



Transport  
Roads & Maritime  
Services

# CONTRACT

for the Design, Supply, Installation  
and Maintenance of the Trip  
Reconstruction and Rating Module  
(TRARM)



**Contract for the design, supply, installation and maintenance of the Trip Reconstruction and Rating Module (TRARM)**

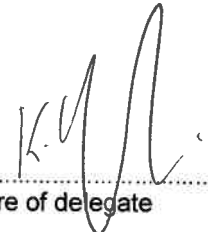
Parties		Principal and Supplier
<b>Principal</b>	Name	<b>Roads and Maritime Services</b>
	ABN	76 236 371 088
	Address	101 Miller Street, North Sydney, NSW 2060
<b>Supplier</b>	Name	SICE Pty Ltd
	ABN	75 113 609 055
	Address	200 Carlisle Street St Kilda VIC 3187
<b>Date of agreement</b>	26 August 2015	

EXECUTED as a deed.

**SIGNED, SEALED AND DELIVERED**  
for and on behalf of **ROADS AND MARITIME SERVICES** by its authorised delegate:

  
.....  
Signature of witness

Margaret Snedden  
.....  
Name of witness (print)

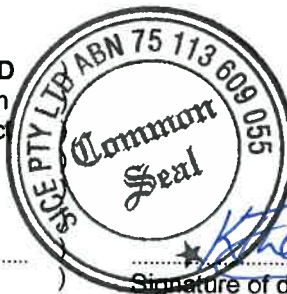
  
.....  
Signature of delegate

Kenneth John Kanofski  
.....  
Name of delegate (print)

**SIGNED, SEALED AND DELIVERED**  
by **SICE PTY LTD** in accordance with section 127(1) of the Corporations Act 2001 (Cth):

  
.....  
Signature of director

MANUEL GONZALEZ ARROSO  
.....  
Name of director (print)



  
.....  
Signature of director/company secretary\*

\*delete whichever is not applicable

KAREN THOMAS  
.....  
Name of director/company secretary\* (print)  
\*delete whichever is not applicable

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## Contract Details

<b>Operations and Maintenance Phase</b> (clause 1.2)	Operations and Maintenance Phase	5 years from Go Live of Release 1
	Period by which the Operations and Maintenance Phase may be extended	5 years
<b>Operational Support Period</b> (clause 13)	The period commencing on Go Live of Release 1, and running until the later of:	
	(a) the date that is 8 weeks after Go Live of Release 1; and (b) the end of the Operational Acceptance Period for Release 1.	
<b>Date for Practical Completion for each Release</b> (clause 48)	As stated in in Schedule 1.	
<b>Liquidated Damages</b> (clause 10.11)	For delay in meeting the Date for Practical Completion for Release 1, [REDACTED] per day for each day after the Date for Practical Completion for that Release, up to a maximum aggregate amount equal to [REDACTED] of the Contract Price.	
<b>Minimum duration of Warranty Period</b> (clause 11.2)	The period commencing on Go Live for Release 1 and ending 36 consecutive months after Go Live of Release 2.	
[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	
<b>Supplier Liability Cap</b> (clause 36.3(a)(i))	[REDACTED] the Contract Price.	
<b>Amount of Bank Guarantee</b> (clause 38.1)	[REDACTED] for the period from the Commencement Date to the Date of Practical Completion for Release 2.	
	[REDACTED] for the period from the Date of Practical Completion for Release 2 to the expiry of the Warranty Period.	
	[REDACTED] for the period from the expiry of the Warranty Period to the end of the Term.	

*MA*

**Parent Company Guarantee** (clause 38.2)

Parent Company Guarantee required:

Yes

No

If 'yes', the following company will be the Parent Company Guarantor:

Company Name

ACN / ABN

Address

**Supplier Representative** (clause 39.1)

Managing Director, SICE Pty Ltd;  
200 Carlisle Street, St Kilda, VIC, 3187

**Principal's Representative** (clause 39.2)

Project Director  
Tolling Systems Upgrade Program  
Pod 3E Octagon  
110 George Street  
Parramatta,  
New South Wales, 2150

**Notices** (clause 45)

If to the Principal:

Attention:

Position:

Address:

Facsimile:

Email:

Copy to:

Project Director  
Tolling Systems Upgrade Program  
Pod 3E Octagon  
110 George Street  
Parramatta,  
New South Wales 2150

RMS General Counsel  
101 Miller Street  
North Sydney, New South Wales, 2060

If to the Supplier:

Same as Supplier  
representative

Attention:

Position:

Address:

Facsimile:

Email:

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# General Terms

## Part A – Agreement Term & Scope of Services

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### 1 Term and Overview

#### 1.1 Phases of the agreement

This Agreement commences on the Commencement Date and is comprised of the following phases:

- (a) a Delivery Phase, during which the Supplier must provide the Delivery Services, as described in Part B of these General Terms; and
- (b) the Operations and Maintenance Phase, during which the Supplier must provide Operations and Maintenance Services, as described in Part C of these General Terms.

#### 1.2 Operations and Maintenance Phase

- (a) If the Principal notifies the Supplier, at least 120 days prior to the expiry of the Operations and Maintenance Phase, that it wishes to extend the Operations and Maintenance Phase for any extension period specified in the Contract Details, then this Agreement will be extended for such period.
- (b) The Principal may extend the Operations and Maintenance Phase under this clause 1.2 twice, and any additional number of times agreed by the parties.
- (c) Subject to clause 1.2(d), the same Service Levels and Operations and Maintenance Fees will apply during the Operations and Maintenance Phase and any extension of the Operations and Maintenance Phase made under this clause.
- (d) Where this Agreement is extended under clause 1.2(a), the Supplier may vary the Operations and Maintenance Fees in accordance with Schedule 2B.

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### 2 Due Diligence

- (a) As at the Commencement Date, the Supplier acknowledges that it has had the opportunity to conduct appropriate due diligence and inform itself of all matters (including those related to the System and Site) necessary to enable it to:
  - (i) form the decision to enter into this Agreement;
  - (ii) satisfy itself as to the scope and nature of the Services to be provided; and
  - (iii) satisfy itself that it is able to perform its obligations under this Agreement for the Contract Price and Operations and Maintenance Fees.

- (b) Without limitation, the Supplier agrees that it is not relieved of any of its obligations under this Agreement and will make no Claim against the Principal as a result of the Supplier's failure to conduct appropriate due diligence and inform itself of all matters referred to in clause 2(a).

---

### **3 Scope of Services**

#### **3.1 Scope**

The Supplier must supply the System and provide the Services to the Principal in accordance with the Specifications and this Agreement, including by:

- (a) preparing the Documentation as required under this Agreement;
- (b) providing the Delivery Services; and
- (c) providing Operations and Maintenance Services.

#### **3.2 No exclusivity**

Without limiting anything in clause 42.3, the Supplier's relationship with the Principal is not exclusive, and the Principal may itself deliver any part of the Services, or engage a third party to perform any part of the Services.

#### **3.3 Other Authorities**

The Supplier acknowledges and agrees that, without limiting any of the Supplier's rights under clause 16.5, and provided that any changes to which clause 29 applies are effected in accordance with that clause:

- (a) there are Authorities (other than the Principal) which may exercise their statutory functions and powers in a manner which:
  - (i) disrupts, interferes with or otherwise affects the Services; and
  - (ii) imposes additional terms and conditions on the Principal in relation to the Services; and
- (b) the Supplier bears the full risk of all occurrences of the kind referred to in clause 3.3(a) and will have no Claim against the Principal arising out of or in connection with such occurrences; and
- (c) the Supplier must comply with any additional terms and conditions imposed on the Principal by any Authority (other than the Principal).

#### **3.4 Project Objectives**

- (a) The Supplier acknowledges that the Principal has appointed the Supplier to assist the Principal in achieving the required Project Objectives.
- (b) The Supplier must at all times:
  - (i) act in a manner consistent with the Project Objectives;
  - (ii) do all things as are reasonably necessary to facilitate the achievement of the Project Objectives; and

- (iii) track and report on its performance against the Project Objectives.
- (c) As soon as the Supplier becomes aware that any of the Project Objectives may not be achieved, the Supplier must immediately notify the Principal's Representative in writing, setting out:
  - (i) the reasons why it believes this to be the case, including any supporting evidence; and
  - (ii) the proposed alternative methods, if any, of achieving the Project Objectives.
- (d) The Supplier acknowledges that the achievement of the Project Objectives does not limit the Supplier's other obligations and responsibilities under this Agreement.

### 3.5 Staging

The activities to be performed under clauses 4,5, 6 and 7 are to be provided in discrete stages, as described in the SWTC (Delivery Services). Without limiting the foregoing, the parties acknowledge and agree that the activities described in sections 4, 5, 6, 7 and 8 of the SWTC (Delivery Services) will be repeated in respect of each Delivery Stage, and that the following testing activities will be repeated in respect of each Release and the System as a whole:

- (a) Factory Acceptance Testing;
- (b) Design Documentation Review;
- (c) System Testing (Non Operational);
- (d) Operational Readiness Trial; and
- (e) testing described in the SWTC (Delivery Services) to be performed during the Operational Acceptance Period.

References in this Agreement to any of those activities in relation to a Release will be taken to be a reference to those activities as performed or required to be performed in relation to that Release.

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## Part B – Delivery Phase

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### 4 Design

#### 4.1 Design Documentation

- (a) The Supplier warrants to the Principal that:
  - (i) the Concept Design & Bill of Materials has been prepared by the Supplier in accordance with the SWTC and will be fit for its intended purpose;
  - (ii) it has satisfied itself that there are no ambiguities, discrepancies or inconsistencies in or between the Concept Design & Bill of Materials and the SWTC;
  - (iii) the Design Documentation will:
    - (A) satisfy the requirements of the SWTC and the other requirements of this Agreement;
    - (B) be as shown in, and in accordance with, the Concept Design & Bill of Materials, subject to such changes as may be necessary to ensure compliance with this Agreement;
    - (C) be fit for its intended purpose;
    - (D) be completed in accordance with the requirements of this Agreement; and
    - (E) integrate all the discrete design elements;
- (b) In relation to each Design Document which the Supplier is required to prepare, being the Design Documentation specified in the SWTC, the Supplier must:
  - (i) prepare the Design Document, in consultation with the Principal, so that it:
    - (A) complies with any relevant requirements of this Agreement;
    - (B) is as shown in, and in accordance with, and is a logical development of, the SWTC and the Concept Design & Bill of Materials; and
    - (C) describes in detail the System design and development requirements, including describing all relevant activities, methods, processes, checks and milestones to be performed by the Supplier in respect of the Releases to which it relates;
  - (ii) provide the Design Document to the Principal for Acceptance in accordance with the timeframes set out in the Delivery Plan.
- (c) Once a Design Document has been Accepted by the Principal, the Supplier must comply with it.
- (d) The Supplier acknowledges that the Principal is relying on the Supplier's expertise in preparing the Design Documentation to meet the Principal's requirements and the Supplier's obligations under this Agreement.



- (e) The Supplier warrants and represents from the date each Design Document is Accepted by the Principal, that:
  - (i) it is complete and accurate in every respect and is not misleading or deceptive; and
  - (ii) meets the requirements of this Agreement and complies with all applicable Laws and Standards referenced in the Specifications.

#### 4.2 Updating Documentation

The Supplier must, during the Delivery Phase, maintain and keep all Design Documentation up to date to reflect:

- (a) any changes arising from the correction of Defects in the System or the Services;
- (b) current practices and Laws; and
- (c) any changes agreed with the Principal in accordance with clause 29.

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## 5 Provision of Delivery Services

### 5.1 Provision of Delivery Services

The Supplier must provide the Delivery Services and the Deliverables in accordance with the Specifications.

### 5.2 Working expeditiously for Practical Completion

The Supplier must work expeditiously and diligently so as to achieve:

- (a) Milestone Completion of each Milestone by the Milestone Due Date and in the sequential order of Milestones as set out in the Delivery Plan; and
- (b) Practical Completion of each Release by the Date for Practical Completion for that Release.

### 5.3 Milestone Completion

- (a) The Supplier acknowledges that unless otherwise instructed by the Principal in writing, it cannot commence work on a subsequent Milestone until all prior Milestones, according to the order of Milestones specified in part 1 of the Delivery Plan, have reached Milestone Completion.
- (b) Within 10 Business Days of the Supplier achieving Milestone Completion, the Principal will issue a Notice of Acceptance in relation to the Milestone to the Supplier setting out the date of Milestone Completion.

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## 6 Supply of System

### 6.1 Obligation to Supply

- (a) The Supplier must supply the System in accordance with:
  - (i) the requirements of this Agreement, including the Specifications;

- (ii) the timeframes set out in the Delivery Plan;
  - (iii) all applicable Laws and Standards;
  - (iv) using good workmanship and materials which are new and free of defects or other imperfections, and of the quality specified in the SWTC;
  - (v) so that the design life of each part of the System will meet or exceed the design life standards referenced in the Specifications;
  - (vi) so that the System:
    - (A) is, and will remain at all times during the Warranty Period, fit for its intended purpose;
    - (B) is compatible and interoperable with, and does not restrict or adversely impact, the performance of any other component of the Tolling System or any equipment and systems specified or referred to in this Agreement, (including any other equipment used by the Principal or another Authority) that the Supplier knows, or reasonably ought to know, will be used with or in the vicinity of the System;
    - (C) when properly used, will not emit electro-magnetic radiation, heat or noise that could be detrimental to persons, the environment or the operation of the System;
    - (D) when properly used, is safe and without risk to the Principal or its Personnel, or any other persons; and
    - (E) complies with all applicable Laws and Standards.
- (b) Without limiting clause 6.1(a), the obligation to supply the System includes:
- (i) delivering, installing and integrating the Hardware in accordance with clause 7;
  - (ii) developing the Developed Software, and supplying, installing and integrating all Software, in accordance with clause 9);
  - (iii) installing and commissioning the System in accordance with the Specifications;
  - (iv) integrating the Hardware and the Software, and all other components of the System (both internally and with the Interoperable Systems), including ensuring that each component of the System operates seamlessly with each other component, and with the Roadside System and the Tolling Back Office;
  - (v) developing and documenting processes and training all relevant Personnel in accordance with the Specifications; and
  - (vi) testing the System in accordance with clause 10.

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## 6.2 Interface Specifications

From time to time, the Principal may request Interface Specifications for the System, and the Supplier will provide the Interface Specifications for the System within a reasonable time after receiving such a request.

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# 7 Hardware

## 7.1 Hardware Supply and Installation

- (a) Without limiting anything in clause 6, the Supplier must supply and deliver the Hardware in accordance with the Specifications and this Agreement.
- (b) Unless otherwise agreed with the Principal, the Supplier must install the Hardware at the Site in accordance with the Specifications. The Supplier must notify the Principal when installation of any Hardware is complete.
- (c) Unless otherwise agreed, the Supplier must ensure that all Hardware is:
  - (i) newly manufactured;
  - (ii) of merchantable quality; and
  - (iii) fit for the purpose for which the Hardware is supplied.

## 7.2 Removal of packaging

Unless otherwise requested by the Principal, the Supplier must (at its own cost) remove and dispose of all packaging material and other by-products associated with the supply or installation of any Hardware promptly after delivery to the Principal.

## 7.3 Hardware Integration and Training

The Supplier must integrate (and work with other service providers to integrate) the Hardware, including the implementation and setting to work of the Hardware with or within the Principal's existing hardware and software environment to ensure that it is ready for use by the Principal and complies with all functional and performance requirements specified in the Specifications.

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# 8 Title and Risk

- (a) Title to the physical materials (but excluding any Intellectual Property Rights) comprising each Deliverable passes to the Principal on the earlier of:
  - (i) creation;
  - (ii) acquisition by the Contractor for the sole purposes of this agreement; or
  - (iii) delivery of it to the Principal, or any location which it is to be delivered under this Agreement.
- (b) The Supplier warrants and represents that the Deliverable is free from any charge or encumbrance at the time title passes to the Principal.

- (c) Risk in each item of Deliverables passes to the Principal on the date of delivery to the Principal.

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## 9 Software

### 9.1 Supplier Licensed Software

The Supplier grants to the Principal [REDACTED] a perpetual, non-exclusive, irrevocable and royalty free licence to:

- (a) use, reproduce, modify, configure, adapt and maintain, and exercise all Intellectual Property Rights in, any of the Supplier Licensed Software which is incorporated into, or required for the use of, the System or any Deliverable, and the Escrow Materials, in any manner, anywhere in the world; and
- (b) sub-license any of the rights described in clause 9.1(a) or to any person, for any Permitted Licence Use.

### 9.2 Procured Third Party Software

The Supplier must procure that the owner or authorised licensor of the Procured Third Party Software grants to the Principal and [REDACTED] a perpetual, non-exclusive, irrevocable and royalty free licence on terms acceptable to the Principal, to:

- (a) use, reproduce, modify, configure adapt and maintain, and exercise all Intellectual Property Rights in, any of the Procured Third Party Software which is incorporated into, or required for the use of, the System or any Deliverable in any manner, anywhere in the world and for any purpose; and
- (b) sub-license any of the rights described in clause 9.2(a) to any person, for any Permitted Licence Use.

### 9.3 Open Source Software

- (a) The Supplier must ensure that the System and Deliverables do not comprise any Open Source Software, other than the Included Open Source Software.
- (b) The Supplier must supply and procure a perpetual, non-exclusive, irrevocable and royalty free licence to the Principal and [REDACTED] of the Included Open Source Software to:
- (i) use, reproduce, modify, configure, adapt and maintain, and exercise all Intellectual Property Rights in, any of the Included Open Source Software which is incorporated into, or required for the use of, the System or any Deliverable in any manner, anywhere in the world and for any purpose; and
- (ii) sub-license any of the rights described in clause 9.3(b)(i) to any person, for any Permitted Licence Use.

- (c) The Supplier must deliver to the Principal a copy of the Source Code Materials for the Included Open Source Software within a reasonable time prior to the date scheduled for commencement of the Acceptance Tests, or such earlier time as may be required to enable the Principal to carry out its tasks in relation to this Agreement.

#### 9.4 Developed Software

- (a) The Supplier must design and develop software (including modifications or enhancements to the Supplier Licensed Software, the Procured Third Party Software, the Principal Supplied Third Party Software and the Included Open Source Software) needed to ensure that the System conforms to the Specifications.
- (b) The Supplier will establish, and provide to the Principal for Acceptance, procedures:
  - (i) to identify and control software components of, and changes to, the Software and to maintain the integrity and traceability of the Developed Software at all stages of its development; and
  - (ii) to control the content of the Documentation relating to the Developed Software.
- (c) The procedures referred to in clause 9.1(b) will include methods for:
  - (i) identifying and locating revisions of the Developed Software as it is developed;
  - (ii) ensuring compliance with the process for change control as set out in clause 29; and
  - (iii) controlling the issue of development revisions of the Developed Software.
- (d) The Supplier will establish, and provide to the Principal for Acceptance, procedures for corrective action to the Developed Software and associated Documentation including:
  - (i) examination of Defects, problems and deficiency reports to determine their causes, and to prepare corrective measures;
  - (ii) analysis of deficiency trends, to prevent the development of Developed Software that does not conform to the Specifications;
  - (iii) review of corrective measures, to determine their effectiveness;
  - (iv) provision for defining all required repetition of testing and reviews to determine the effectiveness of modifications to any item of the Developed Software; and
  - (v) provision for ensuring that timely corrective action is taken by reviewing deficiencies in the Developed Software and tracking their clearance.
- (e) The Supplier must provide the Source Code Materials for the Developed Software to the Principal no later than 30 days after the successful completion

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of Acceptance Tests in accordance with clause 10.6 and at least 60 days prior to the Date for Practical Completion for Release 1, or such earlier time as requested by the Principal. The Supplier must provide to the Principal an updated copy of those Source Code Materials for the Developed Software within two weeks of completing any modifications to any of the Source Code Materials for that Developed Software.

- (f) The Supplier warrants and represents that the Source Code Materials provided to the Principal under this clause 9.4 will contain everything necessary to enable a reasonably experienced programmer to install, configure, maintain, modify and enhance the Developed Software without reference to the Supplier.

#### **9.5 Escrow for Supplier Licensed Software and Developed Software**

- (a) The Supplier must, within 20 Business Days of the Commencement Date, enter into an Escrow Agreement with the Principal and an escrow agent (as nominated by the Principal in its sole discretion) in the form set out in Schedule 7 in relation to the Escrow Materials. The Supplier must ensure that the Escrow Agreement is maintained for the Escrow Term.
- (b) If the Escrow Agreement entered into under clause 9.5 is terminated and the Principal does not obtain the Escrow Materials, the parties must enter into an agreement with a new escrow agent on terms reasonably acceptable to the Principal within 20 Business Days of that termination.
- (c) The licence under clause 9.1, to the extent it relates to the access to or modification of any Escrow Materials which are held in escrow under the Escrow Agreement (in the form in which they are held in escrow) may only be exercised from the time the Principal is entitled to have those Escrow Materials released to it in accordance with the Escrow Agreement. Nothing in this clause prevents the Principal or any other person from exercising any of its rights in relation to any Software or materials licensed to it under this Agreement (including under this clause 9 and clause 30.2), in the form in which that Software or those materials are made available to it before the time at which such release is required.

#### **9.6 Software Supply and Installation**

The Supplier must supply and install the Software (in executable form) on the Hardware in accordance with the Specifications and this Agreement. The Supplier must also supply or make available additional copies of the Software at any time on request by the Principal.

#### **9.7 Software Integration**

The Supplier must integrate (and work with other service providers to integrate) the Software, including the implementation and setting to work of the Software with or within the Principal's existing hardware and software environment, to ensure that it is ready for use by the Principal and complies with all Specifications.

#### **9.8 Software Locks**

The Supplier will ensure that the Software does not contain any Software Locks without first obtaining the prior written consent of the Principal. Where the Principal provides such consent, the Supplier:

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- (a) will not use a Software Lock to prevent the Principal from using the Software including the functionality and performance required by the Specifications; and
- (b) will provide all information (eg license keys) necessary to de-activate the Software Lock (in relation to any period required by the Principal) at the time of supplying the Software and immediately when requested by the Principal.

