Main Works Contractor work drawings; and
- Mechanical and electrical drawings.

#### 1.2.1. General Arrangement Drawings

The general arrangement drawings shall clearly indicate the location and type of all lift well equipment, secondary structure, machinery, brackets and fixings.

#### 1.2.2. Main Works Contractor Drawings

Separate builder's work drawings shall be submitted incorporating comprehensive plan drawings of the lift well, machinery spaces, lift entrances and full elevation details.

All Main Works Contractor's Works shall be clearly identified and the drawings shall incorporate a written schedule of Main Works Contractor's work required to be provided to ensure that necessary allowances can be made accordingly.

The Main Works Contractor work drawings shall include loading requirements for foundations, bases, lifting and supporting structures for plant or equipment, all holes in walls, floors and ceiling elements and machinery spaces as required by this Specification. Any work external to the lift well shall be carried out by others.

The heat output generated by any lift equipment shall be clearly identified by the Main Works Contractor to ensure adequate ventilation is provided in machinery spaces as necessary.

The loading and details of fixings required to any adjacent structure, including the fixing method and sizing, shall be clearly identified.

Mounting plates and associated attachment points, including welds, studs and threaded rods attached to the plates, must be detailed and clearly identified.

The shaft ventilation filter and thermostatic sensor positioning shall be clearly identified.

Electrical supply requirements shall be clearly detailed or scheduled providing at least the following information:

- full load running current;
- maximum starting current; and
- required protective device and capacity.

#### 1.2.3. Mechanical Drawings

Drawings for all mechanical elements related to the aesthetic finishes (e.g. car body work, doors and architraves, pushes, indicators, operating panels (car and landing) and mounting plates) shall be submitted at suitable times during the design stages to enable review, comment and approval without introducing delay to the programme.

Any drawings for items of plant or equipment submitted for comment shall indicate principal dimensions, fixings, connections and all other relevant details.

Where a manufacturer's original drawings are used, they shall be specific to the relevant Works and all references to optional features, other machines of a range and other such references shall be deleted or the original drawings redrawn to comply with this Clause.

#### 1.2.4. Electrical Drawings

All wiring diagrams shall indicate clearly that wiring which forms part of, or is connected to, the equipment as delivered.

#### 1.2.5. Coordination of Drawings

Coordinate all drawings prepared by all trades. Ensure drawings are compatible, correctly annotated and cross-referenced at all interfaces.

### 1.3. Design Calculations

Detailed calculations in accordance with AS 1735 shall be submitted if requested by the Principal's Representative. Verification of the design deflections and stresses of the selected guide rails is the responsibility of the Main Works Contractor and its AEO processors.

### 1.4. Samples

At suitable times during the design stages, The Contractor shall submit to the Principal's Representative samples based on the drawings and schedules of materials and finishes, to enable review and comment as required for the following items:

- car body work, including glass;
- cladding;
- flooring;
- handrails;
- brackets & fixings;
- lighting;
- emergency lighting;
- car and landing operating panels;
- all buttons
- all indicators
- all mounting plates; and
- braille plates for landings.

## **2. General requirements**

### **2.1. Scope of Lift Works**

The work shall comprise all labour and materials necessary to form a complete installation of the lifts and carry out tests, adjustments and commissioning as required giving an effective working installation.

The following is an outline of the work of other trades associated with the lift work. The Main Works Contractor shall coordinate and interface the lift work with the work of other trades and any other work relevant to the lifts with respect to:

- dimensional compatibility;
- technical interfaces e.g. power supplies, security (CCTV), fire alarm, remote alarm, EWIS and finished floor levels, and other similar interfaces; and
- programming of sequential operations to interface with the work and eliminate confrontation.
- Design, supply and install appropriate communication equipment for the lifts' fault monitoring system (including a connecting cable between the lift and staff room, containment, sensors, buzzer and lights) in the station staff office.

Allowance shall be made for all test equipment, meters, weights, work tests, visits to Vertical Transportation Works, witness tests and other such items as required by the Specification.

The Main Works Contractor shall submit drawings, calculations and any other information necessary to substantiate that the proposals meet the performance requirements of the Main Works Contract.

### **2.2. Description of Building and Lift Provision**

The lift systems documented within this Specification are scheduled in the 'SCHEDULES' Subsection of this Section and to be shown on the Project Specific Concept Drawings.

Project Specific Concept Drawings will be provided together with the "Project Specific" Lift details referenced in Schedule A.

### **2.3. Design Intent**

In designing and installing the Lift the following aims shall be addressed:

- universal access (for able bodied and mobility-impaired passengers);
- vandal and misuse resistance;
- heavy goods, heavy equipment and mobile plant loading;
- resistance to railway environmental influences;
- standardisation with the Sydney Trains existing lifts;
- visual continuity;
- passive security;
- ease of maintenance and future availability and sourcing of spare parts;
- maintainability for the design life of the lift;
- stimulating travel experience; and

- minimisation of energy requirements.

All Lift elements are located to facilitate ease of circulation and clarity of way finding. Equal access is provided through the provision of a lift to serve each change of level.

#### **2.4. Waterproofing**

All lifts shall be designed and constructed in accordance with the following waterproofing provisions to be completed by the Main works Contractor in consultation with the Contractor:

- Lift Shaft Pits shall be designed with positive water proofing membranes
- Use of chemical additives to the concrete mix (eg Xypex) should not be solely relied upon for waterproofing
- Use of precast elements with reliance on sealed/caulked joints for water proofing is prohibited as joints will break down over time
- Where water ingress into the lift pit is likely to occur due to natural occurrences, provision of a sump pump and sufficient sump depth shall be provided. For example, excess water ingress through lift pit construction underground through natural ground
- The whole lift shaft structure including the roof needs to be watertight.
- All lift canopies must be designed and constructed to prevent water entry to the shaft wall and wetting the lift controller
- All landings must have a slope away from the lift to ensure water does not enter the lift.
- All landings must be designed to ensure wind driven rain does not contact the controller, call buttons, doors and landing.
- All lift louvers must be storm proof (2 stage) to prevent water ingress from rain and wind driven rain into lift shaft. Detailing on corners of louvres must also prevent water ingress (Back flashing may be required.)
- Glazing of the shaft must be waterproof to prevent water ingress and to allow positive air flow when the shaft fan is operating.
- Wherever possible, paths and platforms are to slope away from lift entries. Where it cannot be avoided that a path or platform slopes towards the lift, a suitable drain must also be designed and installed before lift commissioning, to ensure water does not enter the lift.
- The canopy to the lift shaft shall be fitted with sufficient safety hooks for harness attachments, to permit access to all points on the canopy. A minimum of two safety hooks are required.

- The roof of the lift shaft shall be fitted with sufficient safety hooks for harness attachments, to permit access to all points on the roof. A minimum of two safety hooks are required.
- Use of chemical additives to the concrete mix (eg Xypex) should not be solely relied upon for waterproofing

## **2.5. Plant Operating Hours**

Plant shall be arranged for continuous operation based on a 24 hours a day 7 days a week operation, and shall be capable of achieving 240 starts per hour.

## **2.6. Accessibility**

The lift machinery, ropes, sheaves and other equipment in the machinery spaces are to be arranged so as to be accessible to facilitate safe inspection and maintenance. All parts of the lift, lift shaft and lift shaft equipment especially where these are visible from outside the lift shaft or within the lift car are to be accessible to facilitate safe and easy cleaning. This is particularly relevant where any glazing is used in the lift shaft or in the lift car.

## **2.7. Transfer of Mobility Impaired Persons**

All lift elements shall be designed to facilitate “Universal Access” for mobility-impaired and people with disabilities, in accordance with AS 1735 Part 12, the Building Code of Australia (BCA) and other relevant guidelines and codes.

## **2.8. Heavy goods, heavy equipment and mobile plant loading**

In addition to people transportation, the installation of the lifts shall be designed for transportation of heavy goods, heavy equipment and mobile plant such as Elevated Work Platforms and Scissor Lifts to the maximum rated load on the load notice.

Where the door placement is not centred or in cases where the load of the equipment is in an unfavourable position further from the guide rails, the total gross weight shall be less than 75% of the maximum rated load.

## **2.9. Security**

Upholding the highest levels of security possible is paramount in order to provide user confidence.

A remote alarm system in accordance with the current system adopted by the Sydney Trains shall be installed between the lift and the nominated control room at the station as nominated by the Principals Representative.

Sufficient glazing to the lift cars and car doors shall be used to enable visibility for occupants to see outside, and enable clear lines of sight from outside into the lift. Annealed laminated safety glass shall be provided for all glass used, where required by this Section or the Drawings.

## **2.10. Vandal and misuse resistance**

The lifts on the rail network have extremely high exposure resulting in high maintenance costs and breakdown rates due to vandalism and misuse. Upholding the highest levels of resistance to vandalism and misuse in order to reduce inconvenience to passengers and delays to rail services. To ensure lifts are maintainable at an acceptable level of reliability and aesthetic

condition, all elements of the lift shall be designed to improve resistance against vandalism and misuse (especially impact and etching damage).

Where possible the use of glazing shall be avoided. Glass shall not be used up to a minimum height at the level of the handrail in the car for all car walls, where 5WL Textured Stainless Steel panels shall be used.

### **2.11. Energy Consumption**

The installation of the lifts shall be provided to deliver a good passenger service whilst incurring minimal environmental impact. Variable speed drives shall be provided for the lifts.

Lift cars and lift shafts shall be designed in order to minimise solar gain in both the lift shaft and the lift car. During periods of low usage, the lift cars shall park at a non-exposed level in order to minimise solar gain.

## **3. Performance requirements**

### **3.1. Special considerations**

In undertaking the lift work, the Main Works Contractor and the Contractor shall make sufficient allowance for the conditions of mass transit (rail station) use, station or facility location, environmental exposure and passenger intensity. Without limitation, the Main Works Contractor and the Contractor shall ensure that the Vertical Transportation Works are able to withstand the following conditions of mass transit rail stations:

- power supply conditions;
- electrolysis;
- stray electrical currents;
- temperature extremes;
- humidity;
- water ingress into shaft, including due to wind driven rain;
- environmental exposure;
- train induced vibration;
- train generated brake dust; and
- vandal resistance;
- goods and equipment loading
- plant, mobile plant and EWP loading.

The Lift Design Report as per Clause 3.2 of this document shall demonstrate that these issues have been addressed in the proposal.

### **3.2. Power Supply Conditions**

The Contractor shall be aware that the following permanent power supply conditions apply to the installation of lifts on the RailCorp network:

- EP 90 10 00 02 SP Standard Voltage Tolerances;
- EP 90 10 00 01 SP Electrical Phase Relationships; and

- EP 03 00 00 01 T1 Rectifier Transformer & Rectifier Characteristics.

As a result of the above standards and in accordance with AS 3000 Clause 1.9.4, the Contractor shall confirm measures undertaken to ensure compliance with these standards within the Lift Design Report.

The Lift Design Report shall set out the Contractor's design, manufacture and installation proposals for avoiding issues resulting from any voltage regulation or harmonic issues.

### **3.3. Standby Battery System**

#### **3.3.1. Batteries**

The lift battery shall be capable of initiating the lowering or raising of the lift car to the next floor in the event of a mains power failure. The emergency power supply will release the brake. Upon reaching it's destination and opening the doors the lift shall then shut down until normal mains power is returned.

Standby batteries shall be provided for the alarm sounders, car lighting, remote monitoring system, communication devices, car voice annunciation and powered ventilation equipment, allowing for the following standby times in the event of power failure.

Emergency lighting (Car and well)	4 hours continuous illumination
Communication devices	2 hours use
Car ventilation equipment	2 hours use
Alarm sounders	2 hour continuous operation of all sounders

The alarm sounders shall have a dedicated standby battery, independent of any other battery-backed systems, which shall support all linked sounders operating continuously for the specified duration.

Other battery-backed units that share a common battery shall be capable of operating for the specified periods, assuming concurrent operation of all supported equipment.

Communications infrastructure supporting emergency telephony shall have a minimum run time that meets or exceeds continuous operation of communication devices in the event of power failure.

#### **3.3.2. Battery Charger**

Automatic battery chargers shall be provided, which shall be suitable for trickle charging all standby batteries.

### **3.4. Stray Current Mitigation**

The Main Works Contractor shall be responsible for eliminating the occurrence of stray-current leakage within the lift well and subsequent damage to the overall installation, including lift machinery and all lift well equipment including guide rails and controllers.

### **3.5. Ride Comfort, Noise and Vibration**

#### **3.5.1. General**

It is a requirement that the specified levels of vibration and noise are achieved, for all passenger lifts. If the levels of the various noise and vibration measurements are not in



accordance with the specified levels, the installation of the lifts will be deemed to be non-compliant with the Specification and may be rejected.

3.5.2. Noise Levels on Lift Lobbies

Lift noise, when measured at 1.5m from the floor and 1m from the door face with the doors closed, shall not exceed 50dB(A) at any time during the lift cycle.

3.5.3. Lift Vibration

Vibration measurements shall be taken at the centre of the car, on the floor, in three mutually perpendicular axes corresponding to vertical vibration and lateral quaking. Measurements shall be made of vibration levels in each direction over the following cycles:

- one full cycle from the bottom of the station to the top;
- one full cycle from the top of the station to the bottom; and
- journeys shall be measured to identify that the correct speed profiles are being achieved.

A cycle is defined as the period from when the doors start to close at one level, to when the doors have fully opened at the final level.

The vibration levels shall not exceed the values indicated in the performance table below.

3.5.3.1. Noise Levels in Lift Cars

Noise levels in the car under acceleration, deceleration and at maximum car velocity in the cycle shall not exceed the values indicated in the performance table when measured with any mechanical ventilation devices switched 'OFF'. Readings shall also be checked with these devices switched 'ON'.

3.5.4. Noise and Vibration Performance Table

The following table identifies the maximum allowable car noise and vibration performance for differing car speeds.

Lift Speed (m/s)	Maximum Acceleration (m/s <sup>2</sup> )	Maximum Jerk (m/s <sup>3</sup> )	Max. Noise in car dB(A)
1.0 – 4.0	0.8	1.4	55*

Horizontal vibration in the frequency range 1—80 Hz (inclusive) shall not exceed a maximum (RMS) acceleration level of 0.08 m/s<sup>2</sup>. The above limit applies to any time during a complete cycle, in any 1/3rd-octave band in the frequency range specified.

Vertical vibration in the frequency range 1-80 Hz (inclusive) shall not exceed a maximum (RMS) acceleration level of 0.08 m/s<sup>2</sup>. The above limit applies to any time during a complete cycle, in any 1/3<sup>rd</sup> octave band in the frequency range specified.

Vertical vibration during acceleration / deceleration and stop / start periods in the frequency range 1-80 Hz (inclusive) shall not exceed a maximum acceleration level (in any 1/3<sup>rd</sup> octave band) of 0.1m/s<sup>2</sup>.

These maximum vibration levels apply to lift car speeds up to 4m/s.

Maximum in-car noise levels should be measured with the lift car air conditioning and ventilation in operation while the car remains at a fixed location.

## **4. Technical requirements**

### **4.1. Schedules**

The Principal has determined the mandatory requirements for the lift installation to the extent specified in this Section, as included in the 'Schedules' contained in Appendix A.

### **4.2. Electrical and Wiring Installation**

The design of electrical installation shall comply with the current edition of AS/NZS 3000 Electrical Installations and AS/NZS 3008 Selection of Cables.

#### **4.2.1. General**

The electrical supply to the Works shall be in accordance with AS/NZS 3000.

#### **4.2.2. Wiring**

All cables other than travelling cables shall be in accordance with AS1735 & AS/NZS 3000.

#### **4.2.3. Steel Conduit and Trunking**

The installation of conduit shall be in accordance with AS1735 & AS/NZS 3000.

#### **4.2.4. Machinery Space Lighting and Power**

A single-phase supply, terminating in a single-pole switch fuse located in the machinery space(s) shall be provided for each car lighting circuit, taken from the local distribution board.

Machinery space lighting shall incorporate emergency lighting to serve any control panels, drive machines or other serviceable equipment.

A twin 15 amp switched socket outlet with integral RCD protection shall be installed for each lift in the machinery space(s) and in each lift pit, fed from the Lift Controller.

#### **4.2.5. Lift Well Lighting**

The Main Works Contractor shall provide permanent lift-well pulse relay controlled lighting positioned at the top of the shaft, the bottom of the shaft, the controller box (landing) and the maintenance box.

A clearly labelled switch for operating the lift well lighting shall be provided in an easily accessible location adjacent to any pit access ladders.

All well lighting switches shall incorporate a neon indicator that operates when the switch is in the off position to facilitate location of the switch in darkness.

Luminaires shall be positioned in accordance with AS1735. Luminaires shall be standard emergency lights and shall be supplied and installed to the Principal's Representative's approval. In the lift well, the top and bottom luminaire plus every alternate luminaire in the well shall have a self-contained emergency battery pack.

#### **4.2.6. Car Lighting**

##### **4.2.6.1. General**

Car lighting shall be of a suitably robust design to suit a mass transit rail environment and reduce the risk of damage through vandalism or tampering.

#### 4.2.6.2. Car Interiors

Interior lighting shall be by at least four recessed and flush mounted LED luminaires, suitably enclosed, each operated from independent control gear. The illumination shall be not less than 200 lux average horizontal illuminance and 150 lux average vertical illuminance. All lux levels are to be measured at a height 1.5m above the floor level.

The design of light fittings shall include vandal resistant fittings and tamperproof screws, in accordance with the schedules.

#### 4.2.6.3. Emergency Lighting

In addition to mains operated lighting, an emergency system shall energise automatically to the normal car lighting following the failure of the mains supply and shall provide a minimum constant illumination of 50lux for a duration of not less than 3 hours. The emergency lighting shall be combined within the luminaires used for the main lighting. Separate emergency lighting luminaires will not be accepted.