#### 9.9 Future Delivery Services

The Principal agrees that it will not engage any third party service provider (excluding consultants, individual contractors or advisors to the Principal) to design, test or commission changes to the Supplier Licensed Software (other than Third Party Software and the Procured Third Party Software) to process data from additional roads in respect of which data is not being currently processed (**Delivery Services**) unless and until:

- (a) it has first discussed the scope of the Delivery Services with the Supplier, and the parties have (despite using their reasonable endeavours to do so) failed to reach agreement on the terms on which such services would be performed within 90 days after the Principal requesting a written proposal from the Supplier for the performance of those services;
- (b) the Supplier has committed a breach of its agreement with the Principal for the performance of any Delivery Services;
- (c) the Principal's agreement with the Supplier for the performance of any Delivery Services has been terminated due to any wrongful act or omission on the part of the Supplier, or for any reason analogous to those referred to in clause 41.1;
- (d) the Supplier is Insolvent; or
- (e) the Supplier has terminated this Agreement under clause 41.1 or has become entitled to do so.

#### 9.10 Acknowledgement

To avoid doubt, nothing in this Agreement requires RMS to ensure that any third party complies with clause 9.9. The parties acknowledge and agree that any User Agreement (as defined in clause 46.2) may at the Supplier's option include a provision no less favourable to the Supplier than the terms of clause 9.9 (but amended so that references to the Principal will be taken to be references to the [REDACTED] entering into that User Agreement with the Supplier).

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## 10 Verification and Acceptance Testing

### 10.1 Test and Acceptance Master Plan

- (a) The Supplier must in consultation with the Principal, prepare a Test and Acceptance Master Plan in accordance with the SWTC.
- (b) Once the Test and Acceptance Master Plan has been Accepted by the Principal, both parties must comply with it.

## 10.2 Documentation evaluation and Acceptance

- (a) If the Principal has any comments on any Documentation, once it has been delivered by the Supplier for Acceptance, it will notify the Supplier of the alterations it reasonably requires to the Documentation within a reasonable time (taking into account the complexity of the Documentation and the number and level of Principal Personnel required to review the Documentation).
- (b) The Supplier will amend the Documentation as quickly as reasonably possible (but no later than any period specified in the Delivery Plan or any other deadline specified elsewhere in this agreement for the delivery of it) to take account of the Principal's reasonable alterations, and re-submit it to the Principal for its Acceptance.
- (c) The process under clause 10.2(a) and 10.2(b) will be repeated until the Principal requires no further alterations to the Documentation and accepts it in accordance with clause 10.6.
- (d) Where this Agreement refers to the Principal approving or accepting any Documentation, no Acceptance will be taken to have been given by the Principal unless that Acceptance is in writing signed by the Principal's Representative.
- (e) Once the Principal has Accepted any Documentation, it will be deemed to replace the previous versions from the date of the Principal's Acceptance.

## 10.3 Supplier Testing

- (a) The Supplier will undertake verification and testing activities in accordance with the Specifications, to confirm that the Deliverables and Services comply with the requirements of this Agreement, including (in the case of Deliverables forming part of the System) by conducting Factory Acceptance Testing and System Testing (Non Operational) for each Release and confirming that those Deliverables (for each stage of those Acceptance Tests for each Release) comply with the applicable Acceptance Criteria (**Supplier Testing**).
- (b) The Supplier must give the Principal at least 3 weeks' notice of the Supplier's intention to conduct any Supplier Testing and the Supplier must permit the Principal to observe any Supplier Testing and participate in any Supplier Testing as required.
- (c) The notice given under clause 10.3(b) must include details of:
  - (i) the Deliverable or parts of the Deliverable to be tested;
  - (ii) the testing activities to be performed;
  - (iii) a comprehensive plan for the performance of testing activities; and
  - (iv) the proposed date and location of the testing activities.
- (d) Without limiting anything in the Specifications, the Supplier must present the results of any Supplier Testing in a written report produced by the Supplier and delivered to the Principal as soon as practicable after completion of that testing (including copies of test plans, test scripts, traceability and coverage matrices and test results).



- (e) The Supplier must bear its own cost of performing all testing activities which it is required to perform under this Agreement, and the only Principal testing costs the Supplier will bear are the additional costs directly arising by reason of retesting required under this Agreement, due to a failure of a Deliverable or Service to meet any applicable Acceptance Criteria.
- (f) The Principal can order the interruption or termination of any testing activity if damage to a Deliverable or other property, or personal injury, is likely to result from continuation.
- (g) Where testing activities are materially disrupted or interrupted by Defects in a Deliverable, the Principal may require the Supplier to deliver and install a patch or workaround as a priority to overcome the effect of those Defects and to enable the resumption and completion of the testing activities.
- (h) Without limiting the other provisions of this clause, the Principal may carry out, or request the Supplier to carry out, any testing not described in this Agreement and which the Supplier would not otherwise have carried out as it determines necessary to verify that the System or the Deliverable does not contain any Defects and/or complies with the Acceptance Criteria for that Deliverable or a Milestone in relation to which Acceptance Tests have been conducted. The Supplier must arrange or permit such testing as soon as practicable. The Supplier will be entitled to be reimbursed its extra costs necessarily and reasonably incurred as a direct consequence of carrying out any such verification and testing, unless the Deliverable or part of the Deliverable fails such verification and testing, in which event the Supplier shall be responsible for such costs.

#### 10.4 Go Live decision

The Principal will determine, in its absolute discretion, when each Release is to be moved into a Live Production Environment.

#### 10.5 Verification and Acceptance Testing

- (a) The Supplier will notify the Principal when a Service or a Deliverable is ready for any verification and testing under this clause, including that the Service or Deliverable has successfully completed the Supplier Testing in accordance with clause 10.3(a).
- (b) After receiving the Supplier's notice under clause 10.5(a), the Principal will review and evaluate the relevant Deliverables or Service (and, where a Deliverable is or forms part of a Release, test the Deliverable), as required by the Specifications to determine whether the relevant Deliverables or Services meet the applicable Acceptance Criteria.
- (c) Without limiting anything in the Specifications, the Supplier is responsible for establishing and maintaining the required test environments and loading all the required test data. The Supplier is responsible for developing, maintaining and providing to the Principal the required automated tests and testing scripts required by the Principal to perform the testing. The Principal may reuse such automated tests and testing scripts as required.
- (d) The Supplier will, at no charge to the Principal, make available any testing tools and provide any assistance the Principal requires in order to perform testing, or which the Specifications otherwise require the Supplier to provide.

Such assistance may require the Supplier to train the Principal on the use of the testing tools.

- (e) The Principal may conduct additional testing as it determines necessary to verify that a Deliverable or a Service does not contain any Defects.
- (f) The System will be progressively delivered and tested, so each Release builds on and where required modifies the previous Release, and then, once it is in a Live Production Environment, replaces the previous Release.
- (g) For the purposes of this Agreement, testing of the System will be conducted for each Release according to the required test plans agreed by the parties, and the rights and obligations under this Agreement apply to each Release (including components previously tested in earlier Releases). For clarity, components of the System that are tested in earlier Releases may be re-tested in subsequent Releases. Once the complete System is delivered and implemented, it will be subjected to acceptance tests as a whole, including all components.

#### 10.6 Principal's Notice of Acceptance

If the Acceptance Tests demonstrate that:

- (a) a Deliverable (other than the System) or a Service is free from Defects and satisfies all the relevant Acceptance Criteria; or
- (b) a Release meets the OAP Acceptance Criteria for that Release,

to the reasonable satisfaction of the Principal, then within 10 Business Days of a request by the Supplier, the Principal will issue a Notice of Acceptance to the Supplier for the Release or Deliverable or Service (as applicable).

#### 10.7 Acceptance Test failure

- (a) A Service or a Deliverable will be taken to have failed an Acceptance Test (and those Acceptance Tests will be taken not to have been completed successfully) if the Acceptance Test demonstrates that the Service or Deliverable does not meet the applicable Acceptance Criteria.
- (b) During the Operational Acceptance Period for that Release, if one or more Defects occur which would have prevented any Acceptance Criteria for a Milestone due for completion before the commencement of that period (**Earlier Milestone**) from being met, then as part of fulfilling the relevant OAP Acceptance Criteria (and without limiting any of the Principal's other rights or remedies under this Agreement) the Supplier must remedy those Defects and conduct regression testing in respect of the System in accordance with the Specifications, and such other testing as the Principal reasonably requires to demonstrate that those Defects have been rectified and the System continues to meet the Acceptance Criteria for the Earlier Milestone.
- (c) If the Principal is not reasonably satisfied that a Deliverable or Service meets the applicable Acceptance Criteria, then the Principal may give the Supplier a Notice of Failure, setting out each aspect of the System or Deliverable that is not acceptable, including the reasons why it is not acceptable (to the extent it is reasonably able to do so).

## 10.8 Correction and restart of Acceptance Tests

- (a) On receipt of a Notice of Failure, the Supplier must correct, at its own cost, all Defects in the Service or Deliverable, or other failures of the Service or Deliverable to meet the applicable Acceptance Criteria, within 10 Business Days.
- (b) The Principal may conduct or re-conduct the Acceptance Tests (including any testing which the Principal was unable to conduct due to Defects) and raise further Defects or other failures to meet the applicable Acceptance Criteria.
- (c) The Principal may extend the testing period to accommodate any delay arising from any rectification, replacement or further Acceptance Tests.
- (d) The parties' costs of re-conducting the Acceptance Tests are to be borne solely by the Supplier. For clarity, the only Principal testing costs the Supplier will bear are the additional costs directly arising by reason of retesting required under this Agreement, due to a failure of a Deliverable or Service to meet any applicable Acceptance Criteria.

## 10.9 Further failure of Acceptance Tests

If:

- (a) a Deliverable or Service fails an Acceptance Test carried out under clause 10.1;
- (b) where the Deliverable is a Release - there is a failure of the Deliverable to meet the OAP Acceptance Criteria for the relevant Release; or
- (c) where the Deliverable is a Release - the Principal is not reasonably satisfied that the Deliverable is operating in accordance with the applicable Specifications,

then the Principal may at its option:

- (i) issue a Notice of Failure under clause 10.7 in which case clauses 10.8 and this clause 10.9 will apply to a further round of correction and testing;
- (ii) accept the Deliverable or Service, or part of it, by Notice of Acceptance to the Supplier, notwithstanding the failure, for a reduction of the Contract Price as determined by the Principal;
- (iii) accept the Deliverable or Service "as is" by Notice of Acceptance to the Supplier, subject to the Supplier completing, at its own cost, a set of procedures (e.g. work-around) required by the Principal to remove the Defects or their impact; or
- (iv) reject the Deliverable or Service, or part of it, in which case the Principal will be entitled to:
  - (A) any Liquidated Damages payable in accordance with clause 10.11;
  - (B) a refund of any Contract Price paid in respect of the rejected Deliverable or Service; and/or

- (C) immediately terminate this Agreement (in whole or in part) for breach by the Supplier under clause 41.1.

#### 10.10 Practical Completion

Practical Completion is the stage in the carrying out and completion of a Release (and the Delivery Stage relating to that Release) when:

- (a) the Supplier has completed the Delivery Services for that Delivery Stage;
- (b) all relevant Acceptance Tests have been completed successfully and the Principal has issued a Notice of Acceptance for the Release and each and every Deliverable supplied or to be supplied as part of that Delivery Stage;
- (c) the Operational Acceptance Period for the relevant Release has been completed, the relevant Release has met the OAP Acceptance Criteria for that Release and the Supplier has provided the Principal with an acceptable plan to rectify any Defects in that Release which remain at the end of the relevant Operational Acceptance Period;
- (d) the Supplier has submitted to the Principal an up-to-date VCRM with reference to all test reports demonstrating the relevant Release is fit for Acceptance;
- (e) the Supplier has completed all other obligations that the Supplier is required to perform to enable the Principal to use the Deliverables continuously in an operational environment, including the delivery of all applicable Documentation; and
- (f) the satisfaction of all other obligations under this Agreement that are a condition precedent to achieving Practical Completion for that Release occurs,

to the reasonable satisfaction of the Principal.

Within 10 Business Days of the Supplier giving a written notice to the Principal advising that it has achieved Practical Completion for a Release, the Principal will issue a Notice of Practical Completion to the Supplier for the System setting out the Date of Practical Completion for the Release.

#### 10.11 Liquidated Damages

- (a) If Practical Completion for Release 1 is not achieved by the relevant Date for Practical Completion, the Supplier must pay to the Principal the Liquidated Damages for the period commencing on the day after the Date for Practical Completion for Release 1 and ending on the earlier of:
  - (i) the Date of Practical Completion for that Release; or
  - (ii) the date of termination of this Agreement by the Principal.
- (b) The parties acknowledge and agree that the Liquidated Damages:
  - (i) do not exceed a genuine pre-estimate of the loss that the Principal is likely to suffer as a result of the Supplier failing to meet the Date for Practical Completion for Release 1; and

- (ii) are in addition to, and do not limit or affect, any other right or remedy the Principal may have in connection with the Supplier failing to meet the Date for Practical Completion for Release 1, and not does not affect the Principal's right to terminate this agreement under clause 41.1.

The parties acknowledge and agree that neither the liability to pay, nor payment of, Liquidated Damages under this clause in any way limits the liability of the Supplier for, or prevents the Principal from recovering, any loss or damage suffered, incurred or sustained by the Principal by reason of Practical Completion for any Release not being achieved by the relevant Date for Practical Completion, to the extent such loss or damage exceeds in the aggregate the amount of Liquidated Damages which the Supplier is liable to pay under this clause.

- (c) The liability of the Supplier for delay in achieving Practical Completion for any Release is not affected by this clause 10.11 and will be determined in accordance with clause 36.
- (d) The Supplier acknowledges and agrees that if clause 10.11(a) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering the Liquidated Damages, the Principal will be entitled to recover common law damages if Practical Completion for Release 1 is not achieved by the relevant Date for Practical Completion.

#### 10.12 No deemed acceptance

For the avoidance of doubt, none of the following events will give rise to any deemed acceptance of any Release or Deliverable, or waive any rights the Principal has under this clause 10 or otherwise:

- (a) the Principal's failure to issue any Notice of Acceptance, Notice of Practical Completion or Notice of Failure within the prescribed period;
- (b) the Principal's failure to terminate, or termination of, this Agreement (in whole or in part) as a result of the Supplier's failure to complete any Acceptance Tests in accordance with this Agreement;
- (c) the Principal's or the Supplier's failure to complete or participate in any Acceptance Tests within the required timeframe; or
- (d) use of a Release outside the testing environment.

#### 10.13 Purpose of Acceptance Testing

- (a) The Supplier acknowledges that the Principal does not owe any duty to the Supplier to review any Documentation for errors, omissions or compliance with the requirements of this Agreement or to consult with the Supplier or make any comments regarding any Documentation. Accordingly, neither the Principal's participation in any process for developing any Documentation, nor any review or rejection of, nor any consultation or comments by, nor any Acceptance (including any Acceptance of any non-compliance or Acceptance subject to conditions) or Acceptance of any Documentation will:
  - (i) relieve the Supplier of any of its obligations under this Agreement;

- (ii) lessen or otherwise affect the Supplier's warranties under clause 35 or any other of its liabilities or responsibilities under this Agreement or at Law;
  - (iii) constitute an acknowledgment by the Principal that the relevant Documentation meets the requirements of this Agreement; or
  - (iv) constitute a waiver of any of the Principal's rights against the Supplier, whether under this Agreement or at Law.
- (b) The Supplier acknowledges and agrees that acceptance tests are not capable of testing for every possible Defect or other requirement of the Acceptance Criteria and that the issuing of a Notice of Acceptance or Notice of Practical Completion does not:
- (i) affect the Supplier's obligation to correct any Defects under this Agreement; and
  - (ii) constitute a waiver of any of Principal's rights.
- (c) Without limiting clause 10.13(a) or 10.13(b) above, the Acceptance of any Design Documentation does not constitute an agreement by the Principal that a system complying with that Design Documentation will comply with the Specifications, and is merely an approval to proceed to supply and implement a computer system on the basis of that design.

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## **11 Manufacturer and Supplier Warranties**

### **11.1 Assignment of third party warranties**

- (a) If requested by the Principal, the Supplier must assign to the Principal without the need for further consideration, the benefit of all manufacturers' warranties and/or supplier warranties granted to the Supplier by third party suppliers and licensors of the Hardware, Third Party Software (other than Procured Third Party Software and the Principal Supplied Third Party Software) and any other Services.
- (b) Each component of Hardware supplied by the Supplier must be subject to a manufacturers' and suppliers' warranty effective from the Acceptance Date for that component of Hardware until the end of the Warranty Period. If requested by the Principal, the Supplier must obtain an extended manufacturers' and suppliers' warranty to the extent possible.
- (c) If a manufacturers' or suppliers' warranty in favour of the Supplier is not capable of being assigned to the Principal in accordance with clause (a) the Supplier must, if requested by the Principal, enforce the warranty on behalf of the Principal.
- (d) The Supplier must provide the Principal, on reasonable request and in any event within 20 Business Days after request, with any information relating to any manufacturers' or suppliers' warranties.
- (e) For the avoidance of doubt, this clause 11 does not limit any other obligation or warranty of the Supplier under this Agreement.

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## 11.2 Warranty Period

- (a) The Warranty Period commences on Go Live of Release 1 and continues for the minimum period specified in the Contract Details, and (if there are any Major Defects present in the System at the end of that minimum period) thereafter until such time as there are no Major Defects in the System.
- (b) Without limiting any other rights of the Principal under this Agreement, if a Defect in any Deliverable occurs during the Warranty Period, the Supplier must promptly rectify the Defect, at the Supplier's cost, (including supplying an Update or New Release, if required) in accordance with the Service Levels.
- (c) Where an item of Hardware is added to the System or is replaced during the Warranty Period, the additional or replacement item's Warranty Period will commence on the later of the date on which the additional or replacement item commences service and the date upon which satisfactory completion of any applicable Acceptance Tests occurs.

## Part C – O&M Phase

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### 12 Operations and Maintenance Services

During the Operations and Maintenance Phase, the Supplier must provide the Operations and Maintenance Services in accordance with the SWTC (Operations and Maintenance Services).

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### 13 Operational Support

#### 13.1 Operational Support Period

The Supplier must, during the Operational Support Period:

- (a) provide Principal with operational support for the System;
- (b) provide Principal with an adequate number of staff on Site with appropriate qualifications and knowledge to support knowledge transfer and configuration changes and to provide support to Principal staff;
- (c) participate in weekly status meetings with the Principal to review:
  - (i) the number of issues, problems or Defects raised;
  - (ii) the number of issues , problems or Defects resolved (including severity);
  - (iii) the number of issues , problems or Defects outstanding (including severity);
  - (iv) the management of the priority and target dates of configuration changes required to be made for the System including New Releases and Updates; and
  - (v) the transfer of key knowledge items achieved;

- (d) ensure that the Project Manager:
  - (i) attends the weekly Operational Support Period review meetings;
  - (ii) manages the delivery of New Releases and Updates and software environments;
  - (iii) provides weekly status reporting;
  - (iv) manages Defects; and
  - (v) manages any change requests and proposals; and
- (e) provide the Supplier's Personnel (in addition to the Project Manager) at the Site to:
  - (i) make required System configuration changes including New Releases and Updates;
  - (ii) assist and manage the transfer of key knowledge items to the Principal or any third party approved by the Principal; and
  - (iii) manage the resolution of any level 3 issues (as defined in the Specifications) that may arise.
  - (iv) manage and assist with any level 1 or level 2 issues (as defined in the Specifications) that arise;
  - (v) assist with the transfer of key knowledge items to the Principal or any third party approved by the Principal;
  - (vi) act as the day to day liaison point for all issues;
  - (vii) ensure Defects, problems and issues are allocated to the correct Supplier's Personnel and addressed within the required timeframes;
  - (viii) perform testing on the Software and System and Software Updates; and
  - (ix) provide any other assistance that the Principal may reasonably require,

(together, the "**Operational Support Services**").

### 13.2 Support duration

- (a) During the Operational Support Period, the Supplier must provide the Operational Support Services, at the minimum, from Monday to Friday and between 8.30am to 5.30pm.
- (b) Notwithstanding any other clauses in this agreement, the duration of the Operational Support Period may be amended at the discretion of the Principal by notice in writing to the Supplier. In the event that there is a change in the duration of the Operational Support Period and such change has an impact on either the cost or timetable to deliver the Services by the Supplier, then the Supplier will be entitled to raise a change request and proposal pursuant to clause 29 of this Agreement.

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- (c) During the Operational Support Period, the Supplier must ensure that the Principal is able to notify the Supplier of a Defect, problem or issue on a 24 hours and seven days per week basis.

### 13.3 Response time and resolution time

- (a) During the Operational Support Period, the Response time and Resolution time for each of the Severity Levels shall be as specified in Part 4 of Schedule 12.
- (b) The Response time and Resolution time are measured from the time an issue is notified to the Supplier by the Principal, and continues until such time as a Response or Resolution is provided by the Supplier.

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## 14 Service Levels

### 14.1 Service Levels

During the Operations and Maintenance Phase, the Supplier must provide the Services in accordance with, and the System must perform in accordance with, the applicable Service Levels set out in Schedule 12.

### 14.2 Service Level Rebates

- (a) If the Supplier, or the System, fails to meet any of the Service Levels during the Operations and Maintenance Period and the Principal elects to rely on this clause, by notice to the Supplier, the Supplier must pay the Principal, or credit the Principal (at the Principal's option), the applicable Service Rebates.
- (b) The Service Rebates will be calculated on a cumulative basis with the maximum aggregate Service Rebate in any month being limited to the Service Rebate Cap.
- (c) Service Levels do not apply, and no Service Rebates are available to the Principal, until Practical Completion for Release 1.
- (d) Service Rebates:
  - (i) do not exceed a genuine pre-estimate of the loss that the Principal is likely to suffer as a result of the Supplier failing to meet the applicable Service Levels and will be limited to the Service Rebate Cap; and
  - (ii) are in addition to, and do not limit or affect, any other right or remedy the Principal may have in connection with the Supplier failing to meet the Service Levels, and whether the Service Level Rebate has been reached or not does not affect the Principal's right to terminate this agreement under clause 41.1.
- (e) Neither the liability to pay, nor payment of, Service Rebates under this clause, or any decision by the Principal to issue or refrain from issuing a notice under clause 14.2(a), in any way limits the liability of the Supplier for, or prevents the Principal from recovering, any loss or damage suffered, incurred or sustained by the Principal by reason of the failure of the Supplier to meet the Service Levels, to the extent such loss or damage exceeds in the aggregate the amount of Service Level Rebates which the Supplier is liable to pay under this clause.

#### 14.3 Service Level Monitoring

At all relevant times, the Supplier must:

- (a) ensure its monitoring and reporting systems interface with the Principal's service level monitoring system; and
- (b) have in place such tools and procedures as are necessary, including those specified in the SWTC,

to measure its performance, and the performance of the System, against the Service Levels.

#### 14.4 Service Level Reporting

- (a) The Supplier must provide the Principal with a written report within 7 Business Days of the end of each month, setting out all information reasonably required by the Principal in connection with the Supplier's performance, and the System performance, against the Service Levels.
- (b) During the Maintenance and Support Period, these reports must include the amount of any Service Level Rebates that the Principal is entitled to.
- (c) Within 7 Business Days of the end of each month after Practical Completion for Release 1, the Supplier must provide to the Principal a written report setting out all information reasonably required by the Principal and as required by the SWTC including details of the Supplier's performance, and the System's performance, against Service Levels and the amount of applicable Service Rebates. If the Supplier fails to report its performance and the System's performance against a Service Level it will be deemed to have failed to meet that Service Level.

#### 14.5 Performance of obligations

- (a) In performing the Supplier's obligations under this Agreement, the Supplier must:
  - (i) comply with industry best practices and for this purpose develop, implement and continuously improve maintenance standards and systems to reflect best practices, including performance standards, appropriate response times and management and control systems; and
  - (ii) act in a timely and expeditious manner.

#### 14.6 Service Level Review

The Principal will conduct an internal review of the Service Levels at the end of the Warranty Period and each year during the Operations and Maintenance Phase. Once the Principal has completed the review, the parties will meet to discuss the outcomes of that review, including any proposed changes to the Service Levels.

#### 14.7 Consequences of breach of Service Levels

- (a) Subject to clause 41.1(a), if the Supplier or the System fails to meet the Service Levels, the Principal may, on providing at least 10 Business Days' written notice to the Supplier, cease to acquire the Services the subject of

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those Service Levels from the Supplier (on a temporary or permanent basis), and either perform those Services itself or have a third party perform them at the Supplier's cost.

- (b) The cessation of acquiring any Services under clause (a) will not have the effect of invalidating or abrogating any warranty provided by the Supplier under this Agreement.
- (c) If the Principal exercises its rights under clause 14.7(a)
  - the Principal is no longer required to pay the Supplier for the relevant Services.
- (d) In addition to clause (a), the Principal may, on written notice to the Supplier, terminate this Agreement (in whole or in part) if the Supplier, or the System, fails to achieve:
  - (i) the minimum System Performance Criteria; or
  - (ii) a given Service Level each month in any three consecutive months, and the Supplier must perform any required Transition-Out Services at no cost to the Principal.
- (e) The remedies in this clause 14 are without prejudice to any of the Principal's rights and remedies under this Agreement or arising at Law.
- (f) The Supplier acknowledges and agrees that if the remedies in this clause 14.7 are found for any reason to be void, invalid or otherwise inoperative, the Principal will be entitled to recover common law damages if the Supplier fails to meet the Service Levels.

## Part D – General

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### 15 Project Management

#### 15.1 Project management services

Except to the extent that the Specifications provide otherwise, the Supplier is responsible for project managing the Project, including:

- (a) liaising with the Principal, Tolling Contractor (Roadside) and WDA as reasonably necessary while carrying out the Project;
- (b) ensuring that the Project is delivered in accordance with the Management Plans;
- (c) ensuring that the Project is delivered in an efficient and cost effective manner for the Principal and in accordance with industry best practice;
- (d) identifying the Deliverables and the responsibilities of each party;
- (e) co-ordinating the activities of each party as required under the Management Plans so that they occur with minimum disruption to the normal operations of the Principal; and

- (f) preparing for and participating in scheduled quality assurance and audit check points and procedures.

#### 15.2 **Supplier to take necessary steps**

The Supplier must do all things including to provide all reasonable assistance and information to the Principal and its Personnel that are necessary or desirable for the delivery of the Services and the interoperation of the System with all other components of the Tolling System.

#### 15.3 **Reliance**

- (a) The Supplier acknowledges that the Principal is relying on the Supplier's expertise in preparing the Management Plans and the Delivery Plan to meet the Principal's requirements and the Supplier's obligations under this Agreement.
- (b) the Principal's Acceptance of the Management Plans and Delivery Plan will not:
  - (i) relieve the Supplier of any of its obligations under this Agreement;
  - (ii) constitute an acknowledgment by the Principal that the Management Plans and Delivery Plan meet the requirements of this Agreement; or
  - (iii) constitute a waiver of any of the Principal's rights.

#### 15.4 **Project Manager**

- (a) The Supplier must appoint the Project Manager to manage, on a day-to-day basis, the Project, and who will be responsible for (without limitation) ensuring and managing the performance of the Supplier's obligations in accordance with the Specifications.
- (b) The Project Manager must:
  - (i) assemble and lead the Supplier's project team, and work with the Principal to deliver the Services and Project Objectives; and
  - (ii) ensure that the Project is delivered in accordance with the Management Plans and Delivery Plan and that any delays are notified and addressed as required by clause 16; and
  - (iii) be the Supplier's single point of responsibility for delivery of the Services.
- (c) The Supplier must ensure that the Project Manager has the necessary skills and experience to perform his or her role and duties.
- (d) If the Project Manager becomes unable to perform his or her role or duties, or gives notice of their resignation, at any time during the Project, the Supplier must promptly notify the Principal.
- (e) The Supplier acknowledges that the Project Manager will be considered Supplier Key Personnel under this Agreement and the provisions of clause 17 apply in full in respect of the Project Manager.

## 15.5 Progress reports

- (a) The Supplier must monitor and keep the Principal's Representative regularly informed of the progress of the Project in accordance with the requirements set out in the SWTC and the Agreement.
- (b) At the end of each month during the Term, the Supplier must provide the Principal with a written report on that progress, setting out:
  - (i) a narrative summary of the progress of the Project, including any Services performed, Deliverables delivered and Accepted and Milestones commenced or achieved;
  - (ii) an update to the Gantt chart forming part of the Specifications with status updated by assessment of actual achievements and projection of future progress;
  - (iii) details of any failure or anticipated failure to achieve any Milestones in accordance with the Delivery Plan, including any delays or other matters that could adversely affect the Project or the timely achievement of the Milestones;
  - (iv) any recommendations for avoiding or minimising any delays or failures to achieve the Milestones in accordance with the Delivery Plan and other adverse consequences; and
  - (v) during the Warranty Period, a report on the status of all Defects of which the Supplier is aware, including details of when each Defect was recorded, rectified or proposed to be rectified and any steps taken or proposed to rectify any Defect.
- (c) Nothing in a progress report varies the Specifications or any of the Supplier's obligations under this Agreement. To the extent a progress report identifies an actual or possible delay, the Supplier must comply with clause 16.

## 15.6 Project closure

Once the Supplier has successfully completed the Project, including any required Acceptance Tests (or other acceptance criteria), it must promptly notify the Principal and provide all relevant details and documentation as required by the Principal.

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## 16 Delays

### 16.1 Progress reviews

- (a) If, at any time, in the Principal's opinion, the Supplier is not progressing in accordance with a Management Plan, the Principal may give written notice to the Supplier requiring the Supplier to submit to the Principal within 5 Business Days of such notice a plan and program for corrective action to correct the matter the subject of the notice ("**Corrective Action Plan**").
- (b) The Principal may give notice to the Supplier that the Corrective Action Plan does not satisfactorily address the concerns of the Principal, in which case, the Supplier must amend the Corrective Action Plan accordingly. The Supplier must carry out the Corrective Action Plan in a manner to ensure that it complies with the Management Plan.

## 16.2 Notification of delays

Within 10 Business Days of the Supplier becoming aware that it may not be able to achieve any Milestone Due Date (as set out in the Delivery Plan) or other date or time required under this Agreement, the Supplier must immediately notify the Principal's Representative in writing, setting out:

- (a) the details of the possible or actual delay, including the cause (whether because of any act or omission of the Principal, the Supplier or any other party, or as a result of a Force Majeure Event);
- (b) the Milestone Due Date/s or other date or time required under this Agreement that may be affected;
- (c) the effect on the critical path for the programme;
- (d) the steps the Supplier intends to take to avoid or minimise the delay;
- (e) the period, if any, by which the Supplier considers the date for meeting the relevant obligation should be extended; and
- (f) the impact of the possible or actual delay on the Date for Practical Completion for any Release.

## 16.3 Further updates

- (a) The Supplier must update the Principal with information required under clause 16.2 (including any documentation reasonably requested by the Principal) on a fortnightly basis, for delays lasting over 2 weeks, until the Supplier provides its final notice.
- (b) The Supplier shall not be entitled to claim a postponement of the date for delivery or date for Acceptance of a Deliverable or Date for Practical Completion for a Release for a period greater than the duration of the delay.

## 16.4 Supplier delays

- (a) If the Supplier notifies the Principal under clause 16.2 of the possible or actual delay, then the Principal may in its sole discretion (subject to clauses 16.5, 16.6, and 16.7, extend the time for meeting the affected obligation(s).
- (b) If the Principal does not grant an extension, then:
  - (i) the Supplier must perform its obligations in accordance with the Delivery Plan and any other required dates or times under this Agreement (as applicable); and
  - (ii) the Supplier must:
    - (A) do, at no additional cost to the Principal, all things reasonably necessary to overcome the actual or possible delay, including increasing numbers or average skill or experience level of Supplier Personnel (or both); and
    - (B) inform the Principal of all solutions and strategies it intends to take to overcome, manage or minimise the delay or the consequences of the delay.

**16.5 Extension for the Principal's delay or event outside the Supplier's control**

Subject to clauses 16.6 and 16.7, the Supplier will be entitled to claim, and the Principal will be required to grant, a reasonable extension of time by which an obligation under this Agreement must be met if:

- (a) the Supplier will be delayed in achieving any Milestone Due Date or Date for Practical Completion for a Release;
- (b) the Supplier notifies the Principal of the possible or actual delay under clause 16.2;
- (c) the delay cannot be avoided without materially varying or increasing resources used by the Supplier; and
- (d) the delay is caused by one or more of the following events:
  - (i) a failure by the Principal to perform its obligations under this Agreement, (excluding any such failure(s) which result from any act or omission of the Supplier (or any related entity) not expressly permitted or allowed by this Agreement;
  - (ii) an act or omission by the Principal, the Principal's Personnel, the Principal's Representative, other Authorities or any of contractors of the Principal (other than the Supplier) and not being an act or omission:
    - (A) expressly permitted or allowed by this agreement but excluding any direction which the Principal's Representative purports to give under a provision of this agreement but which was not a direction which the Principal's Representative was entitled to issue under a provision of this Agreement;
    - (B) which is within a timeframe expressly permitted, or allowed by the Agreement; or
    - (C) to the extent the act or omission is caused or contributed to by a breach by the Supplier of this Agreement or any negligent, or unlawful, act or omission of the Supplier or its Personnel.
  - (iii) the Supplier not obtaining access to the Site other than where caused by the act or omission of the Supplier or any related entity;
  - (iv) the Principal failing to move a Release into a Live Production Environment within 14 days after the date that all entry criteria for the relevant Operational Acceptance Period have been achieved, to the extent the delay in Go Live is not caused or contributed to by any breach of the agreement by the Supplier or any negligent or unlawful act or omission of the Supplier; or
  - (v) a Force Majeure Event.

**16.6 Option to require additional resources**

Where the requirements of clause 16.5 are met, but the Date for Practical Completion for the relevant Release can still be met by the Supplier if it increases numbers or average skill set or experience level of Supplier Personnel (or both), the Principal may require the Supplier to increase or vary the Supplier Personnel accordingly, in which case the Principal must pay reasonable additional fees to

compensate the Supplier for its additional costs and the due date or time remains unchanged.

**16.7 Delay caused partly by the Supplier**

The Supplier's entitlement to an extension of time will be reduced to the extent that it has not taken all reasonable steps to minimise the delay. Where more than one event causes concurrent delays to a Milestone Due Date and at least one of those events is not an event referred to in clause 16.5, then to the extent that the delays are concurrent, the Supplier will not be entitled to an extension of time to the Milestone Due Date.

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**16.9 Unrequested extensions of time**

The Principal may at any time, in its absolute discretion, extend the date by which an obligation under this Agreement must be met for any reason, whether or not the Supplier is entitled to or has requested such an extension.

**16.10 Reimbursement of Supplier**

- (a) If the Supplier is granted an extension of time under clause 16.5 or the Principal exercises its rights under clause 16.9, the Principal will reimburse the Supplier for:
  - (i) the incremental costs reasonably incurred by the Supplier in respect of any additional travel required as a direct result of the delay, provided that such travel is restricted to travel for any Supplier Personnel which is reasonably required for the purposes of the project at the relevant time;
  - (ii) the incremental costs reasonably incurred by the Supplier in respect of any additional accommodation for those Supplier Personnel required as a direct result of the delay; and
  - (iii) the incremental cost of any time spent by those Supplier Personnel as a direct result of the delay, calculated at Time and Materials Rates, provided that such costs are limited to a reasonable duration of time agreed by the parties (acting reasonably) (or such further period as the Customer requires the relevant Personnel to remain present to avoid travel costs), and in all cases to the extent those Personnel cannot reasonably be utilised by the Supplier in the performance of other work (whether on the Project or otherwise).
- (b) The costs claimable by the Supplier in accordance with clause 16.10(a) are subject to:
  - (i) a daily cap of [REDACTED] per person per night for accommodation; and

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- (ii) an aggregate cap on all expenses of [REDACTED] per day.
- (c) Without limiting clause 16.10(a), the Customer will be entitled to give up to 14 days' notice of a delay and in those cases no travel, accommodation or time costs for the relevant personnel will be able to be claimed by the Supplier.
- (d) All costs claimed in accordance with this clause 16.10(a) are subject to substantiation reasonably acceptable to the Customer, and the Supplier must use its best endeavours to minimise or avoid such costs.

#### 16.11 Failure to notify

If the Supplier does not notify the Principal of the possible or actual delay as required by clause 16.2, then:

- (a) no extension of time will be made (unless by the Principal under clause 16.9);
- (b) the Supplier must perform its obligations as required by the Delivery Plan and any other dates or times required under this Agreement (as applicable); and
- (c) any principle of law or equity (including the "prevention principle") which might otherwise make the required date or time for achievement of an obligation uncertain and payment of Liquidated Damages unenforceable, does not apply.

#### 16.12 Sole Entitlement

This clause 16 sets out the Supplier's sole entitlement to compensation for, delay to the work under this Agreement, including delay or disruption caused by the Principal, whether in breach of this Agreement or otherwise and is in substitution for and excludes the Supplier's rights and remedies at common law to recover damages for such delay to the work.

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## 17 Supplier Personnel

### 17.1 Responsibility for Supplier Personnel

The Supplier is solely responsible for the payment (if any) of superannuation, workers' compensation and all taxes incidental to the employment of the Supplier's Personnel.

### 17.2 Supplier Key Personnel

- (a) The Supplier must obtain the Principal's prior approval for each member of Supplier Key Personnel who will be used by the Supplier to provide the Services (including any replacement) and give the Principal sufficient opportunity to meet them.
- (b) The Supplier must ensure that all Supplier Key Personnel are available and assigned to providing the Services and performing the role specified for that person (if any). If the Supplier Key Personnel is specified as "full time", then that person will be exclusively assigned to providing the Services. If the Supplier Key Personnel is specified as "part time", then the Supplier may use that person to provide services to other customers in addition to the Principal.

### 17.3 Removal of Supplier Key Personnel

The Principal may at any time on reasonable grounds (which need not be proven) and without liability withdraw, limit or suspend its approval of the Supplier Key Personnel given under clause 17.2 by notifying the Supplier. If requested by the Principal, the Supplier must propose another person for approval within a reasonable time of receiving the notice. The Supplier must ensure that any replacement of Supplier Key Personnel under this clause:

- (a) has equivalent skills and experience to the person being replaced;
- (b) have undertaken an adequate hand-over from the person being replaced; and
- (c) is made without inconvenience or cost to the Principal and without any adverse impact on the Deliver Plan or delivery of the Services.

### 17.4 Change to Supplier Key Personnel

The Supplier must not change any Supplier Key Personnel's involvement in the provision of the Services and performance of this Agreement unless:

- (a) they are incapacitated or unable to perform their role for any reason, or leave the Supplier's employment;
- (b) the Services which they were performing are complete; or
- (c) the Principal gives prior written consent to the change.

### 17.5 Denial of access

- (a) If a member of the Supplier's Personnel breaches any applicable requirements under this Agreement, the Principal may, at any time and for any period, refuse the person access to any or all Site, the Principal premises, the Principal Data, the System and IT systems and equipment.
- (b) If it is appropriate and practicable to do so, the Principal will give the Supplier prior written notice of the refusal of access under clause 17.5(a).
- (c) Subject to clause 17.2, the Supplier must replace any member of the Supplier's Personnel refused access under clause 17.5(a) without inconvenience or cost to the Principal and without any adverse impact on the Delivery Plan or delivery of the Services.

### 17.6 No solicitation

- (a) During the period from the Commencement Date until 12 months after the date of termination of this Agreement, neither the Supplier nor the Principal may directly or indirectly (including through a related, associated or labour hire company) employ, engage, solicit or otherwise retain any employee of the other party or any individual contractor providing services to that other party (whether that individual contracts directly with that other party or through a service company) who is, or has been, directly involved in the performance of the that other party's obligations under this Agreement.
- (b) Clause 17.6(a) does not apply if a party (**First Party**) in good faith recruits any employee of the other party (**Second Party**) or any individual contractor providing services to the Second Party for a position which has been publicly

advertised by or on behalf of the First Party and to which that person has responded, provided there has been no solicitation, inducement or encouragement of that person to apply for that position.

- (c) Each party acknowledges that the restraint in this clause 17.6 is reasonable in the circumstances and necessary to protect the other party's business interests, goodwill and Confidential Information.

#### **17.7 Information about Supplier Personnel**

If requested by the Principal, the Supplier must provide to the Principal a list of all of the Supplier's Personnel (including accurate information about the person's identity, qualifications, job history and character) who will be used by the Supplier to provide the Services or who may have access to the Site, the Principal's premises, the Principal Data, the System or IT systems and equipment.

#### **17.8 Criminal record search and investigation**

- (a) If requested by the Principal, the Supplier must (at the Supplier's cost), in relation to any or all of the Supplier's Personnel who will be used by the Supplier to provide the Services or who may have access to the Site, the Principal's premises, the Principal Data, the System or IT systems and equipment:
  - (i) prior to, but no earlier than three weeks before the Supplier uses that person or grants that person access:
    - (A) for those persons who reside in Australia, perform or procure a criminal record search from the Criminal History Branch of the Australian Federal Police (or such other branch or office of the Australian Federal Police or law enforcement agency performing the functions of the Criminal History Branch from time to time) and promptly provide the results of the search to the Principal; and
    - (B) for those persons who reside outside Australia, use reasonable endeavours to perform or procure a criminal record search from the relevant police force of the jurisdiction where that person resides and promptly provide the results of the search to the Principal; and
  - (ii) conduct such other investigations as the Principal may reasonably request and promptly provide the results of those investigations to the Principal.
- (b) The Principal may (at the Principal's cost) carry out the searches referred to in clause 17.8(a)(i) itself or such other investigations as the Principal considers appropriate, and the Supplier must provide all assistance as the Principal may reasonably request.
- (c) The Supplier acknowledges that any search or investigation by the Principal in accordance with this clause 17.8 will not affect the Supplier's obligations under this Agreement.

#### **17.9 Consent from Supplier Personnel**

The Supplier must obtain all necessary consent from the Supplier's Personnel to enable:

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- (a) the Supplier and the Principal to conduct the searches or investigations under and within the timeframes specified in clause 17.8; and
- (b) the Supplier to provide the results of its searches or investigations to the Principal in accordance with clause 17.8.

**17.10 Inability to obtain consent**

If the Supplier is unable to obtain a person's consent as required under clause 17.9 the Supplier must, unless the Principal agrees otherwise in writing:

- (a) not use that person to provide the Services or give that person access to the Site, the Principal's premises, the Principal Data, the System or IT systems and equipment; and
- (b) provide a replacement for that person who is acceptable to the Principal within a reasonable time of the Principal's request to do so and without inconvenience or cost to the Principal.

**17.11 No access where there has been a Relevant Offence**

The Supplier must not allow a member of the Supplier's Personnel to be used to provide the Services or have access to the Site, the Principal premises, the Principal Data, the System or IT systems and equipment without the written consent of the Principal, if:

- (a) a search conducted under clause 17.8 shows that the person has a criminal record or been convicted of an offence which is or could be a Relevant Offence;
- (b) the Supplier has reliable evidence that the person has a criminal conviction or has served a custodial sentence and that conviction occurred, or any part of that sentence was served, in the previous 10 years anywhere in the world; or
- (c) the Supplier has reliable information indicating that a trial is currently underway against the person which could result in a conviction of that person for an offence which is or could be a Relevant Offence.

**17.12 Supplier becomes aware of information**

If the Supplier becomes aware of information of the type referred to in clause 17.11 at any time during the Term, the Supplier must immediately notify the Principal and the Supplier must take such reasonable action as the Principal requests in relation to the person including, without limitation, replacing that person with a person who is acceptable to the Principal within a reasonable time of the Principal's request to do so and without inconvenience or cost to the Principal.