The luminaires for the emergency lighting shall be located and rated such that, in addition to providing general illumination of the car, they shall provide sufficient illumination to distinguish the car threshold and all communication and control features within the lift car.

Power for all the emergency lights shall be supplied by more than one power supply, configured so that not all of the lights connect to any one supply. Each supply shall be on separate circuits to ensure redundancy and that failure of any one supply will not result in total failure of all the lights in the car.

#### 4.2.7. Car Top Lighting

A low energy LED (or equivalent approved by the Principal's Representative) light fitting incorporating a non-maintained emergency light shall be provided on top of the lift car. The fitting shall be powered by a standby battery supply. A lead LED light and a bulkhead LED light fixed to the top of car.

### 4.3. Lift Car Ventilation and Air Conditioning

All lift cars shall include cooled mechanical ventilation to operate when the temperature inside the lift car exceeds 21C and be of sufficient capacity that the maximum temperature in the lift car interior does not exceed 25C when the temperature in the lift shaft is 34C.

The ventilation shall have an air handling capacity to change the volume of air in the lift car in less than 1 min. The mechanical ventilation shall include an auxiliary power source to maintain these ventilation requirements for a period of at least 2 hours in the absence of normal power.

The cooled mechanical ventilation unit shall include a label specifying the brand and model of the unit, as well as the general technical specifications of the unit, and the contact details of the manufacturer.

### 4.4. Lift Shaft Ventilation

The lift shaft ventilation shall be designed and installed by the Main works Contractor to the following specification:

#### 4.4.1. Operation

The shaft fan(s) shall be positioned at the bottom of the shaft and capable of providing positive air pressure throughout the shaft. The fan shall be connected to the remote monitoring system.

#### 4.4.2. Fan(s)

The fan(s) shall be operated by a two-speed, 3-phase drive controlled by the shaft thermostat with thermal overload protection. The shaft ventilation thermostat shall be positioned at the top of lift shaft where the lift electrical equipment is located. The shaft fan penetration shall be internally protected with a mesh screen to prevent entry into the lift shaft in the case of maintenance or removal of the shaft fan.

#### 4.4.3. Filter

The shaft ventilation intake shall be filtered and accessible for maintenance without entering the danger zone. The fan filter shall be fitted with an industry standard magnahelic gauge for the specific type of fan and connected to a dedicated alarm through the remote monitoring system. This gauge shall be visible from inside the lift shaft and contained within the ventilation void.

#### 4.4.4. Louvre

The shaft ventilation louvre must be 2-stage and storm proof to protect against adverse environmental conditions. The louvre shall be hinged, lockable and accessible for maintenance without entering the danger zone. Where louvres are installed in positions accessible to the public, vandal-proof welded mesh screens shall be installed. The mesh screens shall not impede the louvre door opening mechanism.

### **4.5. Painting**

#### 4.5.1. General

With the exception of self-finished surfaces and elements otherwise specified, the whole of the equipment shall be painted one coat in the factory after full and proper surface preparation, including priming. Any damaged surfaces shall be made good on-site to the satisfaction of the Principal's Representative.

#### 4.5.2. Special Paint Requirements

All steelwork provided by the Main Works Contractor and the Contractor shall be de-rusted, treated with rust inhibitor, primed and painted.

All cable trunking and conduit shall be painted to match adjacent services.

### **4.6. Guides Rails and Brackets**

#### 4.6.1. General

The car and counterweight guides shall be jointed and fixed to their brackets so they do not deflect by more than 5.0mm under normal operating conditions.

#### 4.6.2. Fixings

Mechanical anchor fixing methods shall not be used for any structural connections or lift guide brackets which connect the lift rails/structure to the lift shaft. Only chemical anchor fixings shall be used due to the dynamic loading produced by the lift. Sydney Trains has extensive history of mechanical anchors working loose over time in lift shafts.

The structural engineer shall detail the chemical anchors selected considering the lift shaft structure and the induced loads as advised by the Main Works Contractor. Any variation away from this requirement shall be endorsed by the Principal's Representative. The selection of suitable chemical anchors shall be addressed in the Lift Design Report and calculations appended therein.

#### 4.6.3. Guide Rail Construction

All car and counterweight guides shall be machined, undercut tee section, with tongue and groove plated joints and shall be provided with steel bases.

#### 4.6.4. Guide Fixing Pitches

The fixing pitch between guide brackets shall be arranged to restrict the designed deflection below the maximum specified. If, due to limitations on the guide fixing pitches caused by construction or structural constraints, this maximum deflection cannot be achieved, suitable guide rail backing shall be provided to achieve the deflection criteria accordingly.

### 4.7. Buffers

The Contractor shall provide all necessary supports, mountings and fixings for the buffers.

### 4.8. Guarding and Screening

#### 4.8.1. Well Screening Construction

Unless specified or otherwise approved, well screening shall be manufactured from 10 s.w.g. x 25mm steel weld mesh securely welded within a rigid angle frame.

Screens shall not be used to support trunking, conduits or any ancillary lift equipment in the well.

#### 4.8.2. Counterweight Screens

Counterweight guarding shall be provided in accordance with AS1735.1, as appropriate.

Where the screen conceals buffers with serviceable parts (oil buffers or buffers with switches or other like items) such parts shall be easily visible and accessible either through a removable panel or around the screen.

#### 4.8.3. Well Flushing

Approved stainless steel, framed panels of minimum 1.2 mm thickness shall be provided in accordance with AS1735.1, as appropriate. A ramped apron shall be provided below the lowest track or sill.

All fixings shall be countersunk with no projection into the running clearance between the car and landing sills.

### 4.9. Lift Pits

#### 4.9.1. Emergency Stopping Devices

Emergency stopping devices shall be provided, of a mushroom head design. Toggle or rocker type switches shall not be accepted.

If the stopping device is more than 2000mm above the pit floor, an additional stopping device shall be fitted at low level.

All stopping devices shall be clearly and permanently labelled run/stop.

A minimum of two emergency stopping device shall be installed, one at a convenient and accessible location near the bottom of the pit ladder, and the other at a convenient and accessible location next to the top of the pit ladder.

#### 4.9.2. Socket Outlets

A socket outlet controlled by a local or integral RCD shall be provided in each lift pit.

#### 4.9.3. Pit Access Ladders

A pit ladder shall be provided to allow for safe and easy access to each lift pit with handrails extending to a minimum of 1100mm above the pit access level.

All ladders shall preferably be permanently fixed within the lift well in a position that is easily visible and accessible from the pit access level.

### 4.10. Lift Drives

#### 4.10.1. General

The control system shall provide fully closed loop feedback for speed control by way of an encoder device mounted directly on the high-speed shaft of the drive motor or similar agreed method.

#### 4.10.2. Harmonic Spectrum Data

At the request of the Principal's Representative, the Main Works Contractor shall provide harmonic spectrum data relating to each phase of the supply to the drive motor:

- when a lift car is accelerating in either direction with full Contract Load;
- when a lift car is accelerating in either direction empty; and
- during levelling operations.

#### 4.10.3. Lift Motors

An emergency stopping device shall be provided and fixed adjacent to the lift machine.

### 4.11. Machines

#### 4.11.1. General Provisions

All components comprising the lift machine and associated supports, together with any diverting pulleys, shall be located in the lift well and supported on vibration insulators.

#### 4.11.2. Gearless MRL Machines

Only VVVF asynchronous squirrel cage type or VVVF permanent magnet synchronous machines shall be used.

### 4.12. Suspension and Compensation Ropes

All ropes shall be delivered to Site together and shall be properly coiled or reeled and adequately protected.

The suspension rope anchorage devices shall permit and indicate equalisation of tension in each rope.

A data plate shall be attached to the car cross head providing details of the suspension rope, its construction, date of installation, lift 'Contract Speed', rated car load and mass of empty car.

#### **4.13. Car Slings**

The lift car shall be carried in a steel sling securely fixed together and substantially reinforced and braced to relieve the car enclosure of all strain and to withstand the operation of the safety gear under full-load conditions without any permanent deformation.

#### **4.14. Guide Shoes**

##### 4.14.1. General

All lifts shall utilise roller guides to the car and counterweight.

All guide rollers shall be selected to achieve the necessary noise and vibration limits as specified in this Specification.

##### 4.14.2. Roller Guides

Roller guides shall comply with the following requirements:

- they shall be so mounted as to provide continuous contact of all wheels with the corresponding rail surfaces under all conditions of loading and operation;
- the roller guides shall run on dry guide rails
- guards shall be provided to protect the wheels on top of the car and counterweight.

The car and counterweights are to be statically balanced following fitting of all equipment and finishes prior to final fixing and setting of the roller guides.

#### **4.15. Over Speed Governors and Safety Gears**

Safety gear and over speed governors shall be provided and installed in accordance with AS1735.

The governor tension weight assembly mounted in the lift pit shall incorporate a pulley guard to prevent the ingress of objects.

#### **4.16. Counterweights**

A counterweight shall be provided as required to optimise power consumption and to provide traction where applicable in accordance with AS1735.

#### **4.17. Car Walls, Floors and Ceilings**

The complete interior finishes and fittings of the lift car including ceiling, walls, door trims, skirting, floor and light fittings shall be to selected designs, as detailed in the schedules.

All car walls below handrail level shall be of 5WL textured stainless steel panels. No glazing is to be used for this area.

All car walls above handrail level shall be of 5WL textured stainless steel panels with glazing panel cut-outs. Glazing panels shall be fully framed and shall not extend to the edges of any wall face. Glazing panels shall not be used for any structural purpose.

The car floor coverings shall be of Stainless Steel Checker plate material.

#### 4.17.1. Platform Isolation

Unless specifically identified in the schedules, the complete platform and car enclosure of each lift shall be effectively isolated from the car sling, by resilient rubber pads or suitable anti-vibration pads securely fixed to prevent displacement.

#### 4.17.2. Protective Drapes

Where protective drapes are required, the Contractor shall supply sets of purpose made protective drapes for each lift car.

The protective drapes shall not obscure the load plate, ventilation apertures, the intercom, hands free telephone or the push button and signal panels or any communication or control equipment.

Where the protective drapes cover glass, the drapes shall be stencilled in bold letters "CAUTION - GLASS BEHIND".

Where protective drapes are not required, suitable facilities shall be provided for the attachment of protective drapes only in each lift car. Purpose made protective drapes shall not be required.

### **4.18. Lift Car Roof Equipment**

#### 4.18.1. Maintenance Control Units

A maintenance control unit shall be provided on the top of the car and shall be mounted to eliminate the risk of accidental operation of any controls. In addition to housing an emergency stopping device and door operating controls, a common run button shall be provided, which in conjunction with operation of the directional pushes for up and down shall provide movement of the lift car under maintenance control.

All controls on the maintenance unit shall be clearly labelled.

#### 4.18.2. Roof Safety Hooks

The car roof shall be fitted with at least two safety hooks, each clearly marked with its safe working load, for the attachment of safety harnesses. Additional hooks shall be provided to ensure that a hook is located within 1500mm of any normally accessible point on the car roof.

#### 4.18.3. Guard Rail On Car Top

Guard rails shall be provided on the top of car in accordance with AS1735.1.

#### 4.18.4. Socket Outlet

A socket outlet controlled by a local or integral RCD shall be provided on the car roof.

#### 4.18.5. Emergency Communication Units

A communication unit as detailed as per section 2.3.22 shall be provided on the lift car, incorporating an emergency call button that shall initiate direct communication with a 24 hour attended monitoring service.



## **4.19. Automatic Horizontal Sliding Doors**

### **4.19.1. Door Operators**

The electric door operators (VVVF or DC PWM) shall be of high speed, heavy-duty construction and suitable for intensive traffic duty.

The opening and closing speed of the door operator shall be easily adjusted to suit operating conditions and shall be initially set to the times shown in the schedules in this Section.

The interval of time that the doors are in the fully open position shall be easily adjustable, to a maximum period of 30 seconds to allow for particular needs of the station.

### **4.19.2. Passenger Protection System**

A passenger protective device(s) shall cause the doors to re-open when an obstruction enters the detection zone and before contact is made with any such obstruction.

The passenger protective device(s) shall be effective from not more than 25mm above the sill and to a height of not less than 1.8m above the sill and shall not project beyond the leading edge of the door panel(s).

The passenger protection device(s) shall be mounted on the edge of the doors for ease of access and cleaning.

### **4.19.3. Door Sills, Guides and Suspension**

Each door shall be provided, complete with a top track, running sill and supporting frame as required. Door guide blocks shall be easily renewable from the well side of the door panel without the door having to be lifted or removed.

### **4.19.4. Mechanical Car Door Locking**

In the interests of safety, it shall not be possible to open a car door, except during the pre-opening condition and when the car is within a designated unlocking zone in accordance with AS1735.

All car doors shall be provided with a mechanical car door lock, matched to the door drive and electrical locking equipment.

### **4.19.5. Landing Door and Door Frames**

Landing doors shall be glass and framed with 5WL embossed stainless steel. The surrounding landing structure, including the landing entrance frame trim, shall be finished stainless steel.

Where required, all landing doors, frames and associated items such as sills, tracks and locking devices shall comply with the requirements of relevant authorities in respect of fire resistance rating and shall be such as to pass a one-hour standard fire test in accordance with relevant Australian Standards.

Landing door sills shall be adequately supported to withstand mobile plant (such as Elevated Work Platforms) up to the maximum load on the load notice in the lift car.

Each landing level shall contain a braille plate detailing the level in a tactile symbol and braille equivalent. The plate shall be located on the landing entrance trim.

#### 4.19.6. Car Door

Glass car doors shall be framed in 5WL embossed stainless steel.

Car door sills shall be adequately supported to withstand mobile plant (such as Elevated Work Platforms) up to the maximum load on the load notice in the lift car.

### **4.20. Controllers**

#### 4.20.1. Construction

The control system shall be of the microprocessor type.

The components and cabinets shall be designed and mounted in a manner that facilitates inspection, maintenance, adjustment and replacement of any serviceable parts & in accordance with AS1735 & AS/NZS 3000.

The control system equipment and associated software shall be of non-proprietary type, and shall not require the use any special proprietary tools.

#### 4.20.2. Interference

The arrangement of the electrical equipment shall be such that there is no interference with the correct operation of radio, television receivers or other electronic apparatus in the station or other buildings in the locality, caused by the normal working of the installation of the lifts.

All lift equipment shall be provided within the limitations for Electromagnetic Emissions and Immunity given in AS/NZS 61000. No suppression components shall be used in any part of the circuit where their failure might cause an unsafe condition.

## **5. Operational and control requirements**

### **5.1. General**

The control features detailed below shall be provided in accordance with the scheduled requirements within this Specification.

### **5.2. Exclusive Service**

Provide independent service control for each lift with a control key switch located in the car operating panel in the car. When operated the independent service switch shall:

- Remove that lift from the normal control system so that it responds to and cancels car calls only;
- Park the car with doors open;
- Allow car button registration to be made in the normal manner and with respect to further travel of the lift, shall set the direction of travel;
- The key switch for the independent service shall be limited access type.

### **5.3. Automatic Re-levelling**

Provision shall be made to allow for automatic, accurate re-levelling of the lift car where, after stopping at a floor, loading, unloading or sinkage could cause the car to move out of level with the floor by more than 10mm with the doors open or closed.

### **5.4. Call Registered Indicator**

Each push button shall incorporate an illuminating indication when it has been operated, which shall be cancelled when the function has been completed (e.g. door open illuminates until the doors are fully open, a car or landing call button illuminates until the call is answered). This feature is to be provided in conjunction with dual illumination as detailed below.

### **5.5. Dual Push Button Illumination**

All buttons shall be provided with double illumination enabling a white illumination in a non-activated state, and enabling a green illumination in the activated state.

### **5.6. Car Arrival Gongs**

An adjustable electronic chime shall be provided at each floor to give an audible indication when the lift car arrives at the landing in response to a hall call.

The electronic chime shall operate once for the up direction and twice for the down direction and shall incorporate an adjustable setting to enable operation between 2 and 5 seconds before the lift arrives at a floor.

### **5.7. Car Operating Panels**

#### **5.7.1. General items**

The location and design of all engraving in the lift car shall be approved by the Principal's Representative.

Car buttons and operating panels together with floor designations shall be approved by the Principles representative.

The use of incandescent lamps shall not be permitted for push button or signal illumination.

## 5.7.2. Requirements

Item	Feature	Number required per lift
1	Faceplate Material	2.5mm stainless steel
2	Edges	Square and deburred
3	Finish	Linish No. 4
4	Fixings	Tamperproof "Torx" screws
5	Load Notice	As appropriate
6	Buttons	US91-15 compact round metal having tactile and braille, with black pressed face and white/green illumination and vandal proof.
7	Alarm/Phone button	Must be illuminating
8	Stop buttons	Must be <u>excluded</u>
9	Door close buttons	Must be <u>excluded</u>
10	Surface engraving (main and auxiliary operating panels)	To be as follows: 1. Lift No. – 13mm high and 1 mm thick Gills Sans in black with a luminance factor not less than 0.3 in contrast to the background 2. Emergency telephone instructions – 10mm high and 1mm thick Gill Sans filled black 3. Floor engraving - 10mm high and 1mm thick Gill Sans filled black
11	Emergency Telephone	EM-FONE (in car main operating panel only)
12	Auxiliary car operating panel	Panel shall include: 1. the lift identification number 2. the destination buttons and destination description initial (eg. P, C) in raised tactile 3. an emergency phone button
13	Car button location	The location of buttons shall be between 1050mm and 1200mm from floor level.

## 5.8. Landing Operating Panels

### 5.8.1. General items

The location and design of all engraving in the lift car shall be approved by the Principal's Representative.

Landing buttons and operating panels together with floor designations shall be approved by the Principles representative. The landing buttons shall not be closer than 500mm from any internal corner or fixed obstruction, in accordance with AS1735.12.