**17.13 Removal of unsuitable Supplier Personnel**

If the Principal is of the reasonable opinion that any of the Supplier's Personnel is unsuitable to undertake work in relation to this Agreement, then the Principal may request the Supplier to cease using that person to provide the Services. If the Principal makes such a request, the Supplier must provide replacement personnel reasonably acceptable to the Principal within a reasonable time of the Principal's request and without inconvenience or cost to the Principal.

#### 17.14 Certification

Within 5 Business Days of each anniversary of the Commencement Date or otherwise on request by the Principal, the Supplier must certify that, as at the relevant date, the Supplier has and is complying with clauses 17.8 to 17.12 (both inclusive).

#### 17.15 Obligations subject to Law

For the avoidance of doubt, neither party is required to comply with clauses 17.8 to 17.13 (both inclusive) in a manner that contravenes any Laws with which the party is required to comply.

#### 17.16 Knowledge experts

- (a) Subject to obtaining approval under clause 17, the Supplier will:
- (i) ensure that the best knowledge experts from the Supplier Group globally are appropriately engaged in the Supplier's performance of this Agreement;
  - (ii) ensure that [REDACTED] is assigned to oversee the performance of the Supplier and assure the quality of the System and the Deliverables; and
  - (iii) provide the Principal with an escalation path, reasonably acceptable to the Principal, to raise concerns and resolve issues.
- (b) If the Principal notifies the Supplier of a material technical issue in the System or Deliverables which the Principal reasonably believes will not be resolved by the Supplier's Australian-based personnel within the time required by this Agreement, the Supplier will arrange for experienced knowledge experts from the Supplier Group's global resources to be made available within 10 Business Days to the Principal as reasonably required by the Principal to avoid or remedy (as applicable) the relevant issue. The Supplier will also arrange for those experts to attend the Principal premises as reasonably required by the Principal.

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## 18 Sub-contracting

### 18.1 No sub-contracting without approval

The Supplier must not sub-contract any of its obligations under this Agreement without the prior written approval of the Principal. The Principal may give or withhold its approval in its absolute discretion and may impose conditions on its approval.

### 18.2 Withdrawal of approval

- (a) The Principal may at any time on reasonable grounds and without liability withdraw, limit or suspend its approval of a sub-contractor by notifying the Supplier and giving reasons. Upon the Principal withdrawing, limiting or suspending its approval, the Supplier must promptly cease using the sub-contractor as required after receiving notice from the Principal.

- (b) If required by the Principal, the Supplier must propose another sub-contractor for approval promptly after receiving the notice. The Supplier must ensure that the removal or replacement of a sub-contractor under this clause is made without inconvenience or cost to the Principal and without any disruption or adverse impact on the Delivery Plan or delivery of the Services.

### 18.3 Responsibility for sub-contractors

- (a) The Supplier must ensure that:
  - (i) each sub-contractor has the skills, resources and experience to carry out the work sub-contracted to it;
  - (ii) all work performed by the sub-contractor meets the requirements of this Agreement as if it were carried out by the Supplier;
  - (iii) each sub-contractor is aware of and complies with all the relevant terms of this Agreement;
  - (iv) each sub-contract:
    - (A) binds the relevant sub-contractor to terms that are no less onerous than those contained in this Agreement in relation to confidentiality, privacy and Intellectual Property Rights;
    - (B) reserves a right of termination for the Supplier on similar terms to clauses 41.1 and 41.2;
    - (C) contains terms similar to clauses 17.8 to 17.13 (both inclusive);
    - (D) contains no right to subcontract or novate the sub-contract or assign the relevant sub-contractor's rights without seeking the Supplier's and the Principal's prior written consent; and
    - (E) contains terms to the effect that if this Agreement is terminated for whatever reason, the sub-contractor must, on written request by the Principal and at no cost to the Principal, consent to the Supplier's novation of the sub-contract or assignment of its rights under the sub-contract to the Principal or its nominee and execute a deed of novation in the form reasonably required by the Principal.
- (b) The Supplier must project manage the work of any sub-contractor including performing co-ordination and supervision of that work.
- (c) If a sub-contractor materially breaches a sub-contract, or is alleged to have materially breached a sub-contract, the Supplier must promptly notify the Principal and provide the Principal with such information relating to the breach or alleged breach as the Principal may reasonably request.
- (d) If requested by the Principal, the Supplier must facilitate direct communications between the Principal and any sub-contractor (provided that the Supplier will be entitled to participate in such communications).
- (e) The Supplier is liable for all acts and omissions of its sub-contractors as if they were those of the Supplier.

#### 18.4 No liability of the Principal

The Principal will not be liable to the Supplier in relation to any losses or damages suffered or incurred by the Supplier arising out of, or in connection with, the Principal's withdrawal of approval in accordance with clause 18.2.

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### 19 Co-operation with Third Parties

#### 19.1 Co-operation with third parties

- (a) The Supplier acknowledges that the Principal may retain third parties from time to time to provide it with goods and services, including technology specific goods and services. The Supplier must, in accordance with the Principal's directions:
  - (i) provide all reasonable cooperation and necessary assistance to any such third parties;
  - (ii) provide such third parties with access to and use of the Services; and
  - (iii) comply with all other reasonable directions of the Principal with respect to such third parties.
- (b) The Supplier must not, and must ensure that its Personnel, do not interfere with or disrupt, delay or hinder the Principal or its Personnel in their provision of goods and services, or prevent the Principal or its Personnel from carrying out their work or cause the Principal or its Personnel to incur additional cost.
- (c) Without limiting any other provision of this Agreement, the Supplier must not do anything to cause the Principal to be in breach of any Interface Agreement, provided that the Principal has notified the Supplier of the terms of that Interface Agreement. For the purposes of this clause, an **Interface Agreement** means any agreement between the Principal and a third party involved in the construction of any WestConnex Motorway, the Sydney Harbour Bridge or the Sydney Harbour Tunnel or associated infrastructure (include roadside tolling equipment) used on such a road, relating to the manner in which that person and RMS will cooperate in relation to the construction or supply of that road or infrastructure.

#### 19.2 Co-operation with suppliers

The Supplier must co-operate and work with existing suppliers of the Principal, and, without limitation, do everything possible to ensure an effective and orderly transition from those suppliers to the Principal and the Supplier, where such transition is required for the purposes of this Agreement.

#### 19.3 Principal appointment of third parties

- (a) The Supplier acknowledges that the Principal may from time to time appoint a third party to act on the Principal's behalf for the purposes of:
  - (i) managing some or all of the Services; and
  - (ii) exercising or performing some or all of the Principal's rights and obligations under this Agreement.

- (b) Where the Principal appoints a third party under clause 19.3(a), the Supplier must:
  - (i) comply with the directions of the third party and otherwise deal with the third party in the same way as the Supplier would deal with the Principal; and
  - (ii) co-operate with the third party and provide any information that the third party reasonably requires for the purpose of managing the Services on behalf of the Principal.

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## **20 Access to Site and the Principal's Premises**

### **20.1 Access to Site and the Principal's premises**

- (a) Subject to clause 20.1(b), the Principal must provide the Supplier with access to the Site and the Principal's premises in accordance with the Site Access Schedule to enable the Supplier to perform its obligations under this Agreement.
- (b) The Principal may at any time on reasonable grounds refuse access to any Site and the Principal's premises to the Supplier or any of its Personnel.
- (c) The Supplier must, at its own cost, obtain access to and use of any Site and any other property that is not covered by clause 20.1(a) and that is required by the Supplier for the purpose of performing the Services.

### **20.2 Compliance with the Principal policies**

- (a) The Supplier must ensure that all of its Personnel who have access to any Site, the Principal's premises, the Principal Data, the System or IT systems and equipment:
  - (i) are aware of, and comply with the Site and Site Access Requirements and all applicable the Principal policies (including work health and safety policies), procedures (including traffic management, road safety and emergency access procedures) and security requirements;
  - (ii) comply with any reasonable directions of the Principal or Police or Emergency Services issued or notified to the Supplier, while attending the Site or the Principal's premises or accessing the Principal Data, the System or IT systems and equipment;
  - (iii) comply with any applicable Laws relating to the Site; and
  - (iv) if requested by the Principal, execute a deed of confidentiality in the form required by the Principal.
- (b) The Supplier must not use any of the Site, the Principal's premises, the Principal Data, the System or IT systems and equipment, or permit them to be used, for any purpose other than for performing the Services.

### **20.3 Site preparation**

Unless otherwise specified in the SWTC, the Supplier will be responsible for preparing the Site as required by the Design Documentation.



## 20.4 Site Inspections

- (a) The Supplier acknowledges that it is responsible for inspecting the Site and ensuring that the Site is adequate and suitable for the Supplier to implement and install the System and perform its obligations under this Agreement.
- (b) If the Supplier believes that the Site is inadequate or unsuitable, the Supplier must set out in the Design Documentation any required changes or additions required to be made to, or at, the Site to enable the Supplier to implement and install the System and perform its obligations under this Agreement.
- (c) The Principal makes no representation and gives no warranty as to the adequacy or suitability of any of the Site in relation to the performance of the Services, and the Supplier accepts the Site in its present condition and state of repair.
- (d) The Supplier must not rely on any information provided by or on behalf of the Principal in relation to the Site, and to the extent permitted by Law, the Principal is not liable for any damage, expense, loss or liability which the Supplier suffers or incurs as a result of using or relying on any such information or any failure of the Principal to make available information in relation to the Site.

## 20.5 Maintaining the Site

- (a) The Supplier must keep all of the Site to which it has access clean and tidy, including regularly removing rubbish and surplus material from the Site.
- (b) Unless otherwise agreed with the Principal, the Supplier must not store any equipment or other material on or about the Site.
- (c) If the Supplier fails to comply with clauses 20.5(a) or 20.5(b), the Principal may:
  - (i) engage other persons to carry out the work of cleaning and tidying up; and
  - (ii) recover from the Supplier any reasonable costs incurred by the Principal in doing so.

## 20.6 Site warranties

The Supplier warrants and represents that the Site is fit and proper locations for the System to be installed, commissioned and operated in accordance with the Design Documentation and SWTC.

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## 21 Management Plans

- (a) In relation to each Management Plan which the Supplier is required to prepare, being those Management Plans specified in the SWTC, the Supplier must:
  - (i) prepare a Management Plan, in consultation with the Principal, which complies with any relevant requirements of this Agreement and describes in detail how the Services are to be performed by the Supplier, including describing all relevant activities, Personnel,

- methods, processes, checks, escalations and management processes to be performed by the Supplier;
- (ii) provide the Management Plan to the Principal for its Acceptance in accordance with the timeframes set out in the Delivery Plan; and
  - (iii) make any changes to the Management Plan as the Principal may reasonably request within the period specified in the Delivery Plan and re-submit the Management Plan to the Principal for its Acceptance.
- (b) Once the Management Plan has been Accepted by the Principal, the Supplier must comply with it.
- (c) The Supplier acknowledges that the Principal is relying on the Supplier's expertise in preparing the Management Plan to meet the Principal's requirements and the Supplier's obligations under this Agreement. Accordingly, the Principal's approval of a Management Plan will not:
- (i) relieve the Supplier of any of its obligations under this Agreement;
  - (ii) constitute a Change under clause 29 of this Agreement;
  - (iii) constitute an acknowledgment by the Principal that the Management Plan meets the requirements of this Agreement; or
  - (iv) constitute a waiver of any of the Principal's rights.
- (d) The Supplier must update each Management Plan during the Term as is necessary to reflect then current practices and Laws, and submit it to the Principal for its Acceptance. Once the Principal has Accepted the updated Management Plan, it will be deemed to replace the previous version.

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## 22 Documentation

- (a) The Supplier must provide the Documentation (in both hardcopy and electronic form) to the Principal at no additional cost in accordance with the Delivery Plan.
- (b) For the duration of the Term and at no cost to the Principal, the Supplier must:
  - (i) update and maintain all Documentation provided under this Agreement to a standard where the Principal or a third party supplier can effectively use, modify, maintain and support the System; and
  - (ii) provide the updated Documentation to the Principal when it has been updated.
- (c) For the avoidance of doubt, the ownership and Intellectual Property Rights in all Documentation created by the Supplier under this Agreement will belong to the Principal upon creation.

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## 23 Business Continuity and Disaster Recovery

### 23.1 Business Continuity Plan and Disaster Recovery Plan

- (a) The Supplier must at least three months prior to the Date of Practical Completion for Release 1, in consultation with the Principal prepare:
  - (i) a business continuity plan for the continued provision of the Services (**Business Continuity Plan**); and
  - (ii) a disaster recovery plan for the provision of the Services (**Disaster Recovery Plan**),in the event of a Disaster Recovery Event.
- (b) The Supplier must provide the Business Continuity Plan and Disaster Recovery Plan to the Principal for its Acceptance in accordance with the SWTC. The Supplier must make any changes to the Business Continuity Plan and Disaster Recovery Plan as the Principal may reasonably request and re-submit them to the Principal for its Acceptance as soon as possible, and in any case within 10 Business Days.
- (c) Once the Business Continuity Plan and Disaster Recovery Plan have been approved by the Principal in accordance with clause 10.2, the Supplier must comply with them and must ensure that for the remainder of the Term the Business Continuity Plan and Disaster Recovery Plan are kept up-to-date and reflect industry best practice. If requested by the Principal, the Supplier must provide the Principal with a copy of the current Business Continuity Plan and Disaster Recovery Plan.
- (d) The Business Continuity Plan must detail the process for the continued provision of the Services (including critical business functions, resources and infrastructure) and be consistent with the Principal's processes.
- (e) The Disaster Recovery Plan must detail the process for the resumption of all critical technical systems (including applications, data, hardware, communications and other infrastructure) relevant to the Services and be consistent with the Principal's processes.
- (f) Upon the occurrence of a Disaster Recovery Event, the Supplier must implement the applicable parts of the Business Continuity Plan and the Disaster Recovery Plan relevant to the Supplier, unless otherwise directed in writing by the Principal. The Supplier must also act in accordance with the Principal's reasonable directions during the Disaster Recovery Event.

### 23.2 Business Continuity Plan and Disaster Recovery Plan tests

- (a) Unless otherwise directed by the Principal, at least once each year during the Operations and Maintenance Phase, the Supplier must conduct tests of the Business Continuity Plan and Disaster Recovery Plan to ensure that they are effective.
- (b) Prior to conducting any tests of the Business Continuity Plan and Disaster Recovery Plan, the Supplier must agree a suitable time with the Principal to conduct the tests, and permit the Principal to observe and participate in the tests as required. The Supplier must provide the Principal with the results of any such tests within 5 Business Days of the conduct of the test.

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## **24 Records and Audit Rights**

### **24.1 Records and supporting documentation**

The Supplier must maintain auditable and up to date records and supporting documentation in relation to:

- (a) the provision of the Services;
- (b) the operation of the Supplier's Quality Management System; and
- (b) the Contract Price, Operations and Maintenance Fees and any Service Level Rebates, including records for all invoices submitted by the Supplier and all payments made by the Principal under this Agreement.

### **24.2 Audit rights**

- (a) The Principal may appoint an Auditor to audit and inspect the records and supporting documentation referred to in clause 24.1, for the purpose of verifying the Supplier's performance under this Agreement, the amounts payable by the Supplier under this Agreement and the Supplier's likely capacity to perform and comply with its obligations under this Agreement in the future, including:
  - (i) the performance of the Delivery Services;
  - (ii) the performance of the Services and the System against the Service Levels;
  - (iii) compliance by the Supplier with the Principal's quality assurance practices and procedures, as set out in the Specifications;
  - (iv) the Contract Price, Operations and Maintenance Fees and any Service Level Rebates.
- (b) The Principal may only conduct an audit once in any 12 month period, unless further audits are required to be conducted:
  - (i) for the purpose of verifying the compliance with the obligations set out in this Agreement and the Management Plans for the Services;
  - (ii) for the purpose of verifying the accuracy of any report or information that the Supplier has provided (or failed to provide) under this Agreement;
  - (iii) for the purpose of verifying that the Supplier has undertaken any actions required as a result of a previous audit;
  - (iv) to verify the amount of any early termination fee payable due to termination under clause 41.2;
  - (v) at the request or direction of an Authority; or
  - (vi) if required by any Laws.
- (c) If requested by the Auditor, the Supplier must:

- (i) subject to clause 24.2(d), make the records and documentation referred to in clause 24.1 available for inspection; and
  - (ii) give reasonable access to its premises, facilities and equipment used by the Supplier, and which relate, to the provision of the Services by the Supplier; and
  - (iii) ensure that any subcontract approved by the Principal under clause 18 will require the subcontractor to make available to the Supplier, and will enable the Supplier to provide to the Principal, the books and records of the subcontractor relating to the performance of the Services including the substantiation of an early termination fee.
- (d) The Principal acknowledges that clause 24.2(c) does not require the Supplier to provide the Principal or the Auditor with any information:
- (i) where disclosure is prohibited by any Laws;
  - (ii) relating to customer contracts or other customer information of the Supplier;
  - (iii) relating to the costs, profits, internal management and employee records of the Supplier or the Supplier's Personnel; and
  - (iv) which is not directly related to the provision of the Services by the Supplier or relevant to the purpose of conducting the audit as set out in clause 24.2(a).
- (e) Any access to the Supplier's premises, facilities or equipment requested by the Auditor under clause 24.2(c):
- (i) will at all times be supervised by the Supplier; and
  - (ii) will only be permitted to the extent that it is relevant for the purposes of conducting the audit as described in clause 24.2(a).
- (f) When exercising any audit rights under this clause 24.2:
- (i) the Principal must give the Supplier as much notice as is reasonably practicable, but no less than 5 Business Days;
  - (ii) the Auditor must not be a competitor of the Supplier, and must sign a confidentiality agreement with the Supplier in a form which will be agreed by the parties;
  - (iii) the Principal must ensure that the Auditor is aware of and complies with all of the Supplier's applicable policies (including occupational health and safety policies), procedures and security requirements as notified by the Supplier, while on the Supplier's premises or accessing the Supplier's facilities and equipment;
  - (iv) to the extent required, the Supplier will operate its own internal systems and equipment for the Auditor, and the Auditor must not operate or use any of the Supplier's systems or equipment unless otherwise agreed; and

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- (v) the Auditor must conduct the audit in a way that minimises the disruption to the Supplier's business operations.
- (g) If the audit demonstrates that the Contract Price, Operations and Maintenance Fees or the payment of any applicable Service Level Rebates is incorrect, the Supplier must make the necessary adjustments in the following invoice.

### 24.3 Audit costs

The costs of any audit conducted under clause 24.2 (except for the Supplier's own internal costs of complying with its obligations under this clause 24) will be borne by the Principal, unless the audit establishes that:

- (a) the Supplier is not meeting the obligations set out in the Management Plans;
- (b) the Supplier's invoice charges invoiced for the period of the audit exceeded by ■■■ or more the Contract Price and Operations and Maintenance Fees;
- (c) the applicable Service Level Rebates for the period of the audit exceeded by ■■■ or more the Service Level Rebates actually paid to the Principal for that period; or
- (d) the Supplier is in material breach of any of its obligations under this Agreement,
- (e) then, in addition to making the necessary adjustments in accordance with this Agreement, the Supplier must pay or reimburse the Principal all of the Auditor's reasonable charges for the audit.

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## 25 Other Obligations

### 25.1 Continuous improvement

- (a) During the Term, the parties will actively co-operate to identify opportunities for new or improved Services for the purposes of improving performance of the Services and System, including the implementation of new or enhanced technologies, for the benefit of the Principal.
- (b) The Supplier must monitor and report to the Principal every six months on any new or enhanced technologies, emerging trends and changing industry best practices in relation to the Services and System, including the effect (if any) that such technology, emerging trend or changing industry best practice may have on the Principal's current technology strategy.
- (c) Where requested by the Principal, the Supplier must (at the Supplier's cost) demonstrate how it would implement the results of such monitoring and reporting as part of its supply of the Services.

### 25.2 Training

- (a) During the Term, the Supplier must provide sufficient training services to the Principal and its Personnel in accordance with the SWTC.
- (b) If requested by the Principal, the Supplier must provide additional training to the Principal. The charges for any additional training will be agreed between the parties.

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### 25.3 Work Health and Safety

- (a) The Supplier, in respect of the Services, becomes responsible for the performance and all relevant compliance standard and functions of a "person conducting a business or undertaking" as defined under the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2011 (NSW) (**together the WHS Legislation**).
- (b) The Supplier:
  - (i) is fully responsible for ensuring that the Supplier and the Supplier Personnel perform the Services safely; and
  - (ii) accepts responsibility for compliance with the WHS Legislation from the commencement of the Services until the expiry or termination of this agreement.
- (c) The Supplier acknowledges that:
  - (i) the Principal is not obliged to check on the Supplier's compliance with the requirements of the WHS Legislation;
  - (ii) the Principal 's acts or omissions do not relieve, limit or otherwise affect the Supplier's responsibilities under the WHS Legislation and this Agreement;
  - (iii) the Principal has certain obligations under the WHS Legislation;
  - (iv) the Principal may carry out random audits and inspections to ensure that all work being carried out is being done so in accordance with this agreement and the Principal 's safety expectations;
  - (v) the random audits referred to in clause (iv) do not relieve, limit or otherwise affect the Supplier's responsibilities under the WHS Legislation and this agreement;
  - (vi) the provision of the Services may require the Supplier or its Personnel to access hazardous environments; and
  - (vii) there may be some work that can only be performed by the Principal or its approved contractors or which can only be performed if an the Principal's Representative is present.
- (d) The Supplier must, when working on the Site or any other premises of the Principal:
  - (i) to the extent such matters are within the Supplier's control, provide and maintain a working environment that is safe and without risks to the health of any persons in accordance with all applicable Laws (including WHS Legislation);
  - (ii) undertake the Services in such a manner so as to not place the Principal in breach of its obligations under the WHS Legislation;
  - (iii) comply with all applicable Laws (including WHS Legislation) relating to work health and safety;

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- (iv) comply with the reasonable direction of the Principal so as to enable the Principal to comply with its obligations under WHS Legislation;
- (v) take all reasonable care to identify any work health and safety hazards associated with the Services and assess the risk of any hazard identified;
- (vi) identify and implement appropriate measures to eliminate, or where it is not possible to eliminate, control any reasonably foreseeable risks associated with the Services, including preparing written work method statements if required by any applicable Laws relating to work health and safety; and
- (vii) provide the Principal with details of such risk assessments and the work method statements carried out by the Supplier and evidence of the implementation of measures to control any risks to the Principal and its Personnel.