The use of incandescent lamps shall not be permitted for push button or signal illumination.

The landing operating panel must be mounted flush with the landing entranceway frame.

## 5.8.2. Requirements

Item	Feature	Number required per lift
1	Faceplate Material	2.5mm stainless steel
2	Edges	Square and deburred
3	Finish	Linish No. 4
4	Fixings	Tamperproof "Torx" screws
5	Buttons	US91-15 compact round metal having tactile and braille, with black pressel face and white/green illumination and vandal proof.
6	Landing button location	The location of buttons shall be between 1050mm and 1200mm from floor level.

## 5.9. Exclusion of Door Close Button

A door close push button for the purpose of closing the doors when they are fully open shall be excluded.

## 5.10. Door Open Button

A door open push button shall be provided which shall remain effective when the lift is standing within a door zone. By pushing the button the doors shall re-open if they are closing or closed and remain open for a pre-set period.

No control or security features shall be arranged to override the operation of the door open button, which might lead to the possibility of trapping passengers within the lift car.

## 5.11. Car Arrival Indicator

Indicators shall be provided at each landing, which shall illuminate an adjustable period before arrival, between 2 and 5 seconds.

## 5.12. Out of Service Function

### 5.12.1. Out of Service Key Switch

Out of Service key switches shall be provided at the designated location(s) in the lifts car and at the designated landing(s). When the switch is activated, all landing calls shall be cancelled and the Out of Service Indicator shall illuminate on each landing. All existing car calls shall be answered and no new call shall be accepted.

After all existing car calls have been answered the lift shall return to the designated floor and park with the doors closed.

### 5.12.2. Out of Service Indicator

An indicator shall be provided at all floors indicating that the lift is out of service. Any control feature that prevents normal use of the lift to passengers shall automatically activate this indicator.

This feature shall incorporate a battery backed emergency power supply to enable indication even in the event of mains power failure or disconnection.

The out of service indicator shall be an illuminated graphic “OUT OF SERVICE” sign, fitted within the landing call plate.

### **5.13. Fire Service Operation**

Where required as determined in Part E3 (Lift Installations) of the National Construction Code, an additional key switch shall be provided at the ‘Main Terminal Floor’ for Fire Service Operation. Fire Service Operation shall be operable only by the use of a key that is removable in either the ‘OFF’ or the ‘ON’ position. [The Technical Manager must replace the term ‘main terminal floor’ with the name of the floor to which Fire & Rescue NSW will attend when responding to an emergency].

A continuous audible signal in the car shall sound and a visual signal shall be displayed in the car identifying an “FIRE SERVICE OPERATION” status.

All car calls shall then be cancelled and no new ones shall be accepted until the car has separated from any group control and travelled to the floor at which the fire service operation call was registered.

If at the time of registration of the fire service operation call, the lift is travelling away from the destination floor, it shall stop at the nearest floor in the direction of travel without opening the car doors and return immediately to the destination floor.

In the event of the fire detector in the lift shaft being activated, the lift car shall complete its current operation and then will not respond to further car calls. It is anticipated that in response to the fire detection event, the next lift operation will be ‘Fire Services Operation’ under the authority of the Fire and Rescue NSW. This lift operation may be superseded by the project Fire Safety Engineering strategy. As part of the design development the Fire Safety Engineering strategy should be consulted prior to confirming lift operations.

### **5.14. Electronic Passenger Detector**

An electronic passenger detector shall be provided effective when the lift is standing at a floor level with the doors open or closing.

Passenger movement within the detection zones shall initiate an adjustable delay in the remaining door open time if the door is open, (initially set to 2 seconds), or shall reopen a closing door.

### **5.15. Emergency Battery Drive (UPS/APS)**

A facility shall be provided to move the lift car to a floor when the car has stopped between floors due to a failure of the normal power supply. The emergency operation is performed at low speed and all safety functions shall remain operational to prevent an unsafe condition occurring. When the car has reached a floor the doors shall be opened.

The lift shall return into normal service automatically following re-instatement of the power supply.

The emergency battery drive unit shall be designed so that it is protected from damage resulting from harmonics and poor quality permanent electrical supply power and characteristic of the rail environment.

### **5.16. Emergency Manual Operation**

When the lift is being raised or lowered manually an audible and visual signal shall be activated when the lift passes through the unlocking zone. The indicator shall be easily seen and heard by personnel carrying out such emergency procedures.

This device shall be powered by a battery backed power supply to ensure correct operation in the event of a power failure.

The manual raising or lowering procedures shall be clearly described on a non-fade notice, mounted permanently in a prominent position in the machinery space.

The marking of suspension ropes is not acceptable for identifying the location of the lift car at a floor level.

### **5.17. False Car Call Cancel**

Provision shall be made to detect the presence of, and cancel false car calls, either by comparison of the number of calls to the load being carried or by the non-operation of an infra-red detection device following a predetermined number of car stops, or a combination of both.

### **5.18. Motor Start Counter**

A motor starts counter shall be provided. The counter shall provide data on the number of starts per hour, number of door operations, run-time of the lift. The counter shall record information from the time of commissioning of the lift, and shall continue to collect data throughout the life of the lift.

### **5.19. Overload Control**

If the car load exceeds the lift capacity by more than 10% (or a minimum of 75kg) the car shall be prevented from starting and the doors shall remain open.

A visual signal shall illuminate in the car-operating panel and in addition a buzzer shall sound.

### **5.20. Voice Announcement in Lift Car**

The lifts shall be provided with automatic audible information in the lift cars.

The volume of the announcement shall be adjustable between 35dB(A) and 55dB(A). Each time the lift stops in response to a car or landing call, the floor shall be orally identified in English. A tone shall also sound when the lift arrives at a floor. The announcements must correspond with the destination descriptions on the car operating panels..

### **5.21. Water Sensor in Pit**

A sensor shall be provided in the lift pit, which detects the presence of water.

When the sensor is activated, a signal shall be provided via voltage free contacts, which shall enable operation of an alarm. When the sensor is activated the lift shall proceed to the top floor, evacuate any passengers then remain there with the door closed. The lift shall remain unavailable for passenger use until the lift pit sensor no longer detects water.

### **5.22. Shaft Fan Sensors**

#### **5.22.1. Fan Filter Blocked Sensor**

An industry standard magnahelic gauge shall be fitted to the shaft fan to detect the state of the shaft fan filter. The shaft fan controller shall indicate a blocked fan filter through this

sensor to the lift controller and the remote monitoring system via a relay inside the lift controller.

The Main Works Contractor shall provide the sensor and relay with the wiring to be completed by other trades.

#### 5.22.2. Fan Motor Thermal Overload Sensor

A sensor shall be provided which detects when the shaft fan motor is experiencing a thermal overload due to excessive current draw. The shaft fan controller shall indicate a motor thermal overload through this sensor to the lift controller and the remote monitoring system via a relay inside the lift controller.

The Main Works Contractor shall provide the sensor and relay with the wiring to be completed by other trades.

## **6. Interfacing System Requirements**

### **6.1. CCTV Camera in the Car**

The Main Works Contractor shall install CCTV cabling between the power /controls panels and the lift car to the requirements of the CCTV provider. The CCTV provider will supply and install the camera.

### **6.2. Alarms and Communication Systems**

#### 6.2.1. Emergency Alarm Devices

An emergency signal shall be provided, which shall be powered by a standby battery not used for any other purpose.

While the alarm button is pressed, the button shall illuminate and a reassurance sounder fitted on the lift car shall be clearly audible from within the lift car, to indicate that the emergency signal is functioning.

The alarm system shall be capable of being extended to a central alarm panel and a voltage-free contact with suitable terminals shall be provided for this purpose in the machinery space.

#### 6.2.2. Hand-set Free Emergency Phone Systems

The lift manufacturer shall provide a 'hand-set free' communication system.

The hand-set free emergency communication system will be automatically activated following manual push button actuation of the emergency alarm.

Continuous actuation of the emergency alarm button for a period of greater than 3 seconds shall initiate a capability to connect to two remote locations.

Telephone buttons, speakers and microphones, shall be located in the car-operating panel. A suitably descriptive notice as approved by the Principal shall be engraved in the car informing passengers how the 'hands free' telephone is operated. The wording, size and location of the notice shall be as per AS1735 - Part 1.

The Main Works Contractor shall provide all wiring from the telephone to a connection terminal, including a travelling cable with a termination point in the lift machinery space.



### **6.3. Remote Alarm and Monitoring System**

The Contractor shall provide connection to the remote alarm and monitoring system including:

- A termination in the controller for an interface to the Principal's systems via
  - A dedicated I/O board and/or
  - A dedicated communication port or connection, indicatively RS 232, RS 485 or RS 422

Agreed lift controller data and signals shall be allowed to be communicated to the Principal's systems for purposes including operational monitoring, data logging and provision of remote alarms and alerts.

Prior to installation, details of the termination to the controller shall be submitted to the Principal's representative for review and approval.

The Main Works Contractor is to design, supply and install appropriate communication equipment for the lifts' fault monitoring system (including a connecting cable between the lift and staff room, containment, sensors, buzzer and lights) in the station staff office.

### **6.4. Traffic Handling and Diagnostic Data**

Voltage free contacts shall be provided at the lift controller to allow the Building Management System installed at Station to indicate "lift alarm activated", "lift failed to start" and "shaft ventilation filter blocked" alarm conditions separately for each lift. The voltage free contacts will be connected into the Building Management System by others.

### **6.5. Communication Junction Box**

The Main Works Contractor must provide a Communication Junction Box to house interface connections between the Lift and External Services including but not limited to:

- CCTV interface connections
- Remote Alarm interface connection
- Emergency phone interface connection
- Remote monitoring interface connection
- Smoke detector interface connection
- Shaft Vent Fan fault interface connection
- Any other external interface connections

## **7. Equipment Workmanship and Materials**

### **7.1. General**

The Main Works Contractor shall permit the Principal's Representative free access to the Site and any relevant manufacturer's premises during working hours and by agreement. Facilities are to be made available for inspection of materials, assemblies, method of manufacture and quality control of the process.

Unless otherwise described, all materials shall conform to the appropriate Australian Standard. The Contractor shall furnish the Principal's Representative, upon request, with certificates or letters from the prime material manufacturers and Contractor proving that the materials to be used do in fact conform to such Standards and the Specification, and confirming that they have "no objection" to the use of their materials. Such certificates and letters shall be incorporated into the Operation Manuals.

The Contractor shall obtain the total quantity of each material from the same manufacture with proven experience of manufacture of similar materials.

The Contractor shall, upon request, submit a list of all materials proposed which are not specifically described in this Specification.

### **7.2. Fixing Devices**

The Main Works Contractor shall allow for all necessary fixing devices including secondary support steels, framing, bearers, fillets and all preparation in plugging and screwing or cutting for anchor bolts or for other fixing whatsoever necessary.

The Main Works Contractor shall provide for an appropriate combination of all working tolerances in the elements of the Works, in accordance with the relevant Australian Standard, as well as the design tolerances in the work, and shall provide for all necessary adjustments to enable the lifts to be fitted.

### **7.3. Fabrication**

The material used in the fabrication shall be of a type to achieve the required performance and appearance.

Methods used in the fabrication shall be selected to achieve the specified appearance and performance. Methods used shall be based upon the use of suitable equipment and experienced personnel.

Method statements shall contain control procedures to ensure compliance with the requirements of this Specification.

Upon request from the Principal's representative, control samples shall be produced to adequately demonstrate the standard of workmanship and finish required. Where appropriate, range samples shall be established to assist in quality control procedures.

### **7.4. Accuracy and Compliance**

The Contractor shall fabricate and install all assemblies in accordance with the shop component and assembly drawings.

The Contractor shall pre-assemble and carry out as great a proportion of the work as possible within a controlled factory environment.

## **7.5. Workmanship**

The standard of workmanship for all the Works shall be to industry best practice and in accordance with relevant standards, codes of practice and Laws, and strictly in accordance with the shop drawings. The Contractor is deemed to be fully conversant with all relevant Australian Standards.

Workmanship for all construction and component assemblies shall be of the highest standards in every respect. Work shall be true to detail with sharp, lean continuous profiles and surfaces straight and free from defects, dents, marks, cracks, indentations, distortions, waves, scratches or flaws of any nature impairing strength or appearance and fitted with proper joints and intersections and with specified finishes.

Rejection of workmanship shall be at the discretion of the Principal's Representative.

When assembled, any moving parts shall move freely without binding.

All fixings that are visible to lift users shall be either countersunk or of a decorative nature unless otherwise shown on Drawings, or otherwise specified or approved.

Junctions of identical elements shall be mitred, unless otherwise shown on Drawings, or otherwise specified or approved.

No modification or adaptation of the agreed details may be undertaken without approval from the Principal's Representative.

The Contractor shall not cut, drill or otherwise alter the work of other trades to accommodate the Works unless such work is clearly identified on the Drawings.

Whenever such alteration is required, The Contractor shall obtain the Principal's Representative 's advice of "no objection".

### **7.5.1. Appearance**

The finished work is to be entirely free from loose material, chips, marks or any imperfection visible to the naked eye. Localised "making good" is not acceptable.

### **7.5.2. Firmness and Solidity**

The whole system shall be sturdy, rigid, firm and free of vibration, rattling, squeaking and other noises.

## **7.6. Materials**

### **7.6.1. Castings, Extrusions or Profiles**

All castings, extrusions or profiles are to be of adequate thickness and strength to meet the specified design life, structural and durability requirements and eliminate any risk of distortion in the finished surfaces. The thickness of such elements shall be sufficient to ensure their complete rigidity in the lengths required in the final installation.

### **7.6.2. Sealant**

The Contractor shall satisfy itself that any form of sealant is compatible with the adjacent elements of construction in each particular location. All excess sealant shall be properly cleaned from exposed surfaces.

Installed sealant shall provide a smooth continuous surface to the full width of the joint and shall be tooled flat. The sealant colour shall be approved by the Principal's Representative.

Sealant installation is to be strictly in accordance with the sealant manufacturer's instructions. Rejection of finished sealant and re-installation shall be at the discretion of the Principal's Representative, and any costs incurred will be entirely borne by the Contractor.

### 7.6.3. Glass

All glass shall be of sufficient thickness and Annealed Laminated Safety Glass (11.7mm minimum thickness 2 layer bonded) as appropriate to comply with AS1735.2 Appendix "H" requirements.

All glass shall provide undistorted vision and reflection through clear sections and be free from roller wave.

The location of any safety markings required on glazed panels shall be approved by the Principal's Representative. The markings if concealed by a fixing method shall be demonstrated prior to such concealment and supporting documentation shall be provided to ensure compliance with all relevant codes standards and Laws can be confirmed.

All surfaces shall be thoroughly cleaned before glazing to ensure that frames and glass are free from dust, moisture, frost, oil, grease or other foreign substances.

All glass panels are to be fully framed. Setting blocks, corner blocks and spacers shall be used as required to properly install the glass and maintain the performance criteria. All necessary protective measures shall be taken to prevent mechanical damage of glass, any damaging splashes or weld spatter etc.

All glass shall be fully framed on all sides with stainless steel strips, and shall have vandal proof fixings.

All glass used in car and landing doors shall have a frosted effect to a height of 1100mm.

All glass shall be easily accessible for cleaning and replacement. Ease of maintenance must be considered in design to allow the replacement of glass during regulation day to day operations without extensive disturbance to passengers.

### 7.6.4. Security Film on Glass

Security film shall not be used on glass unless where it is required for the reduction of heat load. Where security film is used on glass, this shall not be installed on any surface accessible to the public or lift passengers. Film may only be used on the internal shaft facing face of the lift car. The decision on the requirement for security film shall be project specific and made by the Technical Manager of the Principal's Representative.

The security film shall comply with the Grade "A" – Impact Component Level of AS/NZS 2208 and relevant fire standards.

The window film must be installed in full compliance with the manufacturer's recommendations and meet the following minimum manufacturing and performance characteristics:

- Be manufactured using a micro layered manufacturing technique;
- Be optically transparent, not causing any reflection or refraction;
- Have an abrasion resistance of <5% in accordance with Standard ASTM D 1044;

- Meet Grade 'A' compliance with AS/NZ 2208 1996;
- Have tensile strength of at least 200Mpa;
- Where the security film is replaced on site, the security film must run to the edge of the glass and be held with the glass in the support frame; and
- Where the reduction of heat load is also a requirement the film must reduce Ultraviolet Radiation (UV) by at least 95%.

#### 7.6.5. Safety Stickers on Glass Doors

Safety stickers in accordance with the Principal's approved design must be installed on the non-accessible face (internal shaft facing face) of all car doors and landing doors.

## **8. Commissioning requirements**

The Contractor shall provide all materials necessary to form a complete installation and carry out such tests, adjustments and commissioning as required to give an effective working installation.

The Contractor shall have included for all costs to be incurred in complying with the requirements of this Specification.

The Contractor shall supply all materials, instruments, test equipment, software, any other necessary items required for the performance of all tests required to be undertaken as part of the Contractor's activities. The 1 and 3 phase power supply shall be provided by the Main Works Contractor. The Contractor shall provide evidence to the Principal's Representative that the instruments have been recently calibrated.

Without limiting any part of this Development Agreement, should any test be carried out outside the Sydney Metropolitan Area and testing of equipment and systems not be successful, or inconclusive, the Contractor shall pay all associated costs for the Principal's Representative to attend all further retest(s) / reinspection(s) necessary to demonstrate compliance with the Development Agreement.

The Contractor shall test and commission Vertical Transportation Works. This shall include, but is not limited to the lifts.

### **8.1. Inspections and Tests**

#### **8.1.1. Factory Test**

The Contractor shall include costs and make arrangements for any of the following works tests and inspections, in the manufacturers' premises, as identified in the schedules:

- An examination of selected machined parts of the lift before assembly and of electrical component parts to check freedom from latent defects.