#### **25.4 Environmental protection**

- (a) Without limiting the Supplier's obligations and responsibilities under this Agreement, the Supplier must take all reasonable care to perform the Services in a manner which does not unduly harm or damage the environment.
- (b) The Supplier must comply with any reasonable request of the Principal to stop work or take urgent remedial measures where actual or potential risk of harm or damage to the environment has been identified as a consequence of the Supplier's acts or omissions.
- (c) Without limiting clause 25.4(b), the Supplier must comply with all applicable Laws relating to environmental management.
- (d) The Supplier must implement measures to avoid, minimise, reuse and/or recycle waste where practical and economically feasible. All surplus materials must be recycled, reused or disposed of in accordance with all applicable Laws and to a landfill licensed to receive that type of waste.

#### **25.5 Licences, consents and approvals**

- (a) Where the Principal has not already done so, the Supplier must, at its cost, obtain all necessary licences, approvals and permits required to perform the Supplier's obligations under this Agreement prior to commencing any work that relates to that licence, approval or permit.
- (b) The Supplier must comply with any additional terms and conditions that relate to any of the licences, approvals or permits referred to in clause 25.5(a).

#### **25.6 Supplier to provide assistance and information**

- (a) The Supplier must provide all reasonable assistance and information to the Principal to enable the Principal to comply with its obligations under this Agreement and at Law.
- (b) If requested by the Principal, the Supplier must provide details of any person (for example, a related body corporate or any other private sector entity in which the Supplier has an interest) that:

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- (i) will be involved in, or associated with, performing any of the Supplier's obligations under this Agreement; or
- (ii) will receive a benefit under this Agreement.

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## **26 Contract Price and Operations and Maintenance Fees**

### **26.1 Contract Price and Operations and Maintenance Fees**

The fees set out in Schedule 2 are the total fees payable by the Principal for the supply of the System and the Services.

### **26.2 Fixed Contract Price and Operations and Maintenance Fees**

The Operations and Maintenance Fees and the Contract Price are lump sum fixed, subject only to:

- (a) express provisions of this Agreement; and
- (b) indexation of the Operations and Maintenance Fees under Schedule 2B, and the Supplier bears all other risk as to price.

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## **27 Invoices and Payments**

### **27.1 Payment of invoices**

The Principal must pay each correctly rendered invoice within 30 days from the end of the month in which it receives the invoice. The Principal is not required to pay any amount to the Supplier unless it has received a correctly rendered invoice for that amount.

### **27.2 Correctly rendered invoice**

For the purposes of this Agreement, an invoice is correctly rendered if:

- (a) the invoice is a Tax Invoice;
- (b) the amount claimed in the invoice is due for payment;
- (c) the amount claimed in the invoice is correctly calculated under this Agreement;
- (d) the invoice includes a unique reference number and is set out in a manner that identifies the Services and/or Deliverables which the invoice covers and itemises each amount claimed to a level of detail satisfactory to the Principal acting reasonably (and in any event, complies with any specific requirements in the SWTC);
- (e) the invoice is accompanied by documents that adequately demonstrate to the Principal the relevant Milestone Acceptance criteria have been achieved including Services that were performed, Deliverables supplied and the basis on which the amounts are claimed;

- (f) the invoice is addressed to "Roads and Maritime Services" with attention to the Principal's Representative and identifies this Agreement; and
- (g) the invoice is accompanied by a completed Supplier Statement in the form set out in Schedule 4 in respect of the period to which the invoice relates.

**27.3 Disputed invoices**

Where the Principal considers that an invoice is not correctly rendered, the Principal will:

- (a) issue to the Supplier within 10 Business Days after receipt of the invoice a notice setting out the reasons and identifying any amounts which are in dispute; and
- (b) make payment to the Supplier of all undisputed amounts in the invoice in accordance with this clause 27.

**27.4 Amounts due to the Principal**

Each amount payable by the Supplier to the Principal under an indemnity, warranty, reimbursement, rebate or refund obligation, or default event under this Agreement is a debt due and payable to the Principal on demand. Any demand must attach any relevant verifying documentation and, if the amount payable is a taxable supply, must be a Tax Invoice. The Supplier must pay or credit the amount to the Principal, at the Principal's option, within 30 days after issue of the demand or the time otherwise set out in this Agreement.

**27.5 Payment by the Principal of amounts due to third parties**

The Principal may (but is not obliged to) pay an amount owing by the Supplier to a third party who has supplied services or goods to the Supplier in connection with this Agreement where:

- (a) the time for payment has passed;
- (b) the Principal reasonably considers that supply to the Principal of goods or services may be adversely affected by the non-payment; and
- (c) the Principal has first given the Supplier not less than 5 Business Days' notice that it intends to make the payment.

Where the Principal makes such a payment, the Supplier must credit or pay the amount to the Principal as required by clause 27.4 at the Principal's option.

**27.6 Payment of amounts due to or in respect of employees**

The Principal may but is not obliged to (unless otherwise required by Law) pay any amounts owing by the Supplier to or in respect of an employee of the Supplier who has carried out work in connection with this Agreement provided that:

- (a) the time for payment has passed;
- (b) the Supplier has not given the Principal a Supplier Statement in the form set out in Schedule 4 in respect of the period for which the amounts are owed or has given a Supplier Statement that is not effective for the purpose of relevant Laws; and

- (c) the Principal first gives the Supplier not less than 5 Business Days' notice that it intends to make the payment.

Without limiting any rights the Principal may have under any Laws, the Supplier must credit or pay the amount to the Principal as required by clause 27.4 at the Principal's option.

#### **27.7 Set off rights**

Without prejudicing any other rights available to the Principal, the Principal is entitled to set off against any amount due for payment by it to the Supplier any amount payable by the Supplier to the Principal (including any Liquidated Damages and Service Level Rebates).

#### **27.8 Payment does not affect other rights or obligations**

Payment of money under clause 27.1 is not evidence:

- (a) that the Principal accepts the System or any Deliverable or Services under this Agreement;
- (b) of any waiver by or estoppel against the Principal in relation to any right or action which the Principal may have at any time against the Supplier;
- (c) that the Supplier has carried out its obligations under this Agreement; or
- (d) of the value of any of the Deliverables or Services.

#### **27.9 Suspension of payment**

The Principal may withhold payments to the Supplier without penalty if the Supplier refuses, neglects or fails to perform its obligations under this Agreement, until such obligations are completed in accordance with this Agreement.

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## **28 Taxes and GST**

### **28.1 Taxes**

The Supplier is responsible for all Taxes arising from or in connection with this Agreement and must pay:

- (a) Taxes which are imposed on the Supplier, directly to the relevant Authority; and
- (b) Taxes which are imposed on the Principal, directly to the relevant Authority on behalf of the Principal,

on or before the latest date that the Tax is due for payment without incurring any penalty or additional tax for late payment.

### **28.2 Evidence of payment**

Where the Supplier pays Taxes imposed on the Principal under clause 28.1(b), the Supplier must provide to the Principal within 3 Business Days of payment a written notification evidencing, to the satisfaction of the Principal, the full and timely payment of the relevant Taxes.

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### 28.3 Indemnity

The Supplier must indemnify the Principal against any costs or expenses that the Principal suffers or incurs as a result of the Supplier failing to meet its obligations under clause 28.1.

### 28.4 GST

The parties agree that:

- (a) unless expressly stated otherwise, all amounts payable by the Principal to the Supplier under this Agreement are inclusive of GST;
- (b) if a supply under this Agreement is subject to GST, and the consideration payable or to be provided for the supply is not inclusive of GST, the party receiving the supply must pay to the party making the supply an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate;
- (c) the additional amount is payable at the same time as the consideration for the supply is payable;
- (d) if the additional amount differs from the amount of GST payable by the party making the supply, the parties must adjust the additional amount; and
- (e) if a party is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

### 28.5 Withholding tax

If a Law requires the Principal to deduct an amount in respect of Taxes from a payment under this Agreement, then the Principal will:

- (a) deduct the amount for the Taxes; and
- (b) pay an amount equal to the amount deducted to the relevant Authority as required by the applicable Law and give the original receipts to the Supplier.

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## 29 Change Control

### 29.1 Service Change Request

- (a) At any time during the Term, either party may request changes to the Services (including changes to the Project, scope of the Services, Specifications, Management Plans and any technical changes) by submitting to the other party a request in writing (**Service Change Request**).
- (b) If the Principal submits a Service Change Request to the Supplier, the Supplier must provide to the Principal within 10 Business Days of receiving the Service Change Request, a service change proposal in the form set out in Schedule 5 (**Service Change Proposal**), setting out:
  - (i) full details of the change;

- (ii) a plan for implementing the change, including any proposed Acceptance Tests;
  - (iii) a full impact assessment of the change, including with respect to any Specifications, Design Documentation, Deliverables, Services, Service Levels, Milestones or any timeframes and the risks and benefits to each party;
  - (iv) details of any changes or additional training required as a consequence of the change; and
  - (v) any changes to the Contract Price or Operations and Maintenance Fees), or other proposals, calculated or prepared in accordance with section 2 of Schedule 2.
- (c) If the Supplier submits a Service Change Request to the Principal, the Supplier must include a Service Change Proposal with the Service Change Request.
- (d) After receiving a Service Change Proposal, the Principal may notify the Supplier that the Principal:
- (i) accepts the Service Change Proposal, within 30 days of receiving the Service Change Proposal;
  - (ii) rejects the Service Change Proposal at any time if the Service Change Proposal has not already been accepted;
  - (iii) requires changes to the Service Change Proposal; or
  - (iv) directs the Supplier to effect the Service Change Request (including the Principal determining any disputed issues and incorporating such matters as are fair and reasonable in the circumstances) within a reasonable time and for a variation (if any) to the Contract Price or Operations and Maintenance Fees, at the Principal's option:
    - (A) applying the pricing rules for Service Change Proposals in section 2 of Schedule 2 (as if references to the Service Change Proposal in that section are references to the direction under this clause 29.1(d)(iv));
    - (B) applying the Time and Materials Rates for the effort required by the Supplier's Personnel; or
    - (C) applying a reasonable amount as determined by the Principal in its absolute discretion.
- (e) The Supplier must make any changes to the Service Change Proposal as requested by the Principal and re-submit the Service Change Proposal to the Principal for its Acceptance as soon as possible, and in any case within 5 Business Days of receiving the Principal's advice.
- (f) If the Principal rejects the Service Change Proposal, the agreement will continue unchanged. If the Principal accepts the Service Change Proposal, are the Specifications are varied in accordance with the Service Change Proposal from the date that the last party signs the Service Change Proposal (or such other effective date as set out in the Service Change Proposal). If the Principal directs the Supplier to effect the Service Change Request, the

Specifications are varied in accordance with the direction from the date that the Principal notifies the direction to take effect.

- (g) For the avoidance of doubt, any related changes to the terms of this Agreement will require the parties to submit a Contract Change Request in accordance with clause 29.3.

#### 29.2 Urgent directions

- (a) Where the Principal is of the opinion that a matter is of an urgency requiring an immediate direction, the Principal may issue an oral or written direction to the Supplier that it carry out a change to the Services, regardless of whether a Service Change Proposal has been provided under clause 29.1.
- (b) The Supplier must immediately proceed with the required changes to the Services. The changes to the Services will then be valued in accordance with clause 29.1(d)(iv) and the Contract Price or Operations and Maintenance and Support Fees varied accordingly. If an oral direction is given, the Principal will confirm it in writing as a Service Change Request as soon as possible after the direction is given.

#### 29.3 Contract Change Request

- (a) At any time during the Term, either party may request changes to this Agreement (including changes to its contractual obligations) by submitting to the other party a request in writing (**Contract Change Request**).
- (b) If the Principal submits a Contract Change Request to the Supplier, the Supplier must provide to the Principal within 10 Business Days of receiving the Contract Change Request, a Proposal in the form set out in Schedule 5 (**Contract Change Proposal**), setting out full details of the changes.
- (c) If the Supplier submits a Contract Change Request to the Principal, the Supplier must include a Contract Change Proposal with the Contract Change Request.
- (d) The Principal may accept, request changes to or reject a Contract Change Proposal submitted by the Supplier within 30 days of receiving the Contract Change Proposal.
- (e) The Supplier must make any changes to the Contract Change Proposal as requested by the Principal and re-submit the Contract Change Proposal to the Principal for its Acceptance as soon as possible, and in any case within 10 Business Days of receiving the Principal's advice.
- (f) If the Principal rejects the Contract Change Proposal, the agreement will continue unchanged. If the Principal accepts the Contract Change Proposal, this Agreement incorporates the Contract Change Proposal from the date that the last party signs the Contract Change Proposal (or such other effective date as set out in the Contract Change Request).

#### 29.4 Change request register

The Supplier must maintain a register of all relevant changes made under each Service Change Proposal and Contract Change Proposal during the Term, and update the register as required. If requested by the Principal, the Supplier must provide the Principal with a copy of the register.

## 29.5 Change Order

- (a) Whether or not the Principal's Representative has issued a Contract Change Request under either of clauses 29.1 or 29.3, the Principal's Representative may in writing direct the Supplier to implement a Change (**Change Order**).
- (b) Where the Supplier has provided a notice under clause 29.1 or 29.3 with respect to the Change, the Change Order issued by the Principal's Representative will state whether any one or more of the following will be adjusted as set out in the Supplier's notice under clause 29.1 or 29.3:
  - (i) the Contract Price and Schedule 2;
  - (ii) the Date for Practical Completion for each Release; and
  - (iii) the Operations and Maintenance Phase.
- (c) Where the Supplier receives a Change Order, it must perform its obligations under this Agreement in accordance with the Change specified in the Change Order.
- (d) The fees for a Change Order directed under this clause will be determined in accordance with clause 29.1(d)(iv).
- (e) The Principal's Representative may issue a Change Order under this clause 29.5 at any time during the Term.

## 29.6 Changes to a Project Deed

If any variation is made to the terms of a Project Deed, the parties will amend and update the terms of this Agreement (under this clause 29) as reasonably required by the Principal to reflect such a variation (including to address any consequential impacts on any Services or pricing under this Agreement and to ensure that the Principal is able to comply with the terms of the Project Deed as so varied).

## 29.7 Pre-Agreed Changes

- (a) The Principal's Representative may, in his or her absolute discretion and without being under any obligation to do so, direct any Pre-Agreed Change by giving written notice to the Supplier.
- (b) The Principal and the Supplier agree that if a notice pursuant to clause 29.7(a) is given in respect of a Pre-Agreed Change by the exercise date specified in the table in Schedule 16, this deed, including any relevant components of the Contract Price, will be deemed to be amended in accordance with the relevant amendments set out in Schedule 16 from the date the Supplier receives such notice.
- (c) Where the Principal's Representative directs a Pre-Agreed Change by giving written notice to the Supplier by the relevant date referred to in clause 29.7(b), the Supplier, in respect of that Pre-Agreed Change:
  - (i) must carry out its obligations under this deed as amended by clause 29.7(b); and
  - (ii) acknowledges and agrees that:

- (A) any adjustment of the components of the Contract Price made pursuant to clause 29.7(b) will be full compensation for all costs and any damage, expense, loss, liability or delay it suffers or incurs arising out of or in connection with the issue of such a notice and no further adjustment will be made to the components of the Contract Price under this clause 29; and
- (B) the Supplier is not entitled to make any Claim for:
  - (aa) any acceleration to the carrying out of the Services which the Supplier must perform at any time in order to achieve completion of a Release by the Date for Practical Completion for the relevant Release; or
  - (ab) any extension of time for any delay to the carrying out of the Services,

in connection with the issue of such a notice or the amendment of this deed pursuant to clause 29.6(b).
- (d) Nothing in this clause 29.7 prevents the Principal's Representative from:
  - (i) issuing a Service Change Request as referred to in clause 29.1(a); or
  - (ii) issuing a Change Order under clause 29.5(a),

that involves the same (or similar) changes to the Services as a Pre-Agreed Change after the exercise date for giving notice of the Pre-Agreed Change specified in Schedule 16.

**29.8 Acceleration of Delivery Services**

- (a) In addition to any other rights it has under this clause 29, the Principal may at any time direct the Supplier in writing to provide the Principal with a proposal (**Acceleration Proposal**) specifying the following information for accelerating the Delivery Services:
  - (i) details of the additional materials and resources which the Supplier considers will be required to comply with the proposed acceleration, including an estimate of the hours of work which will be required to be performed by Supplier Personnel in addition to the current requirements for providing the Delivery Services;
  - (ii) details of the additional supervision which the Supplier will be required to provide to achieve the proposed acceleration;
  - (iii) the Supplier's extra costs and expenses which it may reasonably incur in achieving the proposed acceleration;
  - (iv) a draft program showing the proposed revised Date for Practical Completion for each Release which will be implemented to achieve the proposed acceleration, including any necessary revisions to the Milestone Due Dates and Delivery Plan; and
  - (v) to the extent that the Supplier is reasonably of the opinion that the proposed acceleration is not practicable, evidence to the satisfaction of the Principal as to the basis of that opinion.

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- (b) The Supplier must provide the Principal with the Acceleration Proposal within 5 Business Days of receipt of the direction give under clause 29.8(a).
- (c) On receipt of the Supplier's Acceleration Proposal, the Principal may do any of the following:
  - (i) advise the Supplier by notice in writing which expressly refers to the Supplier's Acceleration Proposal that the Principal accepts the Acceleration Proposal, in which case, the Date for Practical Completion for the relevant Release and Milestone Due Dates specified in the Delivery Plan will be revised to the date contained in the Supplier's Acceleration proposal, and the Contract Price will be adjusted by the amount accepted by the Principal in the Supplier's Acceleration Proposal;
  - (ii) reject the Supplier's Acceleration Proposal; or
  - (iii) give the Supplier a direction in accordance with clause 29.1(d)(iv) to accelerate the Delivery Services.

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## **30 Other Intellectual Property Rights**

### **30.1 Intellectual Property Rights in Principal Works**

- (a) Subject to clause 30.2, the Supplier assigns and must procure that the Supplier's Personnel assign to the Principal all Intellectual Property Rights in the Principal Works on the later of creation and the Commencement Date.
- (b) The Principal grants to the Supplier a non-exclusive and royalty free licence to use the Principal Works solely for the purpose of providing the Services to the Principal pursuant to this Agreement.

### **30.2 Pre-existing Intellectual Property Rights**

Clause 30.1 does not affect the ownership of Intellectual Property Rights in any Pre-Existing Material. The Supplier grants to the Principal and [REDACTED] a perpetual, non-exclusive, irrevocable, royalty-free licence to:

- (a) use, reproduce, modify, configure, adapt and maintain, and exercise all Intellectual Property Rights in, any of the Pre-Existing Material which is incorporated into, or required for the use, operation, maintenance, modification and updating of the System or any Deliverable in any manner, anywhere in the world;
- (b) sub-license any of the rights described in clause 30.2(a) to any person, for any Permitted Licence Use.

### **30.3 Know-how and methodologies**

Subject to the Supplier's obligations of confidentiality under clause 31, nothing in this Agreement affects the ownership of, or restricts the Supplier's ability to re-use, any know-how, skills or methodologies which the Supplier owns.

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#### 30.4 Intellectual property warranty

The Supplier warrants that:

- (a) it will not infringe the Intellectual Property Rights or Moral Rights of any person in providing the Services or otherwise performing this Agreement; and
- (b) the System, the Deliverables, and their use, do not infringe and will not infringe, the Intellectual Property Rights or Moral Rights of any person.

#### 30.5 Indemnity

The Supplier must (either directly itself or by procuring sub-contractors to do so):

- (a) at the Principal's request and sole option:
  - (i) defend at no cost to the Principal, all Infringement Claims; or
  - (ii) provide, at no cost to the Principal, all reasonable assistance required by the Principal to defend any Infringement Claim; and
- (b) indemnify the Principal against all costs (including legal costs on a solicitor and own client basis), losses, damages and expenses that the Principal may sustain or incur as a result of an Infringement Claim; and
- (c) satisfy any settlement of or judgement given in an Infringement Claim.

#### 30.6 Other remedies

Without limiting any other rights the Principal may have, if, as a result of any Infringement Claim, the Principal is prevented from using the System, a Deliverable or any of its component parts, the Supplier must, at the Principal's option and at the Supplier's cost:

- (a) promptly procure for the Principal the right to use the System, Deliverable or component parts (as applicable) on reasonable commercial terms as contemplated under this Agreement free of any claim or liability for infringement;
- (b) promptly procure for the Principal replacement hardware, component part or software that complies with the Specifications; or
- (c) promptly modify the System, Deliverable or component parts (as applicable) so that it ceases to infringe those rights (while still complying with the Specifications).

#### 30.7 Return of System or Deliverables

Without limiting any other rights the Principal may have (including, but not limited to, any right available pursuant to clause 41.1(a)), if the Supplier has not complied with clause 30.6 within 10 Business Days after prevention of use of the System, Deliverable or component parts (as applicable) or such longer period as the parties may agree, the Supplier must, at the Principal's option:

- (a) accept return of the Deliverable and any other material acquired under this Agreement the use of which is detrimentally affected by any return of anything under this clause 30.7;

- (b) return to the Principal the Contract Price and any other moneys paid by the Principal which relates to the items returned under clause 30.7(a);
- (c) pay the difference between the Contract Price and the reasonable additional expenses incurred or losses suffered by the Principal in procuring from other sources hardware, software and services substantially similar to the System or the Deliverable (as applicable) and anything returned by the Principal under clause 30.7(a); and
- (d) terminate this Agreement in accordance with clause 41.1.