#### **8.1.2. Site Acceptance Tests**

The Contractor shall test and examine the whole installation to its own satisfaction. The Contractor shall then carry out tests, to be witnessed by the Principal's Representative, to demonstrate compliance with this Specification and for operational and safety compliance.

These tests and examinations shall comply with the requirements of AS 1735 part 10. The results of the tests shall be recorded on a separate test and examination certificate for each lift. The Contractor shall provide these certificates to the Principal's Representative.

In particular, acceptance criteria and hold and witness points shall be nominated for the performance requirements set out in section 5.0 of this specification.

##### **8.1.2.1. Dynamic Tests on Electric Traction Lifts**

Notwithstanding the requirements of AS1735 part 10, the witness tests shall include the following specific dynamic tests:

- motor current readings shall be taken and recorded in the up and down direction with empty car, balanced load and full load in the car;
- downward operating safety gears shall be tested under 100% load with the safety gear operated either by over speed or via a test groove provided on the governor for

the purposes of verifying the correct operation of the safety gear and over speed assemblies as installed;

- manual activation of the governor shall satisfy the requirements of this Specification;
- upward over speed control equipment shall be tested with an empty lift car travelling upward in an over speed condition or via a test groove on an over speed governor if provided;
- car buffers shall be tested by running the lift car carrying 100% rated load, at "Contract Speed" (see the Schedules to this Section) onto the buffers; and
- counterweight buffers shall be tested by driving the empty car upward so that the counterweight strikes the buffers at Contract Speed.

The Main Works Contractor shall provide a lift shaft capable of withstanding all loads imposed by the lift, including dynamic tests. The Main Works Contractor is responsible for damage to equipment or property occurring from these tests and shall subsequently carry out all necessary remedial works at its own expense.

#### 8.1.2.2. Functional Tests

The operational functions of all lifts shall be demonstrated to the Principal's Representative, including but not limited to:

- all push buttons, indicators and sounders, gongs and other like items;
- all key switches and functions controlled thereby;
- special control features such as fire alarm recall, emergency recall switches, out of service switches and other such features; and
- in the case of there being two or more lifts operating under a group control arrangement, this facility, together with any other special traffic handling features, shall be demonstrated;
- smoke parking of the lift in the event of a smoke alarm;
- emergency evacuation function in the event of mains electrical power loss.
- lift shaft mechanical ventilation

#### 8.1.3. Test Certificates

At the request of the Principal's Representative, the Contractor shall make available copies of any manufacturers' test and type test certificates.

#### 8.1.4. Testing Personnel and Equipment

All testing and commissioning shall be carried out by suitably qualified testing personnel, experienced in such work and using suitable instruments.

All instruments and test equipment shall be calibrated in accordance with the Contractor's quality assurance procedures and at the request of the Principal's Representative, The Contractor shall make available copies of any calibration certificates for test equipment used during commissioning.

#### 8.1.5. Putting Into Service

The Contractor shall successfully complete the commissioning of the Vertical Transportation Works and rectify any defects identified during commissioning to the satisfaction of the

Principal's and rectify any Defects identified during commissioning to the satisfaction of the Principal's Representative, prior to putting the lift(s) into service.

Prior to any lift being put into service, in accordance with the Work Health & Safety Act 2011 and Work Health & Safety Regulation 2011, the Main Works Contractor shall clean the machinery spaces, lift wells and cars of all debris and leave the complete installation in the state of cleanliness expected of a new product.

The installation of the lifts when completed shall not be used prior to issue of a declaration of conformity in accordance with the Work Health & Safety Act 2011 the, Work Health & Safety Regulation 2011 and registration with WorkCover NSW.

The Contractor shall provide operation instructions and manuals to the satisfaction of the Principal's Representative.

### **8.2. Operating and Maintenance Manual**

The Main Works Contractor is required to provide operating and maintenance manuals, shop drawings, electrical wiring diagrams and all relevant asset references and technical data to the Principal's Representative.

### **8.3. Hazard and Risk Assessment (AEA National Code of Practice)**

The Contractor is required to provide a Hazard and Risk Assessment for Lifts addressing all applicable items in the AEA National Code of Practice to the Principal's Representative.

### **8.4. Maintenance Spares**

The Contractor is to include the provision of sufficient spares for each lift type to minimize downtime associated with common faults. A list of such spares is provided below:

<b>Item</b>	<b>Description</b>	<b>Number required per lift type</b>
1	Landing Door RH	2
2	Landing Door LH	2
3	Car Doors RH	2
4	Car Doors LH	2
5	Car Glass Panels	4
6	Car Buttons	6
7	Landing Buttons	2
8	Door operator	2
9	Door protection devices	4
10	Car lighting	15
11	UPS/APS emergency backup system (complete unit)	1
12	Car and Landing Indicators	2
13	Voice Annunciator System	2
14	FST Controller board	1



<b>Item</b>	<b>Description</b>	<b>Number required per lift type</b>
15	Inverter	1
16	Brake chopper unit	1
17	Motor encoder	1
18	Shaft position encoder	1

# Appendix A – Schedules

## Schedule A - Lift Details

**Lift: No** – “Number of lifts and location - Project Specific”

**NOTE: The details provided below are indicative only. The final details will be subject to detail design and agreement between TfNSW, Main Works Contractor and the Contractor.**

Description	Details	Notes
Lift Type	Passenger/Goods Machine-Room-Less (MRL)	Machine Room Less (MRL) (Lift car sill, landing door sill and car floor strengthened to be capable of transporting motorised (500kg) equipment up to the lift car rated load)
Lift Car Capacity	<i>Project Specific</i>	<i>Project Specific</i>
Internal car width	<i>Project Specific</i>	<i>Project Specific</i>
Internal car depth	<i>Project Specific</i>	<i>Project Specific</i>
Internal ceiling height	<i>Project Specific</i>	<i>Project Specific</i>
Lift shaft width	<i>Project Specific</i>	<i>Project Specific</i>
Lift shaft depth	<i>Project Specific</i>	<i>Project Specific</i>
Lift pit depth	<i>Project Specific</i>	<i>Project Specific</i>
Lift shaft head room	<i>Project Specific</i>	<i>Project Specific</i>
Landing/Car door opening width	<i>Project Specific</i>	<i>Project Specific</i>
Mass of applied lift car finishes	<i>Project Specific</i>	<i>Project Specific</i>
Rated speed	<i>Project Specific</i>	<i>Project Specific</i>
Travel	<i>Project Specific</i>	<i>Project Specific</i>
Total number of stops	<i>Project Specific</i>	<i>Project Specific</i>
Number of landing entrances	<i>Project Specific</i>	<i>Project Specific</i>
Power / Drive system	Gearless VVVF	
Motor starts per hour	240 +	
Control System	Directional Collective	
Levelling accuracy	+/- 3.0 mm	
3 phase mains supply voltage	415 Volts	AS/NZS 3000, Clause 1.8.2 (c)
Single phase supply voltage	240 Volts	+ 10% - 6% (in accordance with AS 60038)
Counterweight safety gear required (Y/N)	No	
Ventilation fan required	Yes	Thermostatic Control
Climate control required, air conditioning	Yes	Thermostatic Control
Low Use Functionality	Yes	During periods of sustained inactivity and, after a predetermined time of no lift movement, the lift car shall automatically park at lowest level served.
Work tests and inspection required	Yes	Include all costs for visiting the Works for up to four (4) members of the project team.

Schedule B – Lift Traffic Handling and Performance Data

Function	Performance	Comments
Minimum door opening time	1.5 Seconds	Adjustable
Minimum door closing time	2.5 Seconds	Adjustable
Landing Call Dwell time	6-8 Seconds	Adjustable
Main Lobby Dwell time	8.0 Seconds	Adjustable
Car Call Dwell Time	6-8 Seconds	Adjustable

## Schedule C - Control Features

Feature	Required Y/N	Notes
Advance door opening	No	
Attendant service	No	
Audible information feature	Yes	
Automatic car ventilation operation	Yes	Key operated from main car operating panel.
Automatic re-levelling	Yes	
Station life support system recall	No	
Call registered indicator	Yes	
Dual push button illumination	Yes	White (non-activated state), Green (activated state)
Car arrival gongs	Yes	
Landing lanterns	Yes	
"Car Arrival" indicator	Yes	
"Car Approaching" indicator	No	
"Lift In Use" indicator	No	
"Out Of Service" indicator	Yes	
Car calls backwards	No	
CCTV camera in the car	Yes	
Convention feature	No	
Door close button	No	Must be excluded.
Door open button	Yes	
Door opening with extended hold time	No	
Door open sounder	No	
Earthquake operation	No	
Electronic passenger detector	Yes	
Emergency battery drive	Yes	
Emergency power drive	No	
Emergency recall operation	Yes	
Evacuation Control	No	
False car call cancel	Yes	
Fire Service Control	Yes	
Integrated access control	No	
Ladder contact	No	
Motor start counter	Yes	
Out of service switch	Yes	
Overload control	Yes	
Priority service in car	Yes	
Security access control	No	
Car Voice Annunciation	Yes	
Induction loop system	No	
Water sensor in pit	Yes	
Child Protection System	No	
Break Glass Detector	No	

**Schedule D – Lighting**

Component	Fitting Type	Glass Type	Material	Light Colour	Special Requirements
Lift car lighting	LED Downlights (recessed with glass diffuser)	Opal	Glass / Stainless Steel 304	4000K	Vandal Resistant

\*Lux Levels: 200 lux horizontal and 150 lux vertical illuminance required 1.5m above the car floor

## Schedule E - Car Finishes

Component	Material	Finish	Pattern	Colour	Protection to Finishes
Full mock up of lift car required	No				
Lift car suspended ceiling	Detail Design drawing required setting out lift ceiling specification and co-ordination				
Lift car left side wall (Upper)	5WL Textured Stainless Steel 304 panel		5WL Textured Stainless Steel		
Lift car left side wall (Lower)	5WL Textured Stainless Steel 304 panel		5WL Textured Stainless Steel		
Lift car right side wall (Upper)	5WL Textured Stainless Steel 304 panel		5WL Textured Stainless Steel		
Lift car right side wall (Lower)	5WL Textured Stainless Steel 304 panel		5WL Textured Stainless Steel		
Lift car flooring	Stainless Steel 304 Checker-plate				Tread plate
Lift car door(s)	Framed Full Length Glass				Privacy Film – Floor to 1100mm
Skirting	Stainless Steel 304	Satin Linished			
Lift car sill	Heavy Duty				
Landing entrance architraves	Stainless Steel	Satin Linished			
Landing entrance transom panels	Framed Glass (full height 5WL stainless steel framed glass panels with opaque treatment to 1100mm above sill height.)				
Landing doors	Framed Full Length Glass				Privacy Film – Floor to 1100mm *Carpark (lift 5) ONLY, landing entrance doors must have fire rated glazing
Landing sills	Heavy Duty – Full width support angle				
Car operating panel(s) x 2	Stainless Steel 304	Satin			
Car push buttons	US91-15 compact round metal having		Round		Vandal resistant.

Component	Material	Finish	Pattern	Colour	Protection to Finishes
	tactile and braille, with black pressel face and white/green illumination and vandal proof.				
Car position indicators	Colour LCD Screens				Vandal Resistant
Car position indicator plates	Stainless Steel 304	Satin			Vandal Resistant
Key switches in car	Manufacturer's	Standard			Vandal Resistant
Landing push buttons	US91-15 compact round metal having tactile and braille, with black pressel face and white/green illumination and vandal proof.		Round		Vandal resistant. Refer Specification
Landing push button plates	Stainless Steel 304	Satin			Vandal Resistant
Landing lantern plates	Stainless Steel 304	Satin			Vandal Resistant
Lift Well Flushing	Stainless steel 304	Satin			
Well dividing screens	N/A				
Counterweight screens	To Specification			Safety Yellow	
Car roof handrails	To Specification			Safety Yellow	



**Schedule F – Car and Landing Equipment**

The colour and finish to equipment shall be manufacturers standard unless indicated otherwise in the schedule below.

<b>Equipment</b>	<b>Colour</b>	<b>Finish</b>	<b>Comments</b>
Car doors – panels	Framed Full Length Glass	Matte	
Car doors – top track assembly	Black	Matte	
Car door toe guard	Black	Matte	
Lift car platform	Black	Matte	
Car sling	Black	Matte	
Car pulleys	Safety Yellow	Matte	
Car roof balustrades	Safety Yellow	Matte	
Landing doors – panels	Framed Full Length Glass	Matte	
Landing doors – top track assembly	Black	Matte	
Landing fascia panels/toe guards	Black	Matte	

## Schedule G – Machine Equipment

Equipment	Colour	Finish	Comments
Lift machine			Manufacturer's Standard
Lift lowering device			Manufacturer's Standard
Traction & diverter sheaves	Safety Yellow	Matte	
Machinery guards			Manufacturer's Standard
Over speed governor guard			Manufacturer's Standard
Control panels			Manufacturer's Standard
Machine & liftwell Trunking / Conduit	Black	Matte	To match shaft primary structural steels

Additional notes and special requirements:

N/A

## Schedule H – Lift Shaft Equipment

Equipment	Colour	Finish	Comments
Counterweight screen	Safety Yellow		
Pit ladder	Galvansed	Matte	Galvanised steel. To match primary structural steels
Sole plates / buffers stands	Galvanised.		Galvanised steel.
Pit sump cover	Galvanised		Galvanised steel.
Counterweight frame and weights	Safety Yellow		
Counterweight pulley	Safety Yellow		
Guide rails	Black	Matte	
Guide brackets	Black	Matte	To match primary structural steels
Well dividing steels	N/A		
Well dividing screens	N/A		
Overhead & Secondary steelwork	Black	Matte	To match primary structural steels
Guide footing & buffer stools	Black	Matte	To match primary structural steels
Buffers			Manufacturer's Standard
Rope compensation units	N/A		
Governor tension frame			Manufacturer's Standard
Lift pit	Black	Matte	To match primary structural steels
Lift well	Black	Matte	To match primary structural steels
Well brackets	Black	Matte	To match primary structural steels
Lift car brackets	Black	Matte	To match primary structural steels

Additional notes and special requirements:  
N/A

**Exhibit B - Chain of Responsibility Standard**



Transport  
for NSW

# Chain of Responsibility Standard

ST-487

Applicable to:  
**Transport for NSW**

TfNSW Integrated Management System  
Element 11: Procurement and Contract Management

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## Table of Contents

<b>1.</b>	<b>Purpose</b> .....	<b>3</b>
<b>2.</b>	<b>Scope</b> .....	<b>3</b>
<b>3.</b>	<b>Definitions</b> .....	<b>3</b>
<b>4.</b>	<b>Accountabilities</b> .....	<b>3</b>
<b>5.</b>	<b>Chain of Responsibility (CoR) Overview</b> .....	<b>5</b>
5.1.	What is CoR? .....	5
5.2.	CoR and TfNSW .....	5
5.2.1.	Core Elements .....	5
5.2.2.	Legal liability .....	6
5.2.3.	Reasonable Steps.....	6
5.3.	Procurement Requirements .....	7
5.4.	National Heavy Vehicle Accreditation Scheme.....	7
5.5.	The NHVR Performance-Based Standards (PBS) Scheme.....	7
5.5.1.	Manufacturers' Self-certification .....	8
5.6.	CoR Liabilities .....	8
5.7.	Accredited Training .....	8
5.8.	Record Keeping .....	9
<b>6.</b>	<b>Related Documents and References</b> .....	<b>9</b>
<b>7.</b>	<b>Superseded Documents</b> .....	<b>9</b>
<b>8.</b>	<b>Document History</b> .....	<b>9</b>
<b>9.</b>	<b>Appendix A: Core Elements</b> .....	<b>10</b>

# 1. Purpose

The purpose of this Standard is to outline TfNSW’s commitment to the Chain of Responsibility (CoR). The CoR ensures all stakeholders in the supply chain have equal responsibility in maintaining the compliance with the Heavy Vehicle National Law (HVNL).

## 1.1.1.1. Scope

This standard applies to work carried out work on behalf of Transport for NSW (TfNSW). This includes work undertaken for and on behalf of TfNSW by Contractors/ Delivery Partners, and other parties who form a part of the TfNSW Supply Chain.

A worker or individual can risk of a breach of the HVNL even if they have no direct role driving or operating the vehicle. Directors, Partners, and other managerial individuals are held accountable for the actions of their workers.

# 2. Definitions

All terminology in this Standard is taken to mean the generally accepted or dictionary definition, with the exception of the following terms which have a specifically defined meaning:

Definitions	
<b>CoR</b>	Chain of Responsibility.
<b>Heavy vehicle</b>	Any heavy vehicle (including trucks, buses and plant) over 4.5 tonnes gross vehicle mass (GVM).
<b>HVNL</b>	Heavy Vehicle National Law (NSW).
<b>NHVAS</b>	National Heavy Vehicle Accreditation Scheme
<b>NHVR</b>	National Heavy Vehicle Regulator (NHVR)
<b>PBS</b>	Performance Based Standards.
<b>Supply Chain</b>	All parties involved in the operation of heavy vehicles for and on behalf of TfNSW, including: <ul style="list-style-type: none"> <li>- Operator</li> <li>- Employer</li> <li>- Scheduler</li> <li>- Loading manager/loader/unloader</li> <li>- Packer</li> <li>- Dispatcher (consigner)</li> <li>- Driver</li> <li>- Receiver (consignee)</li> <li>- Refer to CoR Liabilities</li> </ul>

# 3. Accountabilities

The Director Safety, Quality, Environment, and Risk is accountable for this Standard including authorising the document, monitoring its effectiveness and ensuring a formal document review.

Direct Reports to the Secretary are accountable for ensuring the requirements of this Standard are implemented within their area of responsibility.

The RACI (Responsible, Accountable, Consulted, Informed) method describes the participation by various roles in developing systems, documentation and implementing tasks or deliverables across the department, clarifying roles and responsibilities in multi-divisional departmental services, business and projects processes.

RACI Abbreviations	Definition
<b>R</b>	1. <b>Responsible:</b> The person responsible for the system, document or tasks implementation or publication.
<b>A</b>	2. <b>Accountable:</b> The person accountable for the system, document or task owner with ultimate accountability for implementation or publication.
<b>C</b>	3. <b>Consulted:</b> The persons or stakeholders consulted before the system or document is implemented or published.
<b>I</b>	4. <b>Informed:</b> The persons or stakeholders informed about the system or document development, review, implementation and publishing.

	Director Safety Quality Environment and Risk	Director Reports to the Secretary	Procurement/Contract Offices	Principal Contractors
Ensure requirements are applied with their area of control		A		
Development and maintenance of this CoR Standard for TfNSW	A	C	C	I
Where necessary, provide Contractors with access to current TfNSW documents (including revisions).	C		R	I
Monitor Contractor compliance with CoR requirements.	C	I	R	C/I
Develop and implement CoR management plans for areas of TfNSW responsibility.	C	R		
Monitor and record evidence of CoR compliance.	I	I	R	
Ensure Contracts contain CoR requirements as per this Standard.			R	C



## 4. Chain of Responsibility (CoR) Overview

### 4.1. What is CoR?

The principle behind CoR is simple: *Any Party who has control in the transport chain can be held responsible and may be made legally liable.*

Heavy Vehicle National Law (NSW) 2013 was introduced to provide a single set of NSW laws, including CoR legislation, which targets any party in the Supply Chain based on the three principles of:

1. **Control:** Corporate entities, directors, partners, and managers are accountable for the actions of people under their control.
2. **Responsibility:** CoR ensures that all parties in the Supply Chain shares equal responsibility for ensuring breaches of road transport law do not occur.
3. **Legal Liability:** The actions, inactions, or demands of the responsible persons in the Supply Chain are held legally liable.

### 4.2. CoR and TfNSW

TfNSW recognise its contribution in the supply chain and shall ensure that its terms of consignment or work/employment contracts will not result in, encourage, reward, or provide an incentive for the driver or other party in the supply chain to break any road transport laws. We shall also encourage other parties in the supply chain to be aware of their legal obligations and comply with them at all times.

#### 4.2.1. Core Elements

CoR takes particular aim at breaches of the compliance obligations relating to.

- Speeding Compliance.
- Fatigue Management.
- Dimension Requirements.
- Mass Limits.
- Loading restraint requirements.
- Roadworthiness – **Note:** Roadworthiness is not a core CoR provision.

Refer to [Appendix A: Core Elements](#) for more information regarding compliance.

##### 4.2.1.1. TfNSW and the Core Elements

The use of heavy vehicles brings with it obligations on all parties in the supply chain to ensure their safe and compliant operation. In order to achieve compliance, TfNSW is committed to ensuring systematic controls are in place to mitigate risks associated with the following CoR elements:

- **Fatigue management:** ensuring scheduling and rest breaks, monitoring of work and driving hours, training and awareness sessions for relevant personnel.

- **Speeding compliance:** ensuring scheduling, policies, procedures and ongoing education.
- **Loading requirements:** ensuring equipment design, policy, procedures, and training for relevant staff.
- **Mass limits:** ensuring vehicle specification, vehicle-specific load patterns, load sheets and containerisation.
- **Dimension requirements:** ensuring equipment design, policy, procedures and training for relevant staff.
- **Roadworthiness:** (non-CoR core compliance) ensuring all vehicles are inspected and maintained in-line with manufacturer's requirements.

#### 4.2.2. Legal liability

Legal liability is imposed on all those in the Supply Chain who have responsibility where their actions, inactions, or demands put driver's lives and other lives at risk. All parties in the Supply Chain must take [Reasonable Steps](#) to prevent a breach.

A range of penalties (for example, warnings, improvement notices, and prohibition orders) give courts greater enforcement measures for penalising offences. They also help to prevent, persuade and target the causes of breaches to ensure a culture of compliance within the heavy vehicle industry.

#### 4.2.3. Reasonable Steps

Where TfNSW identifies that TfNSW or a Contractor/ Delivery Partner is involved in the Supply Chain, TfNSW will take reasonable steps to ensure compliance with CoR requirements. Reasonable steps include:

- (a) Audits of work schedules and work records.
- (b) National Heavy Vehicle Accreditation Scheme (NHVAS)
- (c) Reviews of business activities, processes, policies, and written instructions.
- (d) Identifying how best to manage outcomes and prevent offences.
- (e) Implementation of processes to be used in the event of unexpected delays or during occasions of unforeseen failures and associated issues.
- (f) Planning for driver rest breaks with some consideration for unexpected traffic delays when creating trip timetables.
- (g) Provision of accurate weights of containers and ensuring loads will not exceed vehicle mass or dimension limits.
- (h) Positioning and securing loads to ensure they remain stable for the entire journey.
- (i) Developing and implementing corrective and preventative actions following breaches.
- (j) Establishing a risk management plan.
- (k) Conducting training to develop staff awareness of business policies and procedures and their obligations.
- (l) Ensuring staff are not just aware of their obligations, but are actively engaged in implementing practices.

The reasonable steps will be incorporated as part of the safety assurance associated with the work to be undertaken.

### 4.3. Procurement Requirements

TfNSW will ensure that work undertaken for and on behalf of TfNSW involving the use of heavy vehicles will include the following requirements:

- (a) Complies with the Heavy Vehicle National Law (NSW).
- (b) Contractors/ Delivery Partners will develop, implement, and maintain a [CoR Management Plan](#) including ensuring contracts with transportation companies are appropriate.
- (c) Assurance/Surveillance activities are conducted to ensure speed limit compliance, driver fatigue, fitness for work of drivers, and effectiveness of maintenance of transport subcontractors.
- (d) Objectives and targets for the measurement and monitoring of CoR compliance are established.
- (e) Ensure periodic reporting takes place against CoR performance.

Delivery offices and Projects required to monitor CoR and must develop a strategy of activity to assure that CoR requirements are established and enforced Partner Contractors/ Delivery Partners.

### 4.4. National Heavy Vehicle Accreditation Scheme

Heavy haul sub-contractors working for, or providing services to Principal Contractors/ Delivery Partners must apply for and abide by the conditions of the National Heavy Vehicle Accreditation Scheme (NHVAS). Heavy vehicle operators can apply for accreditation under the following NHVAS modules:

- (a) Mass Management.
- (b) Maintenance Management.
- (c) Fatigue Management: Basic Fatigue Management (BFM).
- (d) Fatigue Management: Advanced Fatigue Management (AFM).

### 4.5. The NHVR Performance-Based Standards (PBS) Scheme

TfNSW and its Supply Chain where necessary will ensure compliance with the PBS. The PBS scheme presents the heavy vehicle industry with the opportunity to be more sustainable, achieve greater productivity and safety through innovative heavy vehicle design. The basic principle of PBS is matching the right vehicle to the right task. PBS vehicles are designed to perform their tasks as productively, safely and sustainably as possible. Vehicles under this scheme are required to meet stringent safety and infrastructure standards to ensure protection of the road system and ensure safe heavy vehicle manoeuvrability with respect to stopping, turning and travelling safely.

### 4.5.1. Manufacturers' Self-certification

Manufacturers can apply to the NHVR to become accredited to perform PBS certifications on their own vehicles. This has removed the requirement and associated cost for manufacturers to employ a third party to certify each vehicle.

## 4.6. CoR Liabilities

Table 1: Parties in the supply chain

Parties in the Supply Chain	Contractor	Haulage Company	TfNSW
Corporations, partnerships, unincorporated associations.	✓	✓	✓
Employers and company directors.	✓	✓	✓
Exporters and importers.	–	–	–
Primary producers.	–	–	–
Prime contractor or drivers.	✓	✓	–
Operator of vehicle.	–	✓	–
Schedulers of goods or passengers for transport in vehicles, and the scheduler of its driver.	✓	✓	–
Consigners, consignees, and receivers of the goods for transport.	✓	✓	–
Loaders and unloaders of goods.	✓	–	–
Loading managers (the person who supervises loading and/or unloading, or managers the premises where it occurs).	✓	–	–

## 4.7. Accredited Training

The staff (including employees, contractors, and service providers) involved in the development or implementation of CoR are required to attend the following Chain of Responsibility modules, all of which carry National Unit of Competencies:

- TLIF0001 Apply CoR Legislation, Regulations, and Workplace Procedures.
- TLIF0002 Administer CoR Responsibility Policies and Procedures.

- TLIF0003 Develop and Implement Policies and Procedures to Ensure CoR Compliance.

## 4.8. Record Keeping

Accountable Managers must ensure that processes are implemented for the management of records related to CoR awareness and compliance within their area of control. These processes must address records generated as a result of activities prescribed in the TfNSW IMS including, but not limited to:

- audit findings and reports;
- formal correspondence;
- hazard reports and safety risk management activities related to CoR;
- CoR process (including checklists and surveillance methodology); and
- CoR reports and lessons learned.

For more information, refer to the [TfNSW Document Development and Review Standard 70-ST-019](#)

## 5. Related Documents and References

### Related documents and references

[TfNSW Document Development and Review Standard 70-ST-019 Roads and Maritime Services \(RMS CoR Factsheets\)](#)

## 6. Superseded Documents

### Superseded Documents

There are no documents superseded as a result of this document.

## 7. Document History

Version	Date of approval	Notes
1.0		New IMS document.

## 8. Appendix A: Core Elements

Element	Compliance
<p><b>Speeding Compliance</b> Excessive speed is the cause or a significant contributing factor in road fatalities involving heavy vehicles:</p>	<ul style="list-style-type: none"> <li>All relevant heavy vehicles are speed limiter compliant</li> <li>All heavy vehicle drivers not only obey applicable speed limits but drive at a speed safe for the prevailing conditions. All parties must meet their obligation to take all reasonable steps to ensure that the driver does not commit a speeding offence.</li> <li>All drivers should plan their trips to ensure they comply by fatigue and speeding breaches.</li> </ul>
<p><b>Fatigue Management</b> Fatigued drivers are disproportionately represented in fatal crashes and serious injury crashes on our roads:</p>	<ul style="list-style-type: none"> <li>All drivers of fatigue-regulated heavy vehicles understand and manage the effects of fatigue in a safe manner that both meets their obligation not to drive while impaired by fatigue and is consistent with prescribed work and rest times.</li> <li>Drivers, operators and other parties develop work arrangements that take account of the effects of fatigue on heavy vehicle drivers and implement flexible and effective procedures to manage those effects.</li> <li>CoR parties meet their obligation to take all reasonable steps to ensure that the driver does not drive while impaired by fatigue or commit any other fatigue offence<sup>1</sup>.</li> </ul>
<p><b>Dimension Requirements</b> Oversize vehicles have a disproportionate impact on public infrastructure and may pose an increased road safety risk if appropriate countermeasures and safeguards are not in place or the oversize vehicle travels on roads or routes that are not suitable for the size of vehicle. The following must be considered to ensure compliance:</p>	<ul style="list-style-type: none"> <li>Drivers and operators must be made to understand their dimension compliance obligations and operate within dimension limits on the roads and routes approved for those vehicles</li> <li>Parties in the chain must have appropriate safeguards that may be required under a Notice or Permit and use the right route.</li> <li>CoR must meet their obligations to take all reasonable steps to ensure that the driver does not commit an offence<sup>2</sup> related to the dimensions of their vehicle/load.</li> </ul>

<sup>1</sup> From RMS fact sheet "Fatigue Management and the Chain of Responsibility"

<sup>2</sup> From RMS fact sheet "[Dimension Requirements and the Chain of Responsibility](#)"

Element	Compliance
<p><b>Mass Limits</b></p> <p>Over-mass vehicles have a disproportionate impact on public infrastructure and where an over-mass heavy vehicle is involved in a crash the impact and the consequences for the persons involved and the performance of the vehicle are more serious.</p> <p>Mass can also be an issue in vehicle stability. High, low density loads result in a high centre of gravity and can induce roll-overs. Further, mass, dimension and restraint can also be related because a poorly restrained and distributed load can result in instability, or it can result in road surface impacts.</p>	<ul style="list-style-type: none"> <li>• Drivers and operators to understand their mass compliance obligations and use the right vehicle for the size and type of load</li> <li>• Drivers and operators stay within mass limits on the roads and routes approved for those vehicles and masses so as to protect the asset</li> <li>• Parties meet their obligation to take all reasonable steps to ensure that the driver does not commit a mass offence<sup>3</sup>.</li> </ul>
<p><b>Loading restraint requirements</b></p> <p>Loads that affect vehicle stability or are not properly secured pose an increased road safety risk, including through an increased risk of rollover and from the consequences of a load or part of a load becoming dislodged. The following must be considered to ensure compliance:</p>	<ul style="list-style-type: none"> <li>• That drivers and operators understand their loading and load restraint compliance obligations.</li> <li>• That suitable methods of restraint are employed every time for every move.</li> <li>• CoR parties meet their obligation to take all reasonable steps to ensure that the driver does not commit a loading or load restraint offence<sup>4</sup>.</li> </ul>
<p><b>Roadworthiness</b></p> <p><b>Note:</b> Roadworthiness is not a core CoR provision.</p> <p>There are two categories of roadworthiness standard that must be met by operators:</p>	<ol style="list-style-type: none"> <li>5. First, the prescribed heavy vehicle standards.</li> <li>6. Second, the other aspects of mechanical condition of a heavy vehicle that may impact upon the safe use of the vehicle on a road. <ul style="list-style-type: none"> <li>○ The first category is prescribed by section 60(1) of the Heavy Vehicle National Law (HVNL) Section 89. HVNL creates a general safety requirement that a person must not use, or permit to be used, on a road a heavy vehicle that is unsafe. Section 89 goes beyond mere compliance with the prescribed vehicle standards and imposes a broader duty on operators and drivers to ensure that their vehicle is safe for operation on a road. This ensures that even if the prescribed vehicle standards do not cover a particular situation the obligation for safe operation is still met by operators.</li> <li>○ Roadworthiness is not directly covered by the CoR provisions but non-roadworthy and/or unsafe heavy vehicles pose an increased risk to the safety of other road users and are potentially more harmful to infrastructure and the environment<sup>5</sup>.</li> </ul> </li> </ol>

(Refer to the linked [RMS fact sheets](#) or [NVHR publications](#) for further information on each core element).

<sup>3</sup> From RMS fact sheet "[Mass Limits and the Chain of Responsibility](#)"

<sup>4</sup> From RMS fact sheet "[Loading Requirements and the Chain of Responsibility](#)"

<sup>5</sup> From RMS fact sheet "[Heavy Vehicle Roadworthiness, Vehicle Registration and Driver Licensing](#)"

**Annexure D**  
**Appendix**



# Lifts

## Appendix

Transport for NSW  
Principal

Liftronic Pty Ltd  
Contractor

Contents

**Schedule 1 - The Principal's policies and procedures and related obligations.....3**  
**Schedule 2 - Deed Poll .....13**  
**Schedule 3 - Principal's requirements for working in the Rail Corridor .....16**  
**Schedule 4 - Approved Form Of Unconditional Undertaking .....21**  
**Schedule 5 - Not used .....23**  
**Schedule 6 - Confidentiality Undertaking .....24**  
**Schedule 7 - Form of Subcontractor Warranty .....34**  
**Schedule 8 - Form of Statutory Declaration .....37**  
**Schedule 9 - Terms of Agreement with Expert.....48**  
**Schedule 10 - KPIs .....55**

## Schedule 1 - The Principal's policies and procedures and related obligations

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

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

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### 1. Transacting and exchanging data

The Contractor acknowledges that the Principal may from time to time, in its absolute discretion, nominate a platform or tool 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:
- (i) NSW Government Local Jobs First Plan unless the Contractor's Activities are construction services;
  - (ii) NSW Government Preference Scheme unless the Contractor's Activities are construction services;
  - (iii) Australian New Zealand Government Procurement Agreement; and
  - (iv) Australia-United States Free Trade Agreement.
- (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 clauses 2(a)(i) to 2(a)(iv) 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.

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## 4. Statement of Business Ethics

- (a) The Contractor must at all times comply with the Principal's statement of business ethics made available at:
- (b) [https://www.transport.nsw.gov.au/sites/default/files/media/documents/2017/statement-business-ethics\\_0.pdf](https://www.transport.nsw.gov.au/sites/default/files/media/documents/2017/statement-business-ethics_0.pdf)(**Statement of Business Ethics**). Prior to the engagement of any Subcontractor by the Contractor, the Contractor must obtain a written acknowledgement from such Subcontractor that it has received, read, understood and will comply with the Statement of Business Ethics. The Contractor must retain the documentation required by this clause 4(b) for a period of seven years and must provide such documentation to the Principal as and when requested.
- (c) If a person has committed a material breach of the Statement of Business Ethics and the Contractor has material information, knowledge of, or believes that such a breach has been committed, the Contractor must notify the Principal's Representative of such information, knowledge or belief.

For the purposes of this clause 4 "Contractor" includes the Contractor's directors, officers, employees, consultants, agents, contractors and subcontractors.

---

## 5. Quality Management

- (a) The Contractor must establish, implement and maintain for the duration of the Contract a quality management system complying with the standard specified in the Contract.
- (b) Any quality system must be used only as an aid to achieving compliance with the Contract and to document such compliance and does not discharge the Contractor's other obligations under the Contract.
- (c) The Contractor will not be relieved from compliance with any of its obligations, or any of its liabilities, under the Contract or otherwise at law as a result of:
  - (i) the implementation of, and compliance with, the quality system requirements of the Contract;
  - (ii) any direction by the Principal's Representative concerning the Contractor's quality system or its compliance or non-compliance with that system; or
  - (iii) any audit or other monitoring by the Principal's Representative of the Contractor's compliance with the quality system.