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## 31 Confidentiality

### 31.1 Disclosure of Confidential Information

A party (**Recipient**) must not disclose the other party's (**Discloser's**) Confidential Information to any person except:

- (a) its Personnel who require it for the purposes of this Agreement or to enable the Recipient to obtain professional advice in relation to this Agreement;
- (b) with the written consent of the Discloser;
- (c) in the case of the Principal, to any person for the purposes of the Principal's business, operations or activities or the exercise of any of the Principal's licence rights;
- (d) if the Recipient is required to do so by Law or by a lawful requirement of any governmental agency having authority over the Recipient or by a relevant stock exchange; or
- (e) if the Recipient is required to do so in connection with legal proceedings relating to this Agreement.

### 31.2 Permitted disclosures

If the Recipient discloses the Discloser's Confidential Information under clause 31.1(a) or 31.1(b), then:

- (a) it must use its best endeavours to ensure that persons receiving the Confidential Information from it do not disclose the information except in the circumstances permitted in clause 31.1;
- (b) the Discloser may at any time require the persons receiving the Confidential Information to give written undertakings in a form acceptable to the Discloser relating to the non-disclosure of the Confidential Information and the Recipient must arrange for all such undertakings to be given promptly; and
- (c) the Recipient must reserve the right to demand immediate delivery of all documents or other materials in its possession, power or control or in the possession, power or control of the third party who has received Confidential Information from it containing or referring to that Confidential Information.

**31.3 Use of Confidential Information**

The Recipient must not use the Discloser's Confidential Information except for the purpose of exercising the Recipient's rights or performing its obligations under this Agreement.

**31.4 Return of Confidential Information**

On the Discloser's request, the Recipient must immediately deliver to the Discloser or destroy all documents or other materials containing or referring to the Confidential Information which are in its possession, power or control or in the possession, power or control of persons who have received Confidential Information from the Recipient, except to the extent that:

- (a) the Recipient requires the Confidential Information for the purpose of performing its obligations or exercising its rights under this Agreement; or
- (b) the Recipient is otherwise entitled to retain the Confidential Information.

**31.5 No disclosure of the terms of this Agreement**

Except as otherwise agreed or required by Law, any Authority or stock exchange, neither party may disclose the terms of this Agreement to any person other than its Personnel on a confidential basis.

**31.6 Disclosure of details of the Principal contracts with the private sector**

The Supplier acknowledges and agrees that the Principal may be required by the *Government Information Public Access Act 2009* to publish this Agreement and information concerning this Agreement.

**31.7 Publicity**

The Supplier may only make press or other announcements or releases about this Agreement and the transactions related to it:

- (a) with the prior written approval of the Principal; or
- (b) as required to be made by Laws or the rules of a stock exchange provided that the Supplier gives the Principal as much prior notice as is reasonably practicable and the opportunity to review and comment on the form and text of the disclosure before the disclosure is made.

**31.8 Open Source Software**

The Supplier must not use or contribute any the Principal Confidential Information in the course of making modifications to any software the subject of an Open Source Licence or make or purport to make any the Principal Confidential Information the subject of an Open Source Licence without the prior written approval of the Principal (such approval to be given at the Principal's sole and absolute discretion).

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## **32 Privacy**

### **32.1 Interpretation**

The obligations of this clause 32 apply notwithstanding any permitted processing of Confidential Information.

### **32.2 Permitted Processing of Protected Information**

- (a) The Supplier must process any Protected Information held in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement and in accordance with all relevant Privacy Legislation.
- (b) In addition to its obligations under clause 32.2(a), the Supplier must comply with all provisions of all Privacy Legislation to the extent they apply to the performance of the Services by the Supplier.

### **32.3 Disclosure by the Supplier**

- (a) Subject to clause 32.3(b) the Supplier may not disclose any Protected Information obtained in connection with this Agreement without the prior written consent of the Principal.
- (b) The Supplier may disclose Protected Information which is required to be disclosed under any applicable Law or by a court or Authority, provided that, prior to disclosing any information, the Supplier promptly notifies the Principal in writing and the Supplier has exhausted all reasonable steps at the reasonable cost of the Principal (whether required by the Principal or not) not to disclose such information.

### **32.4 Contacting individuals**

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

### **32.5 Awareness of privacy requirements and undertakings**

- (a) The Principal acknowledges that, in order for the Supplier to comply with its obligations under this Agreement, the Supplier from time to time will disclose Protected Information held in connection with this Agreement to Supplier Personnel.
- (b) The Supplier must not disclose Protected Information held in connection with this Agreement to Supplier Personnel unless those personnel have been informed by the Supplier of the its obligations under this clause 32.
- (c) The Supplier is responsible for the compliance of Supplier Personnel with the Supplier's obligations under this clause 32.

### **32.6 Security of Protected Information**

- (a) The Supplier must take all necessary steps to ensure that the Protected Information held in connection with this Agreement is protected against misuse and loss, and from unauthorised access, modification and disclosure,

and that only authorised Supplier Personnel with a legitimate role in fulfilling the Supplier's obligations under this Agreement have access to the Protected Information.

- (b) Upon the Principal's request, the Supplier must produce to the Principal or its nominee evidence of the Supplier's compliance with its obligations under clause 32.6(a).
- (c) From time to time the Principal may direct that the Supplier take specified steps or achieve specified types or levels of security, secrecy or privacy protection in respect of the Protected Information and the Supplier (at no cost to the Principal) must comply with any such directions.

### 32.7 Reasonable requests, codes of conduct and advice

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

### 32.8 Accurate recording and storage of data

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

### 32.9 Access and amendment

- (a) The parties acknowledge that from time to time an individual:
  - (i) may seek access to Protected Information about that individual and may seek to have such information altered, corrected or deleted from the Protected Information; and
  - (ii) may have the right to seek such access, alteration, correction or deletion by virtue of contractual arrangements with the Principal or under a Privacy Legislation or other statutory authority, but that such requests for access may not be limited to statutory or contractual rights.
- (b) The Supplier must, if it receives a request from an individual for access to, alteration, correction or deletion of Protected Information about the individual held by it in connection with this Agreement, promptly inform Supplier in writing of the request.
- (c) The Supplier must comply with any reasonable and lawful direction issued by the Principal in respect of any such request.

### 32.10 Complaint handling

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

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- (a) where the Supplier receives a complaint alleging an Interference with Privacy by the Supplier, it must immediately notify the Principal of the nature of the complaint;
- (b) after the Principal has been given notice in accordance with clause 32.10(a), the Supplier must keep the Principal informed of the overall progress in dealing with the complaint insofar as it relates to the actions or duties of the Supplier; and
- (c) the Supplier must comply with any direction issued by the Principal in respect of a complaint (whether or not the complaint was received by the Supplier).

#### **32.11 Agent or sub-contractor**

The Supplier must ensure that any person to whom the Supplier discloses Protected Information complies with the obligations of the Supplier under this clause 32.

#### **32.12 No disclosure or transfer of Protected Information outside jurisdiction**

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

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

#### **32.13 Return of Protected Information**

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

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

#### **32.14 Unauthorised acts**

- (a) An unauthorised act in relation to Protected Information occurs if there is any:
  - (i) breach of this clause 32 by the Supplier;
  - (ii) unauthorised disclosure, use, modification or access, or attempted unauthorised disclosure, use, modification or access, or misuse or loss of such Protected Information; or

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

### 32.15 Remedies

The Supplier acknowledges that:

- (a) the Principal may suffer financial and other loss and damage if any unauthorised act occurs in relation to Protected Information and that monetary damages may be an insufficient remedy; and
- (b) in addition to any other remedy available at law or in equity, the Principal is entitled to relief by way of injunction or otherwise to prevent a breach of, and to compel the specific performance of, this clause 32.

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## 33 Security and Data

### 33.1 Security

The Supplier must:

- (a) implement and maintain appropriate data security measures relating to the System to prevent any unauthorised access by any third party to the System;
- (b) ensure that all Software deployed in the delivery of the Services adheres to industry best practice in relation to the implementation of encryption systems, anti-virus protection, patches, updates and upgrades for security purposes;
- (c) implement and maintain appropriate measures to maintain the confidentiality, privacy and integrity of any data transmitted using the System;
- (d) provide an applicable information security management system in accordance with then-current industry best practice and standards, including AS/NZS ISO/IEC 27001: 2006 – Information Technology – Security Techniques – Information Security Management Systems - Requirements and AS/NZS ISO/IEC 27002: 2006 – Information Technology – Security Techniques – Code of Practice for Information Security Management or equivalent standards;



- (e) carry out risk management in accordance with then-current industry best practice and standards, including AS/NZS ISO 31000: 2009 – Risk Management – Principles and Guidelines or equivalent standards;
- (f) implement and maintain appropriate physical security measures relating to the System, in accordance with Australian industry best practice and standards, including AS/NZS ISO/IEC 27001:2006 – Information technology - Security Techniques – Information Security Management Systems – Requirements or equivalent; and
- (g) address any other specific security requirements of the Principal in relation to the Services.

### 33.2 Payment Card Industry Data Security Standard (PCI DSS)

To the extent that the requirements of PCI DSS apply, the Supplier must:

- (a) do all things as are necessary to ensure the System complies with the PCI DSS at all times during the Term and
- (b) keep and maintain up-to-date records of any PCI DSS compliance measures undertaken by the Supplier and provide the Principal with access to such records upon request.

### 33.3 Loss of the Principal Data

The Supplier must at all times when performing the Services:

- (a) use appropriate procedures and all due care to avoid destruction, loss, corruption or alteration of the Principal Data; and
- (b) store the Principal Data in accordance with any reasonable directions issued by the Principal.

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## 34 Force Majeure Event

### 34.1 Effects of a Force Majeure Event

If a party is unable to perform or is delayed in performing an obligation under this Agreement because of a Force Majeure Event and notice has been given in accordance with clause 34.2:

- (a) that obligation is suspended but only to the extent and for such time as that party is unable to perform or is delayed in performing such obligations because of the Force Majeure Event; and
- (b) the affected party will not be liable to the other party as a result of, and to the extent that, the affected party is unable to perform or is delayed in performing its obligations because of the Force Majeure Event.

### 34.2 Notice of Force Majeure Event

The party affected by the Force Majeure Event must notify the other party of the Force Majeure Event as soon as reasonably practicable:

- (a) setting out the details of the Force Majeure Event;

- (b) identifying the nature and extent of the obligations adversely affected by the Force Majeure Event;
- (c) advising the period of time during which the affected party estimates that it will not be able to perform or will be delayed in performing such obligations; and
- (d) providing details of the action that it has taken or proposes to take to remedy the situation.

#### **34.3 Obligations of affected party**

A party affected by a Force Majeure Event must:

- (a) take all reasonable steps to limit the effects of the Force Majeure Event; and
- (b) promptly re-commence performing the suspended obligations as soon as possible.

#### **34.4 Delays and termination for Force Majeure Event**

The parties will address any delay caused by a Force Majeure Event as required by clause 16.5. The Principal may terminate this Agreement for a Force Majeure Event under clause 41.3.

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## **35 Warranties and Representations**

### **35.1 Supplier warranties and representations**

The Supplier warrants and represents on a continuing basis during the Term, that:

- (a) it is validly existing under the laws of its place of incorporation and has the power and authority to enter into and observe its obligations under this Agreement;
- (b) it is able to lawfully grant all the licences and assignments contemplated in this Agreement;
- (c) it will perform the Services and all other obligations under this Agreement with due care, skill and diligence and in a competent, proper, efficient, timely and professional manner, to a high standard, in accordance with any relevant industry standards applicable to the agreement and which may be expected of a professional organisation experienced in performing services of the scope, type and complexity of the Services;
- (d) it will retain sufficient numbers of appropriately skilled and qualified personnel to ensure the timely performance of its obligations under this Agreement, in a professional manner and with due care, skill and diligence;
- (e) it will comply with all Laws that are related to the performance of the Services or its other obligations under this Agreement;
- (f) it has obtained all the necessary approvals, consents, licences and permits to enter into this Agreement and perform its obligations under this Agreement;
- (g) any information, documentation and materials provided by it are true, correct, complete and accurate and are not misleading or deceptive;

- (h) it has disclosed all matters relating to its commercial, technical or financial capacity that might materially affect its ability to perform any of its obligations under this Agreement; and
- (i) receipt of the Services by the Principal will not:
  - (i) infringe any person's rights (including Intellectual Property Rights and Moral Rights);
  - (ii) constitute a misuse of any person's confidential information (to the extent that the Supplier is obliged to control the use and disclosure of such information); or
  - (iii) result in the Supplier breaching any obligation that it owes to any person.

### 35.2 **Supplier awareness**

The Supplier warrants and represents on a continuing basis during the Term, that:

- (a) it has evaluated all aspects of the Agreement (including the SWTC) and the Specifications and has the expertise to provide the Services including Deliverables and the Principal Works;
- (b) it has obtained all information necessary to enable it to understand the Principal's requirements;
- (c) it has satisfied itself as to the availability and suitability of materials, labour and resources to provide the Services;
- (d) it has satisfied itself as to the nature and difficulty of delivering the Services;
- (e) it has satisfied itself as to the suitability of the Site to perform and receive the Services; and
- (f) it has satisfied itself that it is able to complete the work to a high professional standard and in accordance with this Agreement.

### 35.3 **System design and performance**

The Supplier warrants and represents on a continuing basis during the Warranty Period (and any part of the Term subsisting after the Warranty Period), that:

- (a) the design of the System will:
  - (i) be completed in accordance with, and comply with, the Specifications;
  - (ii) be consistent with the specific functions that the Principal must perform in relation to tolling, both legislative and otherwise;
  - (iii) comply with this Agreement;
  - (iv) comply with all applicable Laws and Standards; and
  - (v) be fit for its intended purposes;

- (b) the System will be free of Defects and will interface with the Interoperable Systems in such a way that the System and the Interoperable Systems will operate seamlessly together, without any Defects;
- (c) the System will facilitate compliance with the Service Levels;
- (d) the Software delivered to the Principal is owned by or has been procured by the Supplier under valid licences from the Software owner and the Supplier is not and will not at any time during the Term, be in default under any such licences;
- (e) the Documentation provided under clause 22 is sufficient to enable an experienced information technology professional or engineer to install and maintain the System and enable the Principal and its Personnel to make full and proper operational use of the System to meet the Project Objectives;
- (f) the Hardware and any additional hardware approved by the Supplier:
  - (i) will be free of Defects;
  - (ii) will enable operation of the Software so as to meet the Specifications; and
  - (iii) will operate in the Operating Environment without any reduction in the performance, functionality or operation of the Operating Environment;

except to the extent that such Hardware or additional hardware is modified by the Principal or a third party in such a way as to prevent it from complying with the relevant manufacturer's specifications;

- (g) any additions or modifications to the System provided by or approved by the Supplier will comply with the warranties set out in clauses 35.3(a), 35.3(b), 35.3(c) and 35.3(f) and will operate with any Updates and New Releases of the Software so as to meet the Specifications, provided that third party additions comply with the relevant manufacturer's and vendor's applicable specifications;
- (h) any products recommended or otherwise specified by the Supplier for use by the Principal in conjunction with the System are sufficient and appropriate to enable the System to meet the Specifications;
- (i) each Deliverable will accord with its description and will meet all specifications and requirements applicable to it under this Agreement;
- (j) each Deliverable will be fit for the purpose as set out in the Specifications or otherwise made known to the Supplier by the Principal in writing prior to the Commencement Date and also for all purposes of which the Supplier, acting reasonably, ought to be aware (including that the Deliverables will be suitable for use in the place or places where they are intended to be used in accordance with local regulatory, legal and customary requirements);
- (k) the Supplier will not incorporate any Open Source Software into the System or any Deliverable other than the Included Open Source Software listed in Schedule 6;
- (l) each item of Open Source Software supplied to the Principal is identical to the version of that software made available by the maintainer of that piece of

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software at the time it is supplied unless specified otherwise in the Specifications and the Supplier has verified files against any checksums made available by the maintainer; and

- (m) the Supplier's use or supply of any Open Source Software will not cause the Principal owned Intellectual Property Rights to become subject to any Open Source Licence unless otherwise agreed by the Principal in writing.

#### 35.4 Customisations

The Supplier warrants that:

- (a) if the Supplier proposes, or the Principal requests, that a customisation to any Supplier Licensed Software be developed or implemented in supplying the System, the Supplier will fully advise the Principal of the impact or potential impact of developing or implementing the customisation;
- (b) the Supplier will not develop or implement any such customisation until:
  - (i) the Supplier has fully advised the Principal of the impact or potential impact of developing or implementing the relevant customisation; and
  - (ii) the customisation is approved by the Principal in writing;
- (c) unless otherwise agreed by the Principal in writing, any such customisation will be developed or implemented in such a way as to make any part of the System, or of the information systems used or specified by the Principal, appropriate to be the subject of any subsequently available maintenance service, releases or upgrades, enhancement, new releases or modifications which may be relevant to the customised Software (**Modification**), without requiring significant changes when such Modification occurs; and
- (d) unless otherwise expressly approved by the Principal, the Supplier will not incorporate into the System any customisations which the Supplier should reasonably expect may adversely affect the operation of the System or any other information system used or specified by the Principal, including any third party system with which the System interfaces.

#### 35.5 Notification of non-compliance

As soon as practicable after becoming aware of any matter which is likely to impact upon its ability to comply with a warranty or representation in this clause 35, the Supplier must give written notice to the Principal detailing that matter and its likely impact on the Supplier's ability to comply with this clause 35.

#### 35.6 Independent assessment

The Principal makes no representation or warranty, express or implied, as to the accuracy or completeness of any information, material or statement given or made to the Supplier. The Supplier is responsible for forming its own independent assessment about any information or material provided by or on behalf of the Principal.

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## 36 Liability and Indemnities

### 36.1 Principal's liability

Subject to clause 36.4:

- (a) the aggregate liability of the Principal to the Supplier under or in connection with this Agreement whether in contract, tort (including negligence), statute or any other cause of action is limited to an amount equal to the Contract Price plus the Operations and Maintenance Fees; and
- (b) the Principal will not be liable to the Supplier under or in connection with this Agreement whether in contract, tort (including negligence), statute or any other cause of action for any indirect or consequential loss or damage, loss of revenue, loss of profits, business opportunities, goodwill or likely savings.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**36.3 Supplier's liability**

- (a) Subject to clause 36.4:
  - (i) the aggregate liability of the Supplier to the Principal under or in connection with this Agreement whether in contract (including Liquidated Damages), tort (including negligence), statute or any other cause of action, [REDACTED] is limited to an amount equal to the Supplier Liability Cap;
  - (ii) the Supplier's liability to the Principal will be limited and reduced proportionally to the extent that such liability is caused or contributed to by any act or omission of the Principal or the Principal's Personnel (other than the Supplier and the Supplier's Personnel).
- (b) Nothing in clause 36.2 will preclude the recovery by the Principal of any loss or damage which arises naturally in the usual course of things, from the breach or other act or omission giving rise to the relevant liability.

**36.4 No limitation**

Nothing in this Agreement operates to limit or exclude:

- (a) any liability of either party in connection with:
  - (i) personal injury (whether or not resulting in death);
  - (ii) loss of or damage to tangible property;
  - (iii) for fraud or wilful breach of this agreement or duty;
  - (iv) for Gross Negligence;
  - (v) for breach of confidentiality; or

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- (vi) for breach of privacy;
- (b) liability that cannot by Law be limited or excluded;
- (c) the Supplier's liability in relation to any indemnity under clause 28.3, 30.5, or 36.6 (but excluding the indemnity under clause 36.6(f) which is not for Gross Negligence); and
- (d) the liability of the Supplier to the extent that the Supplier is or is deemed indemnified for its liability under an insurance referred to in clause 37.

### 36.5 Civil Liability Act

- (a) It is agreed that the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under this deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting the generality of clause 36.4(a) it is further agreed that the rights, obligations and liabilities of the Principal and the Supplier (including those relating to proportionate liability) are as specified in this deed and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.

### 36.6 Indemnities

The Supplier must indemnify the Principal and its Personnel against all losses, actions, proceedings, claims or demands suffered or incurred by the Principal or its Personnel, arising out of or in connection with:

- (a) any death or injury to persons caused by the acts or omissions of the Supplier or its Personnel;
- (b) any loss or damage to the tangible property of the Principal, its Personnel or any third party caused by the acts or omissions of the Supplier or its Personnel;
- (c) any wilful or unlawful act or omission of the Supplier or its Personnel, including any abandonment or other repudiation by the Supplier of the Agreement;
- (d) any breach of clause 31 or clause 32 by the Supplier;
- (e) any breach of clause 33.2 or clause 33.3 by the Supplier; and
- (f) any negligent act or omission of the Supplier or its Personnel.

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## 37 Insurance

### 37.1 Insurance to be provided by the Supplier

- (a) The Supplier must obtain and maintain the policies of insurance (on the terms, for the risks identified, and for the periods of time) specified in Items 3, 4 and 5 of Schedule 8.
- (b) All policies of insurance must be subject to the Laws of Australia and effected with an insurer approved by the Principal as set out in Schedule 8.



- (c) If requested by the Principal, the Supplier must provide certificates of currency proving that the policies of insurance required under this clause 37.1 have been effected and are current. A certificate of currency provided under this clause 37.1(c) must contain all details reasonably requested by the Principal, including a summary of all risks covered and any exclusions.
- (d) The Supplier must not do anything which may vitiate, impair, derogate or prejudice cover under any such policies of insurance or which may prejudice any claim under such policies of insurance.
- (e) The Supplier must immediately notify the Principal of any event which affects or may affect the Supplier's compliance with this clause 37.1, including any cancellation of a policy or reduction of limit or coverage below that required by this Agreement.
- (f) If the Supplier does not comply with clauses 37.1(a), 37.1(b) or 37.1(c), the Principal may, but is not obliged to, effect the relevant policies of insurance and may:
  - (i) recover the cost of doing so as a debt due from the Supplier; or
  - (ii) deduct the premiums payable for the relevant policies of insurance from amounts payable to the Supplier.
- (g) The Supplier must ensure that every sub-contractor it engages is insured at all times for workers compensation and related liability in accordance with the requirements of the *Workers Compensation Act 1987* (NSW).