---

## 6. Safety Management

- (a) The Contractor must, and must ensure that all of its Subcontractors, employees and agents, comply with the requirements set out in the document entitled "General Safety Specification for Contractors" which can be obtained from the Sydney Trains Railsafe website or by contacting the Principal's Representative (**Safety Specification**).
- (b) 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.
- (c) 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 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.

- (d) Without limitation to any other rights the Contractor, to the extent permitted by law, indemnifies the Principal against any and all claims that may be imposed under or that may arise out of the enforcement of any section of the Rail Safety National Law, as a result of any breach by the Contractor or its Subcontractors, employees and agents of the Rail Safety National Law, its associated regulations or this clause 6.
- (e) The Contractor's liability to indemnify the Principal under clause 6(d) will be reduced proportionally to the extent that the loss, expense or damage was contributed to by a negligent act or omission of the Principal or its Subcontractors, employees or agents.
- (f) The Principal may from time to time amend the obligations imposed upon the Contractor under the Safety Specification.

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## 7. Work Health and Safety

- (a) Without limiting or otherwise restricting any other provision of the Contract, the Contractor acknowledges that it has read and understands:
  - (i) the Health & Safety Policy of the Principal available 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;; and
  - (ii) the sections of the Principal's safety management system which are relevant to the Project Activities, found at <http://railsafe.org.au/sms-documents> as amended from time to time.
- (b) The Contractor must, and must ensure that all of its Subcontractors, employees and agents, at all times comply with the requirements of the relevant sections of the Principal's Safety Management System.
- (c) 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 Work Health and Safety Management Systems and Auditing Guidelines (5th edition) (September 2013);
  - (ii) complies with the WHS Legislation;
  - (iii) reflects the Principal's minimum requirements set out in the Principal's Safety Management System; and
  - (iv) includes an ongoing commitment to the training of its employees.
- (d) If clause 3(c) includes conflicting obligations, the obligation which imposes the highest standard of health and safety applies.
- (e) The Contractor must:
  - (i) ensure that all of its Subcontractors, employees and agents 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 Subcontractors, employees and agents with the WHS Management System and the relevant sections of the Principal's Safety Management System.
- (f) 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 7(f)(i) have been communicated to the Contractor's Subcontractors, employees and agents.
- (g) 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 7(g)(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 6 and this clause 7, 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.

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## 8. Environmental Management

- (a) The Contractor must comply with the requirements set out in the Principal's environmental management specifications for contractors which can be obtained from the RailSafe website at:

<https://railsafe.org.au/safety-and-environment-specifications>

or by contacting the Principal's Representative (**Environmental Management Specification**).
- (b) The Contractor must establish, implement and maintain for the duration of the Contract an environmental management system complying with the requirements set out in the Contract.
- (c) The Contractor must:
  - (i) comply with the following provisions in relation to the responsible management of substances:
    - 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 (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;
  - F. pay all costs associated with the clean up, including payment of fines and labour costs; and
  - G. indemnify the Principal for any costs incurred by the Principal to ensure compliance with this clause 8 and for any loss suffered in connection with any leakage or spillage or any costs or losses suffered by reason of the Contractor's failure to safely use or dispose of any substances.
- (d) The Contractor's liability to indemnify the Principal under clause 8(c)(i)G will be reduced proportionally to the extent that the loss, expense or damage was contributed to by a negligent act or omission of the Principal or its Subcontractors, employees or agents.

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## 9. 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 9:

- (i) **"Container Weight Declaration"** has the meaning given in the Heavy Vehicle National 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.

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## 10. 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:

- (c) comply with the requirements of the Policy;
- (d) within 60 days of the Award Date, provide to the Principal an "Aboriginal Participation Plan" in accordance with the Policy; and
- (e) provide to the Principal an "Aboriginal Participation Report" every 3 months in the form required by the Policy.

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## 11. Competitive Pricing

### 11.1 Competitive pricing principles

The Principal and the Contractor agree that it is their common intention that the Contract Sum will be (and will remain for the duration of the Contract) commercially competitive in terms of:

- (a) the price offered by the Contractor to other customers whose orders for its works are of a comparable type to the Contractor's Activities; and
- (b) prices and terms and conditions offered by other providers in the market for works that are the same as or equivalent to the Contractor's Activities.

### 11.2 Most favoured pricing

The Contractor must ensure at all times during the duration of the Contract that the Contract Sum is no less favourable than that which the Contractor provides or offers to provide to any other customer of the Contractor (including Sydney Trains), whose orders for its works are of a comparable type to the Contractor's Activities.



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## **12. Access to Records**

### **12.1 Contractor to retain records**

The Contractor must, for a period of seven years after the end of the Contract keep true and accurate accounts and records of:

- (a) all Contractor's Activities supplied under the Contract; and
- (b) all associated accounts and records including all supporting materials used to generate and substantiate invoices submitted in respect of the Contractor's Activities.

### **12.2 Right to access and audit**

- (a) In order to ensure compliance with its obligations under the Contract and to identify opportunities for achieving reductions in the total cost of supply, the Contractor acknowledges and agrees that the Contractor's Activities will be conducted and operated on an "open book" basis.
- (b) The Principal's Representative and/or any person authorised by the Principal's Representative (and notified to the Contractor's Representative) may at any time, after giving reasonable notice at any time, inspect and/or audit the accounts, records, information and correspondence of the Contractor relating to the carrying out of the Contractor's Activities including all matters relevant to the calculation of the Contract Sum and the rates for the Contractor's Activities in the Payment Schedule (if any) and the elements comprising the determination of total cost.
- (c) The Principal and the Principal's Representative will be entitled (at the expense of the Principal) to take copies of or extracts from any such records.
- (d) The right of access and audit granted under this clause 12.2 may be exercised by the Principal at any time during the duration of the Contract or in the seven year period after the end of the Contract.
- (e) The Principal will be solely responsible for the costs of conducting any audit under this clause 12.2.

### **12.3 Auditing and probity**

The Contractor acknowledges and agrees that:

- (a) the Principal's Representative (or any other person designated by the Principal's Representative) may carry out regular audits on:
  - (i) the Contractor's compliance with its obligations under the Contract (including this Schedule 1); and
  - (ii) a quality and probity basis including:
    - A. inspections after the Contractor has provided the Contractor's Activities;
    - B. random spot inspections;
    - C. viewing CCTV footage available at the worksites, workshops or places where the Contractor's Activities are performed, as notified by the Contractor from time to time;
    - D. inspecting reports prepared by the Contractor in accordance with this agreement; and

- E. utilising the Principal's compliance auditors during possessions to check staff competencies, plant certifications and other relevant factors.
- (b) The Contractor must provide reasonable access to its premises to enable the Principal or its Subcontractors, employees or agents to carry out any such audit and must co-operate with and provide all assistance requested by the Principal or its Subcontractors, employees or agents when carrying out any such audit.

## 12.4 Inspection of Associated Plant and Equipment

- (a) From time to time, the Principal may in its absolute discretion inspect and evaluate any plant and equipment used in the carrying out of the Contractor's Activities but not forming part of the Equipment (**Associated Plant and Equipment**) that is located at the workshops or places where the Contractor's Activities are performed without prior notice to the Contractor (**Principal's Inspections**).
- (b) Without limiting any obligation of the Contractor, at the time of any Principal's Inspection the following documentation pertaining to each item of Associated Plant and Equipment must be made available, at the Contractor's cost, to the relevant Principal's Subcontractors, employees or agents:
  - (i) the operating and servicing manuals produced by the original equipment manufacturer (**OEM**) in respect of the Associated Plant and Equipment; and
  - (ii) evidence of the maintenance history in respect of the Associated Plant and Equipment.
- (c) Where an item of Associated Plant and Equipment is:
  - (i) not made available for a Principal's Inspection; or
  - (ii) determined by the Principal's Representative to not comply with any requirement of the Principal's Policies, Codes and Standards or the Contract,the relevant Associated Plant and Equipment must be removed from the workshops or places where the Contractor's Activities are performed by the Contractor at the Contractor's cost, until such time as the Principal's Representative notifies the Contractor otherwise.
- (d) Each party will bear its own costs in connection with the conduct of a Principal's Inspection.
- (e) The Principal will not be liable upon any claim by the Contractor arising out of or in any way connected with any Principal's Inspection or any determination made by the Principal's Representative under clause 12.4(c)(ii).

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## 13. Additional policies, codes and standards

- (a) The Contractor acknowledges and agrees that:
  - (i) prior to the carrying out of the Contractor's Activities it has, and it will ensure that its Subcontractors, employees and agents have, read each of the documents set out in clause 13(c);
  - (ii) it will, and will ensure that its Subcontractors, employees and agents comply with the policies, codes and standards set out in clause 13(c):

- A. when undertaking the Contractor's Activities or any other activities under or in connection with the agreement; and
  - B. unless the context requires otherwise, as though references to the Principal and its Subcontractors, employees and agents in the Principal's policies, codes and standards referred to in clause 13(c) were references to the Contractor and its Subcontractors, employees and agents; and
- (iii) it will not, and it will ensure that its Subcontractors, employees and agents do not, put the Principal in breach of any of the Principal's policies, codes and standards referred to in clause 13(c).
- (b) The policies, codes and standards referred to in clause 13(c) are available on the Principal's website at <https://www.transport.nsw.gov.au/about-us/who-we-are/sydney-trains/contractors> or upon request from the Principal.
- (c) The Contractor and its Subcontractors, employees and agents must comply with all of the following Principal's policies, codes and standards:
- (i) New South Wales Government Code of Practice for Procurement (January 2005);
  - (ii) Statement of Business Ethics;
  - (iii) Health & Safety Policy;
  - (iv) Environmental and Sustainability Policy;
  - (v) Sydney Trains' Safety Specification;
  - (vi) Drug and Alcohol Policy;
  - (vii) Safety Management System (SMS) documents;
  - (viii) Environment Management System (EMS) documents;
  - (ix) Sydney Trains Hazardous Rail Corridor Locations;
  - (x) Asset Operations Possessions;
  - (xi) SMS-06-SP-3026 WHS Risk Management;
  - (xii) SMS-08-OP-3128 Managing Shift Work and Rostering;
  - (xiii) SMS-08-OP-3129 Managing Fatigue Risks;
  - (xiv) SMS-08-FM-4130 Fatigue Risk Profile;
  - (xv) SMS-06-OP-3043 Managing Risks Using Safe Work Practices;
  - (xvi) SMS-06-GD-0268 Working Around Electrical Equipment;
  - (xvii) SMS-06-OP-3114 Pre-Work Briefings;
  - (xviii) SMS-17-SR-1491;
  - (xix) SMS-06-GD Personal Protective Equipment;
  - (xx) Rail Industry Safety Induction (RISI) Standard; and
  - (xxi) relevant Incident Management Plans for each Delivery Place;

- (xxii) relevant network rules and procedures, including those relating to rail industry worker cards, the worksite protection program, asset operation possessions and contractor's health assessments and drug and alcohol information (the "Sydney Trains RailSafe" website provides safe working information for people working in the rail corridor); and
- (xxiii) any other policies, rules and standards notified by the Principal to the Contractor from time to time during the term of the Contract.

## Schedule 2 - Deed Poll

This deed poll (Deed Poll) made the                    day of                    20

**By:**                    **Liftronic Pty Ltd (ABN 99 002 886 213)** of Level 20, 477 Pitt Street, Sydney NSW 2000 (**Contractor**),

**in favour of:**        **Rail Corporation New South Wales (ABN 59 325 778 353)**, of 477 Pitt Street, Sydney NSW 2000 (**RailCorp**)

**NSW Trains (ABN 50 325 560 455)** of 470 Pitt Street, Sydney NSW 2000 (**NSW Trains**)

**Sydney Trains (ABN 38 284 779 682)** of Level 20, 477 Pitt Street, Sydney NSW 2000 (**Sydney Trains**).

### Recitals

- A        RailCorp owns the rail network and rail assets in NSW, including those in respect of which the Contractor's Activities will be provided by the Contractor.
- B        Sydney Trains is responsible for the operation of passenger services in Sydney.
- C        NSW Trains is responsible for the operation of passenger services in NSW outside Sydney.
- D        Transport for NSW (ABN 18 804 239 602) (**Principal**) is responsible for the governance and delivery of transport services and infrastructure in NSW.
- E        The Principal has entered into a contract with the Contractor dated on or about the date of this Deed Poll (**Contract**) to deliver certain works (**Works**).
- D        It is a condition of the Contract that the Contractor executes this Deed Poll.

**This deed witnesses that the Contractor hereby covenants, warrants and agrees** with and for the benefit of RailCorp, NSW Trains and Sydney Trains as follows:

1.        It will comply with its obligations under the Contract.
2.        Upon completion of the Works, the Works will satisfy the requirements of the Contract.
3.        The aggregate of the Contractor's liability to RailCorp under this Deed Poll, the Contractor's liability to NSW Trains under this Deed Poll, the Contractor's liability to Sydney Trains under this Deed Poll and the Contractor's liability to the Principal under the Contract:
  - (a)        will not exceed the liability which the Contractor would have had under the Contract if the Contract had named, in place of the Principal, the Principal, RailCorp, NSW Trains and Sydney Trains jointly and severally; and
  - (b)        is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Contract.
4.        Any provision of this Deed Poll which seeks to limit or exclude a liability of the Contractor is to be construed as doing so only to the extent permitted by law.
5.        Subject to clause 3 wherever, pursuant to the terms of the Contract, the Contractor gives an indemnity in favour of the Principal, the Contractor gives the same indemnity in favour of RailCorp, NSW Trains and Sydney Trains as if the relevant terms of the indemnity were set out in full in this Deed Poll.

6. RailCorp, NSW Trains or Sydney Trains may at any time, at their sole discretion, assign or novate this Deed Poll (or any right, benefit or interest thereunder) to any Authority, any successor in title to RailCorp, NSW Trains or Sydney Trains. or any other person that assumes the functions or obligations of either RailCorp, NSW Trains or Sydney Trains.
7. The Contractor acknowledges that:
  - (a) in this clause 7:
    - (i) "Sydney Trains Framework Agreement" means the agreement entitled "Lifts & Escalators Framework Agreement Contract No. CW2305170" dated 29 March 2018 between Sydney Trains and the Contractor;
    - (ii) "Maintenance Services Contract" means the contract entitled "Lifts and Escalators Maintenance Services Contract" between Sydney Trains and the Contractor in respect of the maintenance of equipment for Sydney Trains, which was deemed to have been formed pursuant to the Sydney Trains Framework Agreement: and
    - (iii) the terms "Services", "DSI Contract", "New Equipment" and "Serviced Equipment List" have the meanings given to them in the Maintenance Services Contract;
  - (b) Sydney Trains and the Contractor are parties to the Sydney Trains Framework Agreement and the Maintenance Services Contract;
  - (c) Sydney Trains may (but is not obliged to) notify the Contractor that upon completion of the Works, the Contractor must maintain the Works as part of the Services under the Maintenance Services Contract as if the Works had been designed, supplied and installed under a DSI Contract with Sydney Trains; and
  - (d) if Sydney Trains gives the Contractor a notice under clause 7(c):
    - (i) the Contractor must maintain the Works as part of the Services under the Maintenance Services Contract;
    - (ii) the Works will be deemed to be New Equipment for the purposes of the Maintenance Services Contract and will be deemed to be added to the Serviced Equipment List pursuant to clause 8.15(a)(i) of the Maintenance Services Contract;
    - (iii) the Contractor will be entitled to payment of the Comprehensive Maintenance Fee for servicing the Works in accordance with the Maintenance Services Contract; and
    - (iv) (for the avoidance of doubt) the Contractor will be entitled to \$nil for the first 12 months of maintaining the Works because the contract price paid pursuant to the Contract is deemed to include an amount for the first 12 months of maintaining the Works.
8. This Deed Poll is governed by the laws of the State of New South Wales.
9. This Deed Poll may not be revoked or otherwise modified without the prior written consent of RailCorp, NSW Trains and Sydney Trains.
10. Where terms used in this Deed Poll are defined in the Contract, those terms have the meaning given to them in the Contract.

**Executed** as a deed poll.

**Executed by Liftronic Pty Ltd (ABN 99 002 886 213)** in accordance with section 127 of the *Corporations Act 2001 (Cth)*::

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Signature of Director

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Signature of Secretary/other Director

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Name of Director in full

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Name of Secretary/other Director in full

## 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.

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

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### 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.

**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

<http://railsafe.sydneytrains.nsw.gov.au/>

or by contacting the Principal.

**RailSafe Network Rules** means the Network Rules which can be obtained from the RailSafe website at

<http://railsafe.sydneytrains.nsw.gov.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.

#### 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 employees, subcontractors 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, co ordinate 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 subcontractors, employees and agents operating and maintaining the Railway;
  - (iv) warrants that it shall comply with, and ensure that its Subcontractors, employees and agents 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;
  - (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.

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## 2. 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 Principal has Approved Suppliers of Protection Officers. The Contractor must procure Protection Officers from one of the Principal's approved suppliers and must not, without the Principal's written permission, provide or deploy a Protection Officer provided by any other supplier.

### 2.2 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 employees and subcontractors:
  - (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.

## 2.3 "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 employees and subcontractors:
  - (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 employees and subcontractors must comply.

## 2.4 Rail Industry Safety Induction 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 Subcontractors, employees and agents entering the Rail Corridor whose work will require them to intrude into the Danger Zone has been provided with Rail Industry Safety Induction (RISI) training and issued a RISI card by the Principal in accordance with sections 5 and 6 of the Principal Rail Industry Safety Induction (RISI) Standard.