## 37.2 Obligation to inform the Principal

The Supplier must:

- (a) provide full particulars to:
  - (i) the Principal's Representative; and
  - (ii) the Principal's insurance broker,
 of any:
  - (iii) occurrence of an event that may give rise to a claim under any policy of insurance effected under, or as required by, this Agreement; and
  - (iv) notice of any claim or subsequent proceeding or action and developments concerning the claim,
 as soon as possible, and in any case no later than two days after becoming aware of any such circumstance as referred to in clauses 37.2(a)(iii) and 37.2(a)(iv); and
- (b) take such steps as are necessary or appropriate to ensure that its sub-contractors will, in respect to an event or claim of a like nature arising out of or relating to the operations or responsibilities of the sub-contractor, take similar action to that which the Supplier is required to take under clauses 37.1(e) and 37.2(a).

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### 37.3 Obligations not affected

- (a) The requirements for insurance to be effected and maintained do not affect or limit the Supplier's liabilities (including, without limitation, the indemnities given under this Agreement) or other obligations under this Agreement.
- (b) The provisions of clauses 37.2 and 37.3(a) also apply to insurance arranged by the Principal.

### 37.4 Insurance claims procedure

The Supplier must:

- (a) comply with clauses 37.2(a) and 37.2(b);
- (b) not, without the consent of the insurer, make any admission, offer, promise or payment in connection with any occurrence or claim; and
- (c) promptly give all information and reasonable assistance to the Principal or the insurer, or its nominee, as required in the prosecution, defence or settlement of any occurrence or claim.

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## 38 Bank and Parent Company Guarantees

### 38.1 Bank Guarantee

- (a) Within 7 days of the Commencement Date, the Supplier must provide a Bank Guarantee in the form set out in Schedule 9 for the amount set out in the Contract Details in respect of the period from the Commencement Date to the Date of Practical Completion for Release 2. If the Supplier fails to do so, the Principal may:
  - (i) withhold any payments under this Agreement, whether or not such payments are due, until the Bank Guarantee is provided; or
  - (ii) terminate this Agreement (in whole or in part) with immediate effect by notifying the Supplier accordingly.
- (b) The Bank Guarantee must be issued by an Australian domiciled bank acceptable to the Principal.
- (c) On Practical Completion for Release 2, the Principal must deliver the Bank Guarantee referred to in clause 38.1(a) to the Supplier and at the same time the Supplier must provide a replacement Bank Guarantee in the form set out in Schedule 9 for the amount set out in the Contract Details in respect of the period from the Date of Practical Completion for Release 2 to the expiry of the Warranty Period.
- (d) On expiry of the Warranty Period, the Principal is to return the Bank Guarantee referred to in clause 38.1(c) to the Supplier and at the same time the Supplier is to provide a replacement Bank Guarantee in the form set out in Schedule 9 for the amount set out in the Contract Details in respect of the period from the expiry of the Warranty Period to the end of the Term.
- (e) Each Bank Guarantee required to be provided pursuant to this clause 38 must remain valid for a term ending on the date which is 12 months after the date

on which the Bank Guarantee is to be delivered back to the Supplier (although may be cancelled by the Supplier if returned by the Principal as required) and the final replacement Bank Guarantee to be issued in accordance with clause 38.1(d) must remain valid until at least 12 months after the end of the Term.

- (f) The Bank Guarantee will be held as security for the due and proper performance and completion of all of the obligations of the Supplier under this Agreement. Without limiting any rights of the Principal under the Bank Guarantee, if:
- (i) the Supplier fails to properly perform and complete its obligations under this Agreement; or
  - (ii) the Principal suffers loss or damage arising from, or in connection with, such failure by the Supplier; or
  - (iii) the Supplier is Insolvent,
- the Principal may convert and have recourse to the Bank Guarantee for any amount as reasonably determined by it. For the avoidance of doubt, if that money is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Supplier to the Principal and may be recoverable from the Supplier by the Principal in any court of competent jurisdiction.
- (g) The Supplier agrees that the Principal will have no liability for any loss or damage suffered or incurred by the Supplier where the Principal exercises its rights under this clause 38.1 in good faith.
- (h) The Supplier waives any rights it may have to obtain an injunction or otherwise prevent the Principal from making a claim or receiving a payment under the Bank Guarantee. For the avoidance of doubt, this clause 38.1(h) does not prevent the Supplier from taking action to recover from the Principal any amount invalidly received by the Principal under any such Bank Guarantee.
- (i) The Bank Guarantee must be released to the Supplier if the Supplier has fully performed and discharged all of its obligations under this Agreement.

### **38.2 Parent Company Guarantee**

- (a) If specified in the Contract Details, within 15 days of the Commencement Date the Supplier must provide the Principal with a guarantee duly executed by the Parent Company Guarantor in favour of the Principal in the form set out in Schedule 10 and which is duly stamped (if applicable). The Principal may terminate this Agreement (in whole or in part) with immediate effect by notifying the Supplier accordingly if the Supplier fails to provide the guarantee in accordance with this clause 38.2.
- (b) If the Parent Company Guarantor is a foreign entity, the Supplier must, at the same time as the guarantee provided by the Parent Company Guarantor is given to the Principal, provide a legal opinion in relation to such guarantee, which is:
- (i) provided by local lawyers (acceptable to the Principal acting reasonably) from the home jurisdiction of the foreign Parent Company Guarantor; and

- (ii) in form and substance reasonably satisfactory to the Principal.

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## 39 Governance

### 39.1 Supplier Representative

- (a) The Supplier must appoint a senior representative approved by the Principal to act as the Supplier's principal point of contact for all matters relating to this Agreement. The Supplier must ensure that the Supplier Representative:
  - (i) has all the necessary skills and experience to perform their role and duties;
  - (ii) has the necessary authority to exercise all the day to day management powers and functions of the Supplier under this Agreement;
  - (iii) is available at all reasonable times to liaise with the Principal's Representative; and
  - (iv) effectively manages the Supplier Personnel and oversees the performance of the work that the Supplier Personnel are required to perform under this Agreement.
- (b) For the avoidance of doubt, the Supplier Representative will be Supplier Key Personnel for the purposes of clause 17.2.
- (c) A direction given by the Principal to the Supplier Representative will be regarded as having been given to the Supplier.
- (d) Matters within the knowledge of the Supplier Representative will be regarded as being within the knowledge of the Supplier.
- (e) If the Principal Representative makes a reasonable objection to the appointment of a person as the Supplier Representative, the Supplier must terminate the appointment and appoint another person, subject again to the reasonable objection of the Principal Representative.

### 39.2 Principal's Representative

- (a) The Principal must appoint a senior representative of the Principal to act as the Principal's principal point of contact for all matters relating to this Agreement. the Principal may change the Principal's Representative at any time by providing notice to the Supplier.
- (b) In carrying out this agreement, the Supplier will comply with the reasonable directions of the Principal Representative.
- (c) The Principal Representative may, from time to time during the Term, determine the persons who are authorised to bind the Principal in relation to this agreement (**Authorised Persons**).
- (d) Such determination will have force and effect from the date the Principal Representative provides the Supplier with notice in writing of such Authorised Persons.

- (e) Any direction, consent, agreement, waiver, authorisation, determination, decision or other act of a person who is not an Authorised Person or the Principal Representative is not binding on the Principal.

### 39.3 Joint Management Committee

- (a) Within 14 days of the Commencement Date (or such other period as agreed by the parties), the parties must establish a joint management committee to oversee the relationship between the parties, including each party's performance under this Agreement (**Joint Management Committee**).
- (b) A party may replace its representatives or appoint additional representatives to the Joint Management Committee at any time, provided:
  - (i) the number of representatives of each party is equal at all times; and
  - (ii) any replacement or additional representative has, as far as possible, equivalent authority and experience.
- (c) The Joint Management Committee will meet at mutually agreed times and places, but will meet no less frequently than once every six months.

### 39.4 Other working groups and committees

If either party determines that it is necessary to establish a working group or committee to deal with any specific aspect of this Agreement or the Services (including any technical aspects), the parties agree to work together in good faith to establish and participate in such working group or committee.

### 39.5 Prioritisation

- (a) Subject to clause 39.5(b), if the Principal reasonably requests the Supplier to alter or reprioritise a particular Service or the manner in which such Service is to be provided, the Supplier will use its reasonable endeavours to meet that request and will consult with the Principal in good faith to minimise the disruption caused to the Principal's business.
- (b) Clause 39.5(a) does not apply where compliance by the Supplier would cause the Supplier to incur material additional cost or breach this agreement.

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## 40 Disputes

### 40.1 Reasonable endeavours to settle

If a Dispute arises the parties undertake in good faith to use all reasonable endeavours to settle the Dispute expeditiously.

### 40.2 Dispute notice

Any party claiming that a Dispute has arisen may give a written notice to the other party.

### 40.3 Negotiation

If a Dispute is notified under clause 40.2 each party must nominate a senior representative with appropriate authority to negotiate on behalf of the party to settle

the Dispute. The representatives must endeavour to resolve the Dispute within 10 Business Days of the notice under clause 40.2.

#### 40.4 Further resolution process

If the Dispute is not resolved within the period referred to in clause 40.3, the parties' representatives will within a further 5 Business Days seek to agree on:

- (a) a process to resolve the Dispute, for example through further negotiations, mediation, conciliation, independent expert determination or mini trial;
- (b) the procedure and timetable for any exchange of documents and other information in relation to the Dispute;
- (c) procedural rules and timetable for the conduct of the selected mode of proceedings; and
- (d) a procedure for selection and compensation of any neutral person (who may or may not be employed by a party).

#### 40.5 Arbitration

- (a) If the representatives are unable to agree on a process for resolving the Dispute in the period referred to in clause 40.4 or the Dispute has not been resolved within 10 Business Days (or such other period as the parties may agree) of the parties agreeing such a process, either party may refer the Dispute to arbitration administered in accordance with the Domestic Arbitration Rules of the Australian Commercial Dispute Centre which are in force as at the date on which the Dispute is referred to arbitration.
- (b) Despite anything to the contrary in the Domestic Arbitration Rules of the Australian Commercial Dispute Centre, unless the parties otherwise agree, the following principles will apply in the conduct of an arbitration under this clause 40.5:
  - (i) the number of arbitrators will be one;
  - (ii) the parties will jointly appoint the arbitrator and, if the parties do not agree, the appointing authority will be the Australian Commercial Dispute Centre;
  - (iii) the place of arbitration will be Sydney, New South Wales;
  - (iv) all proceedings will be conducted in the English language; and
  - (v) the arbitrator may, after consultation with the parties, appoint one or more experts to assist in resolving a dispute.
- (c) The parties expressly agree that the arbitrator's decision is final and binding on the parties.

#### 40.6 Right to terminate

This clause 40 does not affect either party's rights to terminate this Agreement under clause 41 or pursuant to any other rights of termination contained in this Agreement.

40.7 **Interlocutory relief**

This clause 40 does not affect either party's right to commence court proceedings seeking urgent interlocutory relief.

40.8 **Parties to continue to perform**

Notwithstanding the existence of a Dispute, each party must continue to perform its obligations under this Agreement.

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**41 Termination**

41.1 **Termination by the Principal for cause**

The Principal may terminate this Agreement in full or, at the Principal's option, as it relates to any particular Services or Deliverables immediately by notice to the Supplier if:

- (a) **Breach of agreement** - the Supplier breaches this Agreement and:
  - (i) the breach is not capable of remedy; or
  - (ii) the breach is capable of remedy and the Supplier fails to remedy the breach within 10 Business Days, or such longer time as the Principal states, of receiving notice from the Principal requiring the breach to be remedied;
- (b) **Insolvency** - the Supplier becomes Insolvent;
- (c) **Wrongful assignment** - the Supplier assigns or purports to assign its rights otherwise than as permitted by this Agreement;
- (d) **Change of Control** - the Supplier undergoes a Change of Control, and the Principal reasonably considers that such a change is likely to have a material adverse impact on the Principal or the performance of the Supplier's obligations under this Agreement;
- (e) **Liability** - the Supplier's aggregate liability for a particular kind of loss or damage under or in connection with this Agreement reaches ■■■ of the liability cap applicable to that kind of loss or damage;
- (f) **Service Levels** - the Supplier fails to meet a Service Level for more than ■ consecutive months or for ■ months in a 12 month period, regardless of whether the breaches are corrected or not;
- (g) **Service Rebates** - the Service Rebates equal or reach the Service Rebate cap as set out in section 3 of Schedule 12 in a month period;
- (h) **Rejection** - the Principal is entitled to issue, and does issue, a Notice of Failure under clause 10.7;
- (i) **Other right to terminate** - the Principal is exercising an express right to terminate with immediate effect under this Agreement; or

- (j) **Key Milestones** – the Supplier fails to achieve Milestone Completion of a Milestone by the Milestone Due Date or Practical Completion for a Release by the relevant Date for Practical Completion.

#### 41.2 Termination by the Principal without cause

- (a) The Principal may terminate this Agreement in full or in part as it relates to any particular Services or Deliverables by giving written notice to the Supplier, with effect from the date stated in the notice.
- (b) The Supplier will immediately comply with any directions given in the notice given under clause 41.2(a) and do everything possible to mitigate its Losses arising in consequence of termination under clause 41.2(a).

#### 41.3 Termination by the Supplier

The Supplier may terminate this Agreement by no less than 30 Business Days' notice if, but only if:

- (a) the Principal has failed to pay an undisputed amount invoiced in accordance with clause 26 by the applicable due date;
- (b) the Supplier has issued a notice to the Principal requiring payment of that undisputed amount following the Principal's non-payment by the applicable due date; and
- (c) the Principal has failed to pay that undisputed amount within 30 Business Days after receipt of the Supplier's notice under clause 41.3(b).

To the maximum extent permitted by law, the Supplier irrevocably waives any right it has or may (in the absence of this clause) have had to terminate this Agreement.

#### 41.4 Force Majeure

If a delay or failure to perform a party's obligations due to a Force Majeure Event exceeds 20 Business Days, or if the Principal reasonably considers the Force Majeure Event will not cease within that period, the Principal may immediately terminate this Agreement on notice to the Supplier.

#### 41.5 Continuation

Where the Principal exercises its rights under this clause 41 only in relation to one or more Services or Deliverables, the Supplier must continue to perform this Agreement in respect of any other Services or Deliverables which have not been terminated.

#### 41.6 Partial Termination

For clarity, the references in clauses 41.1 and 41.2(a) to the Principal terminating this Agreement as it relates to any particular Services or Deliverables includes a reference to the Principal terminating Operations and Maintenance Services in relation to a particular WestConnex Motorway, the Sydney Harbour Bridge or the Sydney Harbour Tunnel.



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## 42 Events Following Termination or Expiry

### 42.1 Obligations on expiry or termination

On expiry or termination of this Agreement for any reason , then without limiting any other rights the Principal may have:

- (a) in addition to any other obligations under this Agreement, the Supplier must pay the Principal:
  - (i) any fees paid by the Principal to the Supplier in advance for services not yet supplied or for a licence that has not yet been utilised; and
  - (ii) any Service Rebate accrued up to the date of termination or expiry;
- (b) the Supplier must promptly return to the Principal all Documentation, material and equipment (including Hardware and any spare parts) belonging to the Principal that are in the Supplier's possession, custody or control;
- (c) the Supplier must perform the Transition Out Services in accordance with clause 44.

### 42.2 Remedies

If this Agreement is terminated by the Principal under clause 41.1, then without limiting any other rights the Principal may have:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### 42.3 Early termination fee

- (a) If the Principal terminates this Agreement in full or in part under clause 41.2, then the Principal will pay the Supplier an amount in accordance with section 5 of Schedule 2 in respect of any termination under this clause.

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- (b) The Supplier acknowledges and agrees that any amount payable under clause 42.3(a) will be full compensation for the termination of this Agreement and the Principal will not be liable upon any Claim (insofar as is permitted by law) in respect of that termination other than or the amount payable under clause 42.3(a).

#### 42.4 Survival

Clauses 17.6 (No solicitation), 10.11(Liquidated damages), 24 (Records and Audit rights), 27 (Invoices and Payments), 28 (Taxes and GST), 9 (Software), 30 (Intellectual Property Rights), 31 (Confidentiality), 32 (Privacy), 35 (Warranties and Representations), 11 (Manufacturer and Supplier Warranties), 36 (Liability and Indemnities), 37 (Insurance), 38 (Bank and Parent Company Guarantees), 40 (Disputes), 42 (Events Following Termination or Expiry), 46 (Assignment and Novation), 47 (General) and 48 (Definitions), together with any other clauses in this Agreement which by their nature survive termination or expiry of this Agreement, survive the termination or expiry of this Agreement, as do any rights and remedies accrued before termination or expiry.

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### 43 Step-In and Step-Out

#### 43.1 Principal may take control

- (a) If:
  - (i) any default or non-performance by the Supplier under this Agreement; or
  - (ii) an emergency or Force Majeure Event, substantially prevents, hinders, degrades or delays the performance of any Services deemed by the Principal in its sole and absolute opinion to be critical (**Affected Services**) for more than 48 consecutive hours; or if:
  - (iii) the Principal is entitled to terminate all or part of this Agreement in accordance with clause 41.1 or otherwise for default of the Supplier;
  - (iv) if the Supplier is, or the Principal has reasonable grounds for believing that that Supplier is reasonably likely to be, in material breach of its obligations to provide the Services, either generally or in respect of a specific Service;
  - (v) the Supplier's failure to perform its obligations causes the Principal to breach any Law;
  - (vi) an Authority advises the Principal it should exercise its step-in rights under this clause 43.1,

the Principal may, at its option, take control of the Affected Services (which, in the case of clauses 43.1(a)(iii) to 43.1(a)(vi), means all Services over which the Principal elects to take control) and, in doing so, may take any action as is reasonably necessary to restore the Affected Services, including by itself performing or engaging a third party supplier to provide such services.

- (b) Nothing in this clause will be construed as requiring the Principal to exercise its rights where the Principal decides not to do so.

### 43.2 Suppliers obligations with step-in

If the Principal exercises its step-in rights pursuant to clause 43.1

- (a) the Supplier must as soon as practicable suspend the performance of the Affected Services;
- (b) the Supplier must cooperate fully with the Principal and any third party supplier and provide all reasonable assistance at no charge to the Principal to restore the Affected Services as soon as possible, including by making available to the Principal or its third party nominee all of the Supplier's resources required in the performance of the Affected Services; and
- (c) if the Principal control over Services under this clause 43.2 is likely to exceed 30 days, the Supplier must work with the Principal to develop a plan to manage resolution of the problem for the Principal's Acceptance. Once such a plan is Accepted by the Principal, the Supplier must comply with the plan.

### 43.3 Step out

- (a) Subject to clause 43.3(b), where the Principal or its third party nominee has exercised its step-in rights pursuant to clause 43.1, and if:
  - (i) the breach or circumstance which gave rise to the Principal or its third party nominee exercising its step-in rights has been remedied;
  - (ii) the Parties have held good faith discussions in order for the Supplier to explain the steps it has taken to rectify and prevent any recurrence of the event which gave rise to the exercise of the step-in rights and its ability to resume performance of the Services; and
  - (iii) the Principal is satisfied, in its sole and absolute discretion, of the Supplier's ability or willingness to render performance in accordance with this Agreement,

the Principal or its third party nominee (as relevant) must step-out by issuing a step-out notice to the Supplier giving the Supplier reasonable notice of its intention to step-out and the effective date of that step-out.

- (b) Notwithstanding clause 43.3(a), the Principal or its third party nominee (as relevant) may step-out at any time by issuing a step-out notice to the Supplier, stating its intention to step-out and the effective date of that step-out.
- (c) If the Principal or its third party nominee issues a step-out notice to the Supplier under this clause 43.3:
  - (i) the Supplier must resume the performance of the Services on the date specified in the step-out notice; and
  - (ii) the Principal or its third party nominee (as relevant) must relinquish to the Supplier the control and possession of any of the Supplier's Resources utilised for the performance of the Services pursuant to this clause 43.3.
- (d) If the duration of any step-in extends to a date which is four months from the effective date of the step-in without the Principal or its third party nominee having issued a step-out notice to the Supplier under this clause 43.3, the

Supplier and the Principal will enter into good faith discussions for a period of 5 Business Days in order to agree an appropriate extension to the period of step-in.

- (e) If the Parties fail to agree an extension of the step-in under clause 43.3(d), the Principal may, in its absolute discretion and without prejudice to any other rights or remedies it may have under this Agreement or otherwise:
  - (i) terminate this Agreement or the Affected Services upon notice provided to the Supplier; or
  - (ii) extend the period of step-in.

#### **43.4 Fees**

The Supplier will not be entitled to receive any fees that relate to Services which the Principal has taken control over in accordance with clause 43.1. Without limiting the Supplier's liability to the Principal with respect to any default or non-performance by the Supplier under this Agreement, where the Principal engages a third Party supplier to perform any Affected Services, the Principal is entitled to claim from the Supplier, and the Supplier must pay on written demand by the Principal, the amount by which the costs of the third party provider for provision of the Affected Services exceed the fees that would have been payable to the Supplier for provision of such Services.

#### **43.5 Third Party consents**

The Supplier must obtain all third party agreements, consents and approvals necessary to enable the Principal to exercise its rights under this clause 43 and if required by the Principal with written evidence of such agreements, consents and approvals before the Commencement Date, on each anniversary of the Commencement Date and whenever required by the Principal.

#### **43.6 No limitation of Supplier's liability**

Nothing in this clause 43 limits the Supplier's liability to the Principal in relation to any default or non-performance by the Supplier under this Agreement.