## 2.5 Pre-work safety briefing

The Contractor must conduct pre-work safety briefings for all Subcontractors, employees and agents 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 - Approved Form Of Unconditional Undertaking**

This deed poll (Undertaking) made the                    day of                    20

In favour of:                    **Transport for NSW ABN 18 804 239 602** of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067 (**Principal**)

Given by:                    [                    ] (**Institution**)

**Recitals**

- A.                    By a deed dated [\*] (**Deed**) between [                    ] ABN [                    ] (**Contractor**) and the Principal the Contractor agreed to carry out the Contractor's Activities (as defined in the Deed).
- B.                    Under the provisions of the Deed, the Contractor is required to provide this Undertaking to the Principal.

**Operative**

- 1.                    The Institution unconditionally undertakes and covenants to pay to the Principal on demand without reference to the Contractor and notwithstanding any notice given by the Contractor to the Institution not to do so, any sum or sums which may from time to time be demanded in writing by the Principal to a maximum aggregate sum of # (\$                    ).
- 2.                    The Institution's liability under this Undertaking will be a continuing liability and will continue until payment is made under this Undertaking of the maximum aggregate sum or until the Principal notifies the Institution that this Undertaking is no longer required.
- 3.                    The liability of the Institution under this Undertaking must not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Institution) in any of the stipulations or provisions of the Deed or the Contractor's Activities or acts or things to be executed, performed and done under the Deed or by reason of any breach or breaches of the Deed by the Contractor or the Principal.
- 4.                    The Institution may at any time without being required so to do pay to the Principal the maximum aggregate sum less any amount or amounts it may previously have paid under this Undertaking and thereupon the liability of the Institution hereunder will immediately cease.
- 5.                    This Undertaking will be governed by and construed in accordance with the laws for the time being of the State of New South Wales.

**Executed as a deed poll.**

Signed Sealed and Delivered )

by [ ] )

being signed sealed and )

.....

delivered by its duly constituted )

(Signature)

Attorney [ ] )

under Power of Attorney )

No. in the presence of: )

.....

(Signature of Witness)

.....

(Name of Witness in Full)

**Schedule 5 - Not used**

## Schedule 6 - Confidentiality Undertaking

**Given by:** [insert full legal name of Recipient (insert ABN)] of [insert registered address of Recipient] (**Recipient**) for and on behalf of itself and the Recipient Representatives (as defined in this Deed)

**In favour of:** **Transport for NSW ABN 18 804 239 602** of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067 (**Transport for NSW**) and the Transport for NSW Representatives (as defined in this Deed)

**Made:** at Sydney on the date the Recipient executes this Deed (**date of this Deed**).

### Background

Transport for NSW and the Recipient have entered into a contract entitled [insert] (**Contract**) dated [insert] pursuant to which the Recipient will carry out certain activities (**Contractor's Activities**).

It is a condition of the Contract that the Recipient enter into this Deed.

Transport for NSW has agreed to disclose certain Confidential Information to the Recipient for the Permitted Use on the terms and conditions of this Deed.

---

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Deed (including the Background), unless the context otherwise requires:

**Claim** means any action, suit, claim, demand, cause of action or notice, of any nature whatsoever, at Law or in equity, including:

- (a) in contract, whether for breach or for an entitlement under a contract;
- (b) in tort for negligence or otherwise, including without limitation negligent misrepresentation;
- (c) for contribution or indemnity at common law, equity or statute;
- (d) for restitution, unjust enrichment or quantum meruit;
- (e) under or for breach of statute; or
- (f) in any other way,

whether for a Loss or a Remedy.

**Confidential Information** means:

- (a) information, including the Information Documents and any Personal Information, disclosed by or on behalf of Transport for NSW or the Transport for NSW Representatives to the Recipient or the Recipient Representatives (or of which the Recipient or the Recipient Representatives become aware) in the course of discussions in relation to the Permitted Use;
- (b) information acquired by the Recipient or the Recipient Representatives in the course of discussions prior to the date of this Deed in relation to the Permitted Use;
- (c) any Document or other correspondence provided by Transport for NSW to the Recipient or the Recipient Representatives, that:



- (i) is by its nature confidential;
  - (ii) is designated as confidential by Transport for NSW or the Transport for NSW Representatives from time to time; or
- (d) any other information which by its nature should reasonably be considered to be the confidential information of Transport for NSW or the Transport for NSW Representatives, or which the Recipient or the Recipient Representatives 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 Deed;
- (f) is in the lawful possession of the Recipient without restriction in relation to disclosure before the date of receipt of the information from Transport for NSW or the Transport for NSW Representatives;
- (g) was independently developed by the Recipient or the Recipient Representatives; or
- (h) is required by Law to be disclosed.

**Deed** means this Deed Poll.

**Information Documents** means any information, opinion, data or document in whatever form (including, electronic, verbal, written or visual):

- (a) issued or made available by, or on behalf of, Transport for NSW or the Transport for NSW Representatives to the Recipient or the Recipient Representatives in connection with this Deed or 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 the Recipient before or after the date of this Deed.

**Information Security Requirements** means the following principles, policies, codes, Laws or directions relating to the storage, management, control and handling of information that is security classified and/or subject to a sensitive information label or other protective marking (such as dissemination limiting markers):

- (a) the most recent version of:
  - (i) the NSW Government Information Classification and Labelling Guidelines;
  - (ii) the NSW Digital Information Security Policy;
  - (iii) the Commonwealth Information Security Manual; and
  - (iv) the "Australian Government Information Security Management Guidelines", including:
    - A. Australian Government Security Classification System; and
    - B. Protectively Marking and Handling Sensitive and Security Classified Information;

- (b) Premiers Memorandum M2006-09, Maintaining Confidentiality of Cabinet Documents and Other Cabinet Conventions;
- (c) legislation, including the State Records Act 1998 (NSW) and the Privacy Law; and
- (d) any other principles, policies, codes, Laws and directions that are notified to the Recipient by Transport for NSW to the Recipient from time to time,

as replaced, amended or updated from time to time.

**Loss** means any money, cost (including reasonable legal costs and expenses), expense, damage, interest, penalty, fine, delay, disruption, costs and losses associated with a Remedy or detriment of any kind whatsoever.

**Law** means the common law and any legislation of the Parliament of the Commonwealth of Australia, of any State or Territory of the Commonwealth of Australia or of any other jurisdiction in force at any time and any rule, regulation, ordinance, by-law, statutory instrument, order or notice at any time made under that legislation and, in each case, any consolidations, amendments, re-enactments and replacement.

**Permitted Use** means use for the purposes of the Recipient carrying out the Contractor's Activities, and for no other purpose.

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

**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.

**Related Entity** in relation to:

- (a) the Recipient, has the meaning given to 'related body corporate' in section 9 of the Corporations Act 2001 (Cth); and .
- (b) Transport for NSW, means any "public transport agency" (as defined in the Transport Administration Act 1988 (NSW)), the State of New South Wales, and any entity controlled by any of them.

**Remedy** means any entitlement, damages, interest, compensation, contribution, indemnity, injunction, specific performance, extension of time or other legal or equitable or statutory remedy of any kind whatsoever.

**Representatives** means:

- (a) in respect of the Recipient, any Related Entity of the Recipient and any directors, officers, employees, consultants, agents and contractors of Recipient and any Related Entity of the Recipient (the "Recipient Representatives"); and
- (b) in respect of Transport for NSW, any Related Entity of Transport for NSW and any directors, officers, employees, consultants, agents and contractors of Transport for NSW and any Related Entity of Transport for NSW (other than the Recipient) (the "Transport for NSW Representatives").

## 1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;
- (b) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

- (c) a reference to a "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 that 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 an additional trustee;
- (e) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute or statutory provision includes a statutory modification or re-enactment of it or a statutory provision substituted for it, and each ordinance, by-law, regulation, rule and statutory instrument (however described) issued under it;
- (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 or clause is a reference to a party or clause to or of this Deed;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (j) "includes" in any form is not a word of limitation.

---

## **2. Representations and warranties regarding Information Documents**

The Recipient acknowledges and agrees, for itself and the Recipient Representatives, that:

- (a) the Information Documents are provided by Transport for NSW for the information only of the Recipient;
- (b) neither Transport for NSW or the Transport for NSW Representatives 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) Transport for NSW has provided, or will provide, the Information Documents to the Recipient in reliance upon the acknowledgements and agreements contained in this clause 2.

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## **3. Recipient's obligations**

### **3.1 Confidentiality**

The Recipient acknowledges and agrees, for itself and the Recipient's Representatives, that it will:

- (a) keep the Confidential Information confidential, safe, secure and protected against unauthorized use and access and, subject to clause 3.5, 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 Transport for NSW's express written consent;
- (d) disclose Confidential Information to only those Recipient's Representatives who have a "need to know" the Confidential Information for the Permitted Use;
- (e) 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;
- (f) ensure that any Representative of the Recipient to whom the Recipient discloses Confidential Information:
  - (i) is aware of the confidentiality requirements of this Deed; 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 Deed;
- (g) 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 Deed, unless otherwise approved in writing by Transport for NSW to do so; and
- (h) 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.

### **3.2 Comply with Privacy Laws**

In relation to any Personal Information provided by Transport for NSW to the Recipient under or in connection with this Deed 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.

### **3.3 Not cause breach by Transport for NSW**

Where the Recipient is required to access, collect or disclose Personal Information on behalf of Transport for NSW, then the Recipient must comply with the Privacy and Personal Information Protection Act 1998 (NSW) as if it were Transport for NSW accessing, collecting or disclosing the Personal Information.

### **3.4 Security measures**

The Recipient must ensure that any Confidential Information in it's or the Recipient's Representatives possession, custody or control is kept secure at all times, including by:

- (a) 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 Transport for NSW; and
- (b) where applicable, complying with the Information Security Requirements.

### **3.5 When Recipient may disclose**

The Recipient may disclose Confidential Information:

- (a) with the prior written consent of Transport for NSW;

- (b) to the Recipient's Representatives, but only to the extent that each Recipient's Representative has a "need to know" the Confidential Information for the purposes of the Permitted Use; and
- (c) subject to clause 3.6, to the extent required by Law to do so.

### **3.6 Disclosure required by Law**

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

### **3.7 Inspections and audit**

The Recipient consents, and must procure the necessary consents from any Representative to which the Confidential Information is disclosed by the Recipient, to such inspections and audits as may be reasonably required by Transport for NSW for the purpose of auditing compliance by the Recipient and any relevant Representatives with the terms of this Deed.

### **3.8 Breach of confidentiality obligations**

If the Recipient becomes aware of any actual, threatened or suspected breach of this Deed, including by the Recipient or any Representative of the Recipient, the Recipient must:

- (a) immediately notify Transport for NSW in writing and take all steps necessary to remedy, prevent or stop the actual, threatened or suspected breach of this Deed and comply with any reasonable directions issued by Transport for NSW regarding any unauthorised use or disclosure of the Confidential Information; and
- (b) provide such other assistance as may be reasonably required by Transport for NSW, including in relation to any Claim or proceedings that Transport for NSW may bring against any third party for unauthorised use or disclosure of the Confidential Information.

### **3.9 Return of Confidential Information**

If requested by Transport for NSW, the Recipient must:

- (a) promptly return to Transport for NSW all documents and other physical records of Confidential Information in its or the Recipient Representatives possession, custody or control;
- (b) 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 Representatives to which the Confidential Information has been disclosed by the Recipient;
- (c) where applicable, comply with the requirements of the Information Security Requirements in respect of the destruction or return of any Confidential Information; and
- (d) comply with any reasonable directions issued by Transport for NSW in respect of the Confidential Information.

### **3.10 Compliance with Information Security Requirements**

The Recipient acknowledges and agrees that:

- (a) some, or all, of the Confidential Information is security classified, and/or subject to a sensitive information label or other protective marking (such as dissemination

limiting markers) and must therefore be stored, managed, controlled and handled strictly in accordance with the Information Security Requirements;

- (b) prior to the date of this deed poll it is familiar with and has read, and it will ensure that all relevant Recipient's Representatives are familiar with and have read, the Information Security Requirements;
- (c) it will, and it will ensure that all relevant Recipient's Representatives:
  - (i) at all times comply with and adhere to all relevant and applicable Information Security Requirements; and
  - (ii) cooperate with and assist Transport for NSW and the Transport for NSW's Representatives in the performance of any obligations or requirements of Transport for NSW and the Transport for NSW's Representatives under or in connection with the Information Security Requirements,in respect of any Confidential Information; and
- (d) it will not, and it will ensure that the Recipient Representatives do not, do anything which would:
  - (i) constitute a contravention of the Information Security Requirements by Transport for NSW; or
  - (ii) put Transport for NSW in breach of any Information Security Requirements.

---

## **4. Transport for NSW may enforce Deed**

### **4.1 Recipient acknowledgements**

The Recipient:

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

## **4.2 Breach by Representative**

Where the Recipient discloses the Confidential Information to a Representative, a breach of a provision of this Deed by the relevant Representative will be deemed to be a breach of this Deed by the Recipient.

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## **5. Release and Indemnity**

### **5.1 Release**

To the extent permitted by Law, the Recipient releases and forever discharges, and agrees to hold harmless and acquit Transport for NSW and each of Transport for NSW Representatives from and against any and all Claims arising out of, relating to or in any way in connection with or incidental to:

- (a) the provision of, or purported reliance on, or use of, the Information Documents or any Confidential Information by the Recipient, the Recipient's Representatives or any other person associated with the Recipient to whom the Information Documents or any Confidential Information are disclosed by the Recipient;
- (b) any failure by Transport for NSW or the Transport for NSW Representative to provide any information to the Recipient; and
- (c) any fact, matter, circumstance, conduct, act, omission or thing in connection with any of those matters or things,

whether or not the parties were aware of the fact, matter, circumstance, conduct, act, omission or thing as at the date of this deed and including any Claims in respect of a Loss or a Remedy which the Recipient may suffer or incur in respect of the fact, matter, circumstance, omission or thing after the date of this Deed.

### **5.2 Indemnity**

To the extent permitted by Law, the Recipient indemnifies and will keep indemnified each of Transport for NSW or the Transport for NSW Representatives (those indemnified) against:

- (a) any Loss incurred or suffered by those indemnified where such Loss is incurred by reason of or in connection with any breach of this Deed by the Recipient or the Recipient Representatives; and
- (b) any and all Claims by or on behalf of the Recipient, the Recipient's Representatives or any person claiming through, under, for, on behalf of or by virtue of the Recipient or the Recipient's Representatives, which have arisen or may arise in relation to the matters the subject of the release in clause 5.1.

---

## **6. General**

### **6.1 No exclusion of Law or equity**

This Deed must not be construed to exclude the operation of any principle of Law or equity intended to protect and preserve the confidentiality of the Confidential Information.

### **6.2 Waiver**

The Recipient acknowledges and agrees that:

- (a) no waiver by Transport for NSW of one breach of any obligation or provision herein contained or implied shall operate as a waiver of another breach of the same or of any other obligation or provision herein contained or implied; and

- (b) none of the provisions hereof shall be taken either at Law or in equity to have been varied, waived, discharged or released by Transport for NSW unless by its express consent in writing.

### **6.3 Governing Law**

This Deed will be governed by and construed in accordance with the Law in force in the State of New South Wales. Each party submits to the exclusive jurisdiction of the Supreme Court of New South Wales and the courts competent to determine appeals from that court.

### **6.4 Continuing obligations**

The obligations of the Recipient under this Deed continue after the completion or termination of any employment, engagement or assignment in respect of the Permitted Use.

### **6.5 Revocation or amendment**

This Deed may not be revoked or otherwise modified or amended without the prior written consent of Transport for NSW.



**Executed** as a deed poll

**[Note: Delete the execution block that is not applicable.]**

**[If the Recipient is an individual]**

Signed, sealed and delivered by **[insert full legal name of Recipient]** in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Recipient

\_\_\_\_\_  
Full name and position of witness (print)

\_\_\_\_\_  
Full name and position of Recipient (print)

\_\_\_\_\_  
Address of witness (print)

\_\_\_\_\_  
Address of Recipient (print)

\_\_\_\_\_  
Date

**[If the Recipient is a company]**

Executed by **[insert company name (insert ABN)]** of **[insert registered address]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary

\_\_\_\_\_  
Full name of director (print)

\_\_\_\_\_  
Full name of director/company secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Schedule 7 - Form of Subcontractor Warranty

This Deed Poll is made on the date the Warrantor executes this Deed Poll.

**To:** Transport for NSW ABN 18 804 239 602 of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067 (**Principal**)

[Add other beneficiaries as nominated by Transport for NSW] (**Beneficiary**).

**By:** That person described in Item 1 of the Schedule (**Warrantor**) which expression will include its successors and assigns

### Recitals

- A. The Warrantor has supplied the items described in Item 2 of the Schedule (**Equipment**) to the person described in **Item 3** of the Schedule (**Contractor**) or the person described in Item 4 of the Schedule, a subcontractor of the Contractor (**Subcontractor**), for the works (**Works**) being carried out by the Contractor under the contract described in Item 5 of the Schedule (**Contract**) with the Principal.
- B. It is a requirement of the Contract that the Contractor procure the Warrantor to give the following warranties in favour of the Principal and the Beneficiary with respect to the Equipment.

### Operative

---

#### 1. Quality

The Warrantor:

- (a) warrants to the Principal and the Beneficiary that the Equipment will be to the quality and standard stipulated by the Contract and will be of merchantable quality and fit for the purpose for which it is required; and
- (b) gives the warranty more particularly set out in Item 6 of the Schedule with respect to the Equipment.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Equipment.

---

#### 2. Replacement

The Warrantor warrants to the Principal and the Beneficiary that it will replace so much of the Equipment as within the period described in Item 7 of the Schedule:

- (a) is found to be of a lower quality or standard than that referred to in clause 1; or
- (b) shows deterioration of such extent that in the opinion of the Principal or the Beneficiary the Equipment ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise.

---

#### 3. Warrantor to bear cost

The Warrantor covenants to the Principal and the Beneficiary that it will bear the cost of any work necessary to any part of the Works to enable the requirements of clause 2 to be carried out or to make good the Works afterwards.