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## **44 Transition-Out**

### **44.1 Transition-Out Plan**

- (a) No later than three months prior to the Date for Practical Completion for Release 1 the Supplier must prepare, in consultation with the Principal, a Transition-Out Plan for the Services.
- (b) The Transition-Out Plan must describe in detail all of the services necessary to accomplish transition-out, including:
  - (i) a detailed description of the Transition-Out Services to be provided in relation to each of the Site;
  - (ii) a list of all sub-contractors, assets (hardware and software), tools, operating manuals and procedures to be used to provide the Services;

- (iii) the transition methodology that will be used by the Supplier;
  - (iv) the roles and responsibilities of each party;
  - (v) any risks associated with transition of the Services; and
  - (vi) the timing for transition-out, including any milestones for completion of the Transition-Out Services.
- (c) The Supplier must provide the Transition-Out Plan to the Principal for its Acceptance in accordance with clause 10.2 and the timeframes set out in the SWTC. The Supplier must make any changes to the Transition-Out Plan as the Principal may reasonably request and re-submit the Transition-Out Plan to the Principal for its Acceptance as soon as possible, and in any case within 10 Business Days of receiving the Principals comments.
- (d) Once the Transition-Out Plan has been Accepted by the Principal, Supplier must comply with it.
- (e) The Supplier must keep the Transition-Out Plan up to date during the Term, including incorporating any changes to the plan to reflect changes in the System or the Services or to address known issues and submit it to the Principal for its Acceptance. Once the Principal has Accepted the updated Transition-Out Plan, it will be deemed to replace the previous version.

#### **44.2 Transition-Out Services**

- (a) On request by the Principal, the Supplier will provide the Transition-Out Services in accordance with Schedule 13.
- (b) The Principal will pay the Supplier fees for the Transition-Out Services in accordance with section 7 of Schedule 2.

#### **44.3 Time**

Unless otherwise agreed between the parties, the time required to carry out the Transition Out Services will be a reasonable time having regard to the amount of work required by the Supplier.

#### **44.4 Continuity of Services**

The Supplier will continue to perform, for a reasonable period (as determined by the Principal) of up to 24 months following the expiration or termination of this Agreement, any or all of the Services and charge the fees set out in 0.

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### **45 Notices**

#### **45.1 Form**

Unless stated otherwise in this Agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this Agreement must be in writing.

## 45.2 Notices and communications

A notice, consent, request or any other communication under this Agreement must be:

- (a) left at the address of the addressee;
- (b) sent by prepaid post (airmail if posted to or from a place outside Australia) to the address of the addressee;
- (c) sent by facsimile to the facsimile number of the addressee specified in the Contract Details or notified by the receiving party; or
- (d) sent by email to the email address specified in the Contract Details or as notified by the receiving party.

## 45.3 Time of receipt

A notice, consent, request or any other communication is deemed to be received:

- (a) if by delivery, when it is delivered;
- (b) if posted, the earlier of the date of receipt and 3 Business Days after posting if within Australia or 7 Business Days after posting if posted to or from a place outside Australia;
- (c) if a facsimile, the earlier of the time the addressee receives and the next Business Day after the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- (d) if an email, the earlier of when the email is opened by the recipient and the next Business Day after the time at which it enters the recipient's system (provided that the sender does not receive a delivery failure or out of office message).

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## 46 Assignment and Novation

### 46.1 Assignment or novation

- (a) The Supplier must not assign or otherwise deal with any of its rights, interests or obligations under this Agreement without the prior written consent of the Principal (such consent not to be unreasonably withheld).
- (b) The Principal may, in its absolute discretion and without consent from the Supplier, mortgage, encumber, grant security over or charge:
  - (i) this Agreement; or
  - (ii) any of its interests, rights and obligations under or in connection with this Agreement or the Project,at any time, and the Supplier must, if requested by the Principal, execute a deed giving effect to the mortgage, encumbrance, grant of security or charge.
- (c) The Principal may assign or novate:

- (i) this Agreement; or
- (ii) any of its interests, rights and obligations under or in connection with this Agreement or the Project,

in whole or in part and may do so in its absolute discretion and without consent from the Supplier if the assignment or novation is:

- (iii) at any time following Practical Completion for Release 1; or
- (iv) to:
  - (A) an entity described in paragraph (a) of the definition of Authority;
  - (B) any corporation which is a wholly-owned subsidiary (as that term is defined in section 9 of the Corporations Act 2001 (Cth)) of an entity described in paragraph (a) of the definition of Authority;
  - (C) an entity to which the Principal sells, leases or otherwise transfers ownership of assets;
  - (D) an entity for the purposes of that entity providing services to the Principal or a WestConnex Concessionaire;
  - (E) Sydney Motorway Corporation; or
  - (F) a WestConnex Concessionaire.

(d) In circumstances other than those set out in clause 41.1(c) the Principal may not assign or novate:

- (i) this Agreement; or
- (ii) any of its interests, rights and obligations under or in connection with this Agreement or the Project,

without the prior written consent of the Supplier (such consent not to be unreasonably withheld).

- (e) In the case of a novation, the Supplier must, on request by the Principal, execute a deed of novation and do any other thing necessary to give full effect to the novation.
- (f) In the case of an assignment, the Supplier must, if requested by the Principal, execute a deed of assignment and do any other thing necessary to give full effect to the assignment.
- (g) In the case of novation or assignment, the Supplier will do all things necessary to ensure that the novatee or assignee has the benefit of:
  - (i) policies of insurance referred to in clause 37;
  - (ii) the Bank Guarantee referred to in clause 38.1;
  - (iii) the guarantee executed by the Parent Company Guarantor referred to in clause 38.2; and
  - (iv) Intellectual Property Rights referred to in clause 30.

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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## **47 General**

### **47.1 Relationship of the parties**

The relationship of the parties is that of independent contractors and nothing in this Agreement is to be treated as creating an employee/employer relationship, agency relationship, partnership or joint venture between the parties.

### **47.2 Discretion in exercising rights**

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Agreement expressly states otherwise.

### **47.3 Partial exercising of rights**

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

### **47.4 No liability for loss**

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this Agreement.

### **47.5 Remedies cumulative**

The rights and remedies provided in this Agreement are in addition to other rights and remedies given by Law independently of this Agreement.

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**47.6 Change and waiver**

A provision of this Agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

**47.7 Indemnities**

The indemnities in this Agreement are continuing obligations, independent from the other obligations of the parties under this Agreement and continue after this Agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Agreement.

**47.8 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Agreement or any part of it.

**47.9 Costs**

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Agreement and other related documentation except for any stamp duty.

**47.10 Counterparts**

This Agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

**47.11 Governing law and jurisdiction**

This Agreement is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts of appeal from them.

**47.12 Severability**

If any part or provision of this Agreement is held by a court to be invalid or unenforceable in a jurisdiction, it is severed for that jurisdiction and the remainder of this Agreement will continue to operate in full force and effect.

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**48 Definitions and interpretation**

**48.1 Defined Terms**

In this Agreement, unless otherwise stated:

**Accept or Acceptance** means issuing a Notice of Acceptance under clause 10.6.

**Acceptance Criteria** means:

- (a) for any Milestone- the completion requirements for that Milestone as set out in section 4 of the Delivery Plan;
- (b) for any Deliverable which is subject to Acceptance Testing activities described in the Delivery Plan in relation to a Milestone, at the time those Acceptance

Tests are conducted - the completion requirements for that Milestone as set out in section 4 of the Delivery Plan; and

- (c) for all other Deliverables and Services - the Deliverable or Service complies with this Agreement including the Specifications and has no Defects.

**Acceptance Tests** means the acceptance tests to be performed in accordance with clause 10 in relation to the System and Deliverables.

**Actual Availability** means the Availability of the System during the Measurement Period.

**Agreement** means this agreement, including all schedules, annexures and the SWTC, as amended and updated from time to time.

**Amount of the Consideration** means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a supply, the GST Exclusive Market Value of that consideration as reasonably determined by the party making the supply.

**Approval** means the approval of the Principal provided to the Supplier in writing and signed by the Principal's Representative and, in the case of any Documentation, means that Acceptance of that Documentation.

**Auditor** means any Principal Personnel who provides an internal audit role or function or any external auditor appointed by the Principal to provide independent auditing services.

**Authority** means:

- (a) 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;
- (b) any other person having a right to impose a requirement on the Supplier, or whose consent is required, under Law to carry out the Services; or
- (c) any other person having jurisdiction over, or ownership of, the Services or the System.

**Availability** during a particular period of time (**Measurement Period**) means the percentage calculated in accordance with the following formula:

$$\text{Availability (\%)} = \frac{100 \times \text{Actual time during the Measurement Period that the TRARM is Available}}{\text{Total time in the Measurement Period minus Scheduled Outages}}$$

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**Available** means that the TRARM is continuously available for the beneficial use and enjoyment in accordance with its intended function and purpose and the requirements of this Agreement. For the purposes of this definition, any outages of the TRAM during which the Supplier is performing maintenance (and of which the Supplier has provided the Principal with reasonable advance notice) will be discounted to the extent those outages do not exceed an aggregate duration of 8 hours in a calendar month, and (unless otherwise agreed in advance by the Principal) occur outside of normal business hours (8am to 6pm on Business Days).

**Bank Guarantee** means an unconditional bank guarantee to be provided by the Supplier in accordance with clause 38.1.

**Black List** means the list described in the SWTC.

**Business Continuity Plan** means the plan for business continuity described in the SWTC.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Sydney, New South Wales.

**Call** means when the Principal advises the Supplier's help desk by telephone or email of a Defect in relation to the System.

**Change** means a change effected under clause 29 of this Agreement.

**Change of Control** occurs, in respect of an entity when:

- (a) a person who did not have Control of the entity at the Commencement Date acquires Control of the entity; or
- (b) a person who did have Control of the entity at the Commencement Date ceases to have Control of the entity.

**Change Proposal** means a Service Change Proposal or a Contract Change Proposal, as the context requires.

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

**Commencement Date** means the date this Agreement is executed by both the Principal and the Supplier.

**Concept Design & Bill of Materials** means the documents referred to in Schedule 15.

**Confidential Information** in relation to the Principal means the Principal Confidential Information and in relation to the Supplier means the Supplier Confidential Information.

**Contract Details** means the contract details set out at the front of this Agreement.

**Contract Price** means the contract price set out in Schedule 2A.

**Contract Progress Reports** means the contract progress reports described in the SWTC (Delivery Services).

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**Control** of an entity includes the direct or indirect power to:

- (a) direct the management or policies of the entity; or
- (b) control the membership of the board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of that corporation or otherwise.

**Controller** has the meaning it has in the Corporations Act.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Critical Design Review** means the critical design review described in the SWTC (Delivery Services).

**Daily Rate** means the daily rate as calculated in accordance with 0.

**Date for Practical Completion** means, in respect of a Release, the date specified in the Delivery Plan as the date by which that Release is to be accepted and the Supplier is to achieve Practical Completion for that Release, as may be extended in accordance with clause 16 or as varied in accordance with clause 29.

**Date of Practical Completion** means, in respect of a Release, the date set out in the Notice of Practical Completion for that Release.

**Defect** means in respect of the System, a Service or a Deliverable:

- (a) a failure of the System, Service or Deliverable to meet the applicable Specification or any other relevant requirement set out or referenced elsewhere in this Agreement; or
- (b) any part of the System, Service or Deliverable (including data written by the System or Deliverable, if applicable) that:
  - (i) has an error, defect or malfunction;
  - (ii) is not fit for purpose or of merchantable quality;
  - (iii) results in the System, Service or Deliverable failing or doing something that it was not designed to do;
  - (iv) results in the System, Service or Deliverable not doing something that it was designed to do; or
  - (v) otherwise does not comply with the requirements of this agreement.

**Deliverable** means anything required to be or which is delivered by the Supplier or provided to the Principal under this Agreement, including the System, Documentation, Management Plans.

**Delivery Phase** means the period commencing on the Commencement Date and ending on the Date of Practical Completion for Release 2.

**Delivery Plan** means the delivery plan set out in Schedule 1.

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**Delivery Stage 1** means the stage of the Delivery Services identified in the "Preliminary Master Project Schedule" forming part of the SWTC (Delivery Services), as "Release One".

**Delivery Stage 2** means the stage of the Delivery Services identified in the "Preliminary Master Project Schedule" forming part of the SWTC (Delivery Services), as "Release Two".

**Delivery Services** means the Services to design, supply, install and commission the System in accordance with this Agreement as described in the Delivery Plan and the Specifications.

**Demobilisation Costs** has the meaning given to it under 0.

**Design Documentation** means any documentation to be prepared by the Supplier in accordance with the SWTC which describes in detail the System design and implementation requirements, including describing all relevant activities, methods, processes, checks and milestones to be performed by the Supplier and sets out:

- (a) the proposed system architecture;
- (b) hardware specifications;
- (c) required software requirements
- (d) the prototype user interfaces; and
- (e) work-flow process diagrams.

**Design Documentation Review** or **DDR** means the design documentation review described in clause 3.3 of the SWTC (Delivery Services).

**Developed Software** means all software that is required to be developed, or is developed, by the Supplier under this Agreement (and includes developments, customisations, modifications, enhancements and extensions to the Supplier Licensed Software, Procured Third Party Software or Principal Supplied Third Party Software).

**Direct Costs** has the meaning given to it under section 4 of 0.

**Disaster Recovery Plan** means the plan for disaster recovery described in the SWTC.

**Dispute** includes any dispute, controversy, difference or claim arising out of or in connection with this Agreement or the subject matter of this Agreement, including any question concerning its formation, validity, interpretation, performance, breach and termination.

**Documentation** means user manuals, operating and maintenance manuals, technical manuals, flow charts, logic diagrams and listings, drawings, schematics which are necessary or useful for the effective installation, operation, use and maintenance of the System, including the 'as built' documentation and any other document including the Management Plans, the Design Documentation, and the Test and Master Acceptance Plan, whether in electronic form or otherwise.

**Entry Criteria** means the entry criteria defined in section 5 of Schedule 1 to this Agreement.

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**Escrow Agent** means the escrow agent under the Escrow Agreement.

**Escrow Agreement** means an escrow agreement (or replacement of it) entered into under clause 9.5.

**Escrow Materials** means the Source Code Materials for:

- (a) the Supplier Licensed Software and the Developed Software;
- (b) unless otherwise agreed, the Procured Third Party Software; and
- (c) any customisations, modifications or enhancements of any of the software referred to in paragraphs (a) or (b) above.

**Escrow Term** means the later of:

- (a) 5 years from the Date of Practical Completion for Release 2; or
- (b) the expiry of the Term.

**Exit Criteria** means the exit criteria defined in section 5 of Schedule 1 to this Agreement.

**Factory Acceptance Testing or FAT** means the factory acceptance testing described in the SWTC (Delivery Services).

**Force Majeure Event** means any of the following causes provided that they occur within Australia, are outside the reasonable control of the affected party and could not have been prevented or avoided by that party taking all reasonable steps:

- (a) earthquake;
- (b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (c) act of public enemy, sabotage, malicious damage, terrorism or civil unrest; or
- (d) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority.

**General Terms** means the clauses in Parts A, B,C and D of this Agreement.

**Go Live** means a Release is moved into a Live Production Environment.

**Gross Negligence** means an act or failure to act (whether sole, joint or concurrent) which:

- (a) seriously and substantially deviates from a diligent course of action;
- (b) is done without even a slight degree of care or diligence; or
- (c) is in reckless disregard of or indifferent to the harmful consequences.

**GST** means the tax imposed by the GST Act and the related imposition Acts of the Commonwealth.

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**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999*, as amended from time to time.

**GST Exclusive Market Value** has the meaning given to it in the GST Act.

**Hardware** means all IT hardware and equipment forming part of the System (including each individual item, unit or component).

**Incident** means a perceived or actual issue with the System or Services and includes a Defect.

**Incident Resolution** means the restoration of the required functionality or performance in connection with an Incident by permanent means.

**Incident Workaround** means the restoration of the required functionality or performance in connection with an Incident by temporary means.

**Included Open Source Software** means the Software listed in Schedule 6 as the "Included Open Source Software" and all Updates and New Releases to that Software Accepted by the Principal.

**Information** means all information relating to or developed in connection with:

- (a) the business, technology or other affairs of the Discloser;
- (b) the Deliverables, the Services or this Agreement; or
- (c) any systems, technology, ideas, concepts, know-how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including without limitation, computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property owned or used by, or licensed to, the Discloser.

**Infringement Claim** means any Claim which would, if true, involve a breach of a warranty under clause 35.4.

**Input Tax Credit** has the meaning it has in the GST Act.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it has had a Controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement);
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;

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- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this Agreement reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) (both inclusive) happens in connection with that person under the law of any jurisdiction.

**Intellectual Property Rights** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**Interface** means the interfaces set out in the SWTC.

**Interface Specifications** in relation to software or hardware means sufficient information about that software or hardware for the Principal or another person engaged by the Principal to develop or supply software or hardware which interfaces with that software or hardware and includes a database schema and applications program interfaces.

**Interference with Privacy** means:

- (a) an interference with the privacy of an individual as that term is defined in the Privacy Act 1988 (Cth); or
- (b) a breach of any requirement of any Privacy Legislation.

**Interoperable Systems** means systems that the Supplier will integrate with the System as set out in the SWTC (Operations and Maintenance Services).

**Key Milestone** means any Milestone set out in the Delivery Plan which is specified as a key milestone.

**Laws** means all laws in Australia, including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by-laws, statutory rules of an applicable industry body, mandatory codes of conduct, writs, orders, injunctions and judgments.

**Liquidated Damages** means liquidated damages as calculated in accordance with the Contract Details.

**Live Production Environment** means the environment in which Principal conducts actual transactions in day-to-day business operations using the System.

**M4 Co** means WCX M4 Pty Limited (ACN 602 963 806).

**M4 East Motorway** means the road, tunnel and other physical works, facilities and systems known as the M4 East Motorway and all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements.

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**M4 West Motorway** means the motorway known as the M4 West Motorway in existence as at the date of this deed and as modified over time to include the widening works.

**Major Defect** means a Severity 1 or Severity 2 Defect in the System.

**Management Plans** means the management plans to be prepared by the Supplier in accordance with clause 21 and Accepted by the Principal.

**Manual Image Processing** means any processing performed on a transaction which involves presentation of one or images of a vehicle to an operator in order for the operator to identify and characterise the vehicle involved in the transaction. Where the transaction has previously not been subjected to Manual Image Processing this means manual consolidation, otherwise this means manual verification.

**Milestone** means a stage or event in the Project identified in the Delivery Plan. For avoidance of doubt, a Key Milestone is also a Milestone.

**Milestone Completion** means the completion of a Milestone by the Supplier in compliance with:

- (a) the order of Milestones set out in part 1 of the Delivery Plan;
- (b) the milestone completion requirements set out in part 4 of the Delivery Plan;
- (c) the Acceptance Criteria for the Milestone (including successful completion of all Acceptance Tests applicable to the Milestone); and
- (d) the Entry Criteria and Exit Criteria for that Milestone;

to the reasonable satisfaction of the Principal.

**Milestone Due Date** means the date by which a Milestone must be achieved as specified in the Delivery Plan as may be extended in accordance with clause 16.

**Milestones and Delivery Control Matrix (MDCM)** means the matrix set out in Schedule 1.

**Moral Rights** means any moral rights including the rights described in Article 6bis of the *Berne Convention for Protection of Literary and Artistic Works 1886* (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any statute (including the *Copyright Act 1968* (Cth) or any other law of the Commonwealth of Australia), that exist or that may come to exist, anywhere in the world.

**MOU** means the "Memorandum of Understanding - Electronic Toll Collection version 15" entered into by the Roads and Traffic Authority of New South Wales, SWR Operations Pty Ltd, Airport Motorway Limited, Interlink Roads Pty Limited, The Hills Motorway Limited and Queensland Motorways Ltd, CrossCity Motorway Pty Limited, WSO Co. Pty Limited, CityLink Melbourne Limited, Connector Motorways Pty Limited, ConnectEast Pty Limited, RiverCity Motorway Pty Limited, BrisConnections Operations Pty Limited and Brisbane City Council on or about 30 October 2009, as varied, novated, ratified or replaced from time to time.

**MOU List Processing** means MOU list processing described in the SWTC (Operations and Maintenance Services).

**New Release** in respect of any software, means software produced primarily to extend, alter or improve that software by providing additional functionality or performance enhancement (whether or not defects in the software are also corrected) while still retaining the original designated purpose of that software.

**Notice of Acceptance** means a notice issued by the Principal under clauses 5.3, 10.6 or 10.9 accepting a Release, a Milestone or a Deliverable.

**Notice of Failure** means a notice issued by the Principal under clause 10.7.

**Notice of Practical Completion** means the notice issued by the Principal in accordance with clause 10.10 in respect of a Release.

**Open Source Licence** means a licence which meets the requirements of the Open Source Definition propagated by the Open Source Institute ([www.opensource.org](http://www.opensource.org)).

**Open Source Software** means software which is licensed under the terms of an Open Source Licence.

**Operating Environment** means the technical operating environment of the Principal as set out in the Design Documentation and the SWTC or otherwise described or disclosed to the Supplier by or on behalf of the Principal.

**OAP Acceptance Criteria** means:

- (a) in respect of Release 1 - the Acceptance Criteria for Milestone 11 (Operational Acceptance Period - Release 1); and
- (b) in respect of Release 2 - the Acceptance Criteria for Milestone 15 (Operational Acceptance Period - Release 2).

**Operational Acceptance Period** or **OAP** means in respect of a Release the period commencing on Go Live of the relevant Release and ending on satisfaction of the OAP Acceptance Criteria for that Release.

**Operational Readiness Trial** or **ORT** means the trial described in clause 4.10.8 of the SWTC (Delivery Services).

**Operational Support Period** means the period specified as such in the Contract Details.

**Operations and Maintenance Fees** means the Operations and Maintenance Fees specified in Schedule 2B.

**Operations and Maintenance Phase** means the period specified as such in the Contract Details, as extended in accordance with clause 1.2.

**Operations and Maintenance Services** means the Operations and Maintenance Services described in the SWTC (Operations and Maintenance Services).

**Parent Company Guarantee** means the parent company guarantee to be provided by the Supplier in accordance with clause 38.2.

**Parent Company Guarantor** means the entity specified in the Contract Details.

**Permitted Licence Use** means any purpose in connection with:

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- (a) the business, operations or activities of the Principal [REDACTED]
- (b) the provision of services by the Principal [REDACTED] to any person or the provision of goods or services (including a procurement process) by any person to the Principal [REDACTED] or [REDACTED]
- (c) any other use of the Deliverables in accordance with the Specifications,

[REDACTED]

**Personnel** means, in relation to a party, that party's officers, employees, agents