---

**4. Principal not liable**

The Warrantor acknowledges to the Principal and the Beneficiary that nothing contained in this deed poll is intended to nor will render either the Principal or the Beneficiary in any way liable to the Warrantor in relation to any matters arising out of the Contract or otherwise.

---

**5. This deed poll may not be revoked**

This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal and the Beneficiary.

---

**6. Governing law**

This deed poll is governed by the laws of the State of New South Wales.

---

**7. Jurisdiction**

The Warrantor irrevocably submits to the non-exclusive jurisdiction of the Courts of New South Wales.

---

**8. Enforcement of this deed poll**

For the avoidance of doubt this deed poll is enforceable by any of the Principal or the Beneficiary.

## Schedule

- Item 1: Name and Address of Warrantor
- Item 2: Equipment  
(Recital A)
- Item 3: Contractor  
(Recital A)
- Item 4: Subcontractor  
(Recital A)
- Item 5: Contract  
(Recital A)
- Item 6: Detailed Warranty of Warrantor  
(Clause 1(b))
- Item 7: Period of Years  
(Clause 2)

**[insert period]** years from the expiry of the last "Defects Liability Period" as defined in the General Conditions (including any extension under clause 8.6 of the General Conditions).

**Executed** as a deed poll.

**Executed** by **[insert name of Warrantor] (ABN [insert ABN])** in accordance with s 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Schedule 8 - Form of Statutory Declaration

<b>Statutory Declaration</b>	<i>Oaths Act (NSW) Ninth Schedule</i>								
<p>I, .....</p> <p>of .....</p> <p>do solemnly and sincerely declare that:</p> <p>1. I am the representative of:            .....(ABN.....)            ("the <b>Contractor</b>")            in the Office Bearer capacity of:            .....</p> <p>2. The Contractor has a contract with the [ ..... ]:            .....            ("the <b>Contract</b>")</p> <p>3. I personally know the facts which I have set out in this declaration.</p> <p>4. All employees who have at any time been engaged by the Contractor for work done under the Contract:</p> <p style="margin-left: 20px;">(a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and</p> <p style="margin-left: 20px;">(b) have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,</p> <p style="margin-left: 20px;">with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:</p> <table style="width: 100%; margin-left: 20px; border-collapse: collapse;"> <tr> <td style="border-bottom: 1px solid black; width: 60%;">Employee:</td> <td style="border-bottom: 1px solid black; width: 40%;">Amount unpaid or not accrued:</td> </tr> <tr> <td style="border-bottom: 1px solid black;">.....</td> <td style="border-bottom: 1px solid black;">.....</td> </tr> <tr> <td style="border-bottom: 1px solid black;">.....</td> <td style="border-bottom: 1px solid black;">.....</td> </tr> <tr> <td style="border-bottom: 1px solid black;">.....</td> <td style="border-bottom: 1px solid black;">.....</td> </tr> </table>	Employee:	Amount unpaid or not accrued:	.....	.....	.....	.....	.....	.....	<p><i>insert full name of Declarant</i></p> <p><i>insert address</i></p> <p><i>insert name of Contractor, and ABN if applicable</i></p> <p><i>insert position title of Declarant</i></p> <p><i>Insert name of Principal</i></p> <p><i>insert name of Contract</i></p> <p><i>insert names and addresses of the unpaid employees, the amounts unpaid, and whether in respect of wages, allowances, holiday pay, long service leave payments and superannuation entitlement etc.</i></p>
Employee:	Amount unpaid or not accrued:								
.....	.....								
.....	.....								
.....	.....								
<p>5. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.</p> <p>6. The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):</p>									

- (a) that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors;
- (b) that all their employees and subcontractors, as at the date of the making of such a declaration:
  - (i) have been paid all remuneration and benefits due and payable to them by; or
  - (ii) had accrued to their account all benefits to which they are entitled from;
 

the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract; and
- (c) of details of any amounts due and payable or benefits due to be received or accrued described in 6(b) above which have not been paid, received or accrued,

except for the following subcontractors to the Contractor who have failed to provide such a declaration:

<i>Subcontractor:</i>	<i>Due amount unpaid:</i>
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

7. Where a subcontractor to the Contractor has provided a declaration as in 6 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:

<i>Employee, subcontractor or supplier:</i>	<i>Amount unpaid or not accrued:</i>
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

8. In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.

9. Attached to and forming part of this declaration, as Annexure A, is a "Subcontractor's Statement" given by the Contractor in its capacity as

*insert names and addresses of the Contractor's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the Contractor in respect of this claim*

*insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.*

'subcontractor' (as that term is defined in the Workers Compensation Act 1987 (NSW), Payroll Tax Act 2007 (NSW) and Industrial Relations Act 1996 (NSW) which is a written statement:

- (a) under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;
- (b) under section 18(6) of schedule 2 of part 5 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and
- (c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.

10. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.

11. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:

- (a) given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987 (NSW), the Payroll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW) ("Acts"); and
- (b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.

12. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900 (NSW).

Declared at

this ..... day of  
.....20

Before me:

\_\_\_\_\_  
Signature of person before whom the  
declaration is made

\_\_\_\_\_  
Signature of declarant

\_\_\_\_\_  
Full name and qualifications of  
person before whom the declaration  
is made

And as a witness, I certify the following matters concerning the person who made this declaration (**declarant**):

*[\*strike out the text that does not supply]*

1. \*I saw the face of the declarant.

OR

\*I did not see the face of the declarant because the declarant was wearing a face covering, but I am satisfied that the declarant had a special justification for not removing the covering.

2. \*I have known the declarant for at least 12 months.

OR

\*I confirm the declarant's identity using the following identification document:

Identification document relied on (may be original or certified copy)

Signature of person before whom the declaration is made

Declared at

this .....day of  
.....20

Before me:

Signature of person before whom the declaration is made

Signature of declarant

Full name and qualifications of person before whom the declaration is made

\* *The declaration must be made before one of the following persons:*

- *where the declaration is sworn within the State of New South Wales:*
  - (i) *a justice of the peace of the State of New South Wales;*
  - (ii) *a solicitor of the Supreme Court of New South Wales with a current practising certificate; or*
  - (iii) *a notary public.*
- *where the declaration is sworn in a place outside the State of New South Wales:*
  - (i) *a notary public; or*
  - (ii) *any person having authority to administer an oath in that place.*





**Annexure A**

**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 Relations 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](http://www.workcover.nsw.gov.au), Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au), or Office of Industrial Relations, Department of Commerce website [www.commerce.nsw.gov.au](http://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](http://www.legislation.nsw.gov.au).

**Annexure B**

**Supporting statement by head contractor regarding payment to subcontractors**

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms “principal”, “head contractor”, “subcontractor”, and “construction contract” have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

Head contractor: *[business name of head contractor]*

ABN: [ABN]

\* 1. has entered into a contract with: *[business name of subcontractor]*

ABN: [ABN]

Contract number/identifier: *[contract number/identifier]*

[OR]

\* 2. has entered into a contract with the subcontractors listed in the attachment to this statement.]

\* *[Delete whichever of the above does not apply]*

This statement applies for work between *[start date]* and *[end date]* inclusive (the construction work concerned), subject of the payment claim dated *[date]*.

I, *[full name]*, being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature: ..... Date: [.....]

Full name: [.....] Position/Title: [.....]

<p><b>Penalties</b></p> <p><i>The Building and Construction Security of Payment Act 1999 provides that:</i></p> <p>Section 13(7) A head contractor must not serve a payment claim on the principal unless the claim is accompanied by a supporting statement that indicates that it relates to that payment claim.</p> <p style="text-align: center;">Maximum penalty: 200 penalty units.</p> <p>And:</p> <p>Section 13(8) A head contractor must not serve a payment claim on the principal accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances.</p> <p style="text-align: center;">Maximum penalty: 200 penalty units or 3 months imprisonment, or both.</p>
---

**Attachment**

<b>Schedule of subcontractors paid all amounts due and payable</b>				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Date of payment claim (head contractor claim)
[[ ]]	[[ ]]	[[ ]]	[[ ]]	[[ ]]
[[ ]]	[[ ]]	[[ ]]	[[ ]]	[[ ]]
[[ ]]	[[ ]]	[[ ]]	[[ ]]	[[ ]]
[[ ]]	[[ ]]	[[ ]]	[[ ]]	[[ ]]
[[ ]]	[[ ]]	[[ ]]	[[ ]]	[[ ]]
[[ ]]	[[ ]]	[[ ]]	[[ ]]	[[ ]]

<b>Schedule of subcontractors for which an amount is in dispute and has not been paid</b>				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Date of payment claim (head contractor claim)
[[ ]]	[[ ]]	[[ ]]	[[ ]]	[[ ]]
[[ ]]	[[ ]]	[[ ]]	[[ ]]	[[ ]]
[[ ]]	[[ ]]	[[ ]]	[[ ]]	[[ ]]
[[ ]]	[[ ]]	[[ ]]	[[ ]]	[[ ]]
[[ ]]	[[ ]]	[[ ]]	[[ ]]	[[ ]]
[[ ]]	[[ ]]	[[ ]]	[[ ]]	[[ ]]

**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.

## Schedule 9 - Terms of Agreement with Expert

THIS AGREEMENT is made on *[insert date, month, year, eg 30 November 2005]*

BETWEEN *[insert name, company number and address]* ("Principal")

AND *[insert name, company number and address]* ("Supplier")

AND *[insert name and address]* ("Expert")

### Recitals

- A. The Principal and the Supplier (together "the Parties" and each "a Party") are parties to a contract (the "Contract") for the design and supply of certain goods for the [ ] in [ ].
- B. By written notice dated *[to be inserted]*, the *[insert Principal or Contractor as applicable]* has required that the matter described in Schedule 1, being a matter that the Contract requires or permits to be referred to an Expert for determination, be determined by an Expert appointed under clause 15 of the General Conditions of Contract (the "Matter").
- C. Pursuant to clause 15 of the General Conditions of Contract, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement.

### Operative part

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## 2. Appointment of Expert

- (a) The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.
- (b) The Parties agree that:
- (i) the Expert will act as an expert and not as an arbitrator;
  - (ii) neither the determination of the Matter, nor the process required by this Agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
  - (iii) the rules of evidence do not apply to the determination;
  - (iv) the Expert must conduct the determination of the Matter in accordance with the Rules for Expert Determination Process set out in Schedule 2;
  - (v) in making the determination, the Expert may determine that a Party pay the other Party's costs of the expert determination.
- (c) If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

---

## 3. Confidentiality

All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential between the Parties and the Expert. No such proceedings, submissions or documents, nor any other



information relating to or arising out of the determination, may be divulged to any other person, except with the prior written consent of both Parties or as may be required by law or to the extent necessary to give effect to or enforce the Expert's determination.

---

#### **4. Costs and fees**

- (a) As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3. The Parties agree to comply with any direction from the Expert as to the provision of security deposits in respect of his or her fees and disbursements.
- (b) Subject to any direction as to costs given by the Expert in the Expert's determination, the Parties agree as between themselves that:
  - (i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3; and
  - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in the determination.

---

#### **5. Exclusion of liability and indemnity**

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all claims arising out of or in any way referable to any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

---

#### **6. Co-operation of the Parties**

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

---

#### **7. Governing law**

This Agreement is governed by and is to be construed in accordance with the laws in force in the place stated in Schedule 1.

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#### **8. Jurisdiction**

- (a) The Parties and the Expert irrevocably submit to the non-exclusive jurisdiction of the courts of the in the place stated in Schedule 1.
- (b) The Parties and the Expert irrevocably waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within clause 7(a).

## SCHEDULE 1

1. **The Matter**

*[to be inserted when it comes time for expert determination]*

2. **Governing law - the place**

*[insert place - it should be the same as that nominated for the purposes of clause 17.2 of the General Conditions of Contract.]*

3. **Jurisdiction - the place**

*[insert place - it should be the same as that nominated for the purposes of clause 17.3 of the General Conditions of Contract.]*

4. **Place for conferences with Expert (clause 3.1 of Schedule 2)**

*[insert place - it should be the same place as that nominated for meetings and hearings the purposes of clause 15.13 of the General Conditions of Contract.]*

## SCHEDULE 2

### Rules for Expert Determination Process

#### 1. Commencement

Except as provided in clause 4.3 of these Rules, the expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules and the Code of Conduct appended to these Rules.

#### 2. Written submissions

2.1 7 days after the date this process begins, Party A (ie the Party who gave notice under clause 15.1 of the General Conditions of Contract) must, in addition to any particulars provided by Party A under clause 15.1 of the General Conditions of Contract, give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.

2.2 Within 7 days after the statement in clause 2.1 is served, the other Party must give Party A and the Expert a written response to Party A's submissions.

2.3 If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in clause 2.2 within the time allowed by the Expert.

2.4 If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.

#### 3. Conference

3.1 The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in the place nominated in Schedule 1.

3.2 At least 14 days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.

3.3 The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under clause 3.2, the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the Expert determination process.

3.4 The Parties:

(a) may be accompanied at a conference by legal or other advisers; and

(b) will be bound by any procedural directions as may be given by the Expert in relation to the conference both before and during the course of the conference.

3.5 The conference must be held in private.

3.6 If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

#### 4. General

4.1 In making a determination or calling or holding a conference, the Expert must proceed in accordance with this Contract.

4.2 All proceedings and submissions relating to the Expert determination process must be kept confidential except:

- (a) with the prior consent of the Parties;
- (b) as may be required by law; or
- (c) as may be required in order to enforce the determination of the expert.

4.3 The Expert must:

- (a) inform the Parties of:
  - (i) any relationship or interest with the Parties or their respective officers, employees, contractors, consultants or agents;
  - (ii) any interest the Expert has in the matters in dispute; and
  - (iii) any circumstance which might reasonably be considered to adversely affect the expert's capacity to act independently or impartially,immediately upon becoming aware of any such circumstances; and
- (b) upon making any disclosure under this clause 4.3, unless and until the Parties agree otherwise or it is otherwise determined under clause 15 of the General Conditions of Contract, terminate the proceedings.

5. **The determination**

5.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 90 days after the Expert's acceptance of appointment, the Expert must:

- (a) determine the Matter between the Parties; and
- (b) notify the Parties of that determination.

5.2 The determination of the Expert must meet the requirements of this Contract.

5.3 To the extent permitted by law, the Expert's determination will be final and binding on the Parties unless a party gives a notice of appeal to the other party in accordance with clause 15.11(b) of the Contract.

6. **Costs**

Security for costs must be deposited by both Parties at the commencement of the Expert determination process in accordance with any direction of the Expert.

7. **Modification**

These rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

## **APPENDIX 1 TO RULES FOR EXPERT DETERMINATION PROCESS**

### **Code of Conduct for an Expert**

1. The function of the Expert is to make a determination of the Matter in accordance with the Contract and the Expert Determination Agreement, including the Rules and this Code of Conduct.
2. The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in the Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
3. The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
4. The Expert must disclose to both Parties all information and documents received.
5. If a Party fails to make a written submission, the Expert may continue with the process.
6. Subject to clause 3.3 of the Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.

**SCHEDULE 3**

**The Expert's Fees and Disbursements**

[to be inserted when it comes time for expert determination]

## Schedule 10 - KPIs

There are additional KPIs applicable to the Contractor's Activities. See also Annexure F of the Framework Agreement.

Key Performance Indicator (KPIs)		Measure	Target (per Contract)
<b>Safety and environment</b>			
1.	Minor incidents	Number of minor safety/environmental incidents and near misses	0
2.	Major incidents	Number of major safety/environmental incidents, including Lost Time Injuries ( <b>LTIs</b> ), Medical Treatment Injuries ( <b>MTIs</b> ) and safe working incidents	0
3.	Incident reporting	Percentage of safety/environmental incidents reported on within the timeframe and in the format specified by Transport for NSW	100%
4.	Corrective actions	Percentage of corrective actions closed out within the timeframe specified by Transport for NSW following inspection/audit/investigation by Transport for NSW	100%
<b>Delivery</b>			
5.	Delivery In Full On Time ( <b>DIFOT</b> )	Percentage of Contractor's Activities commenced and completed in accordance with contractual timeframes	100%
6.	Rectification of defects or errors	Percentage of defects or errors in Contractor's Activities rectified or replaced within timeframe specified by Transport for NSW	≥ 90%
7.	Management of subcontractors	Number of complaints received by Transport for NSWs in relation to non-payment of subcontractors	≤ 1
<b>Quality</b>			
8.	Quality of workmanship	Number of instances of poor quality workmanship, including any damage to existing infrastructure and property	0
9.	Skills and experience of Personnel	Number of incidents of Contractor's Personnel who are not competent and/or appropriately accredited, qualified, licensed and/or trained	0
10.	Quality assurance	Number of instances of quality assurance documentation being out of date or incorrect	0
11.	Accuracy of invoices and other claims	Percentage of invoices and other claims under the Contract that have no errors and contain all required information	≥ 90%
<b>Value</b>			
12.	Legitimacy of Contractor claims	Percentage of claims for variations, extensions of time, delays costs and other adjustments to the Contract Price accepted by Transport for NSW or upheld following dispute resolution (claims the subject of unresolved dispute	≥ 90%

Key Performance Indicator (KPIs)		Measure	Target (per Contract)
		resolution not be to counted)	
13.	Cost saving initiatives	Number of tangible cost saving initiatives identified	≥ 1
<b>Innovation and Continuous Improvement</b>			
14.	Continuous improvement initiatives	Number of value adding initiatives identified to improve process efficiency and maintain best practice	≥ 1
15.	Performance Reports	Percentage of monthly KPI Performance Reports provided to Transport for NSW by the required date and which contain accurate and complete information	≥ 80%



## **Annexure E - KPIs**

(If nothing is attached, the only KPIs are those specified in Schedule 10 of the Appendix.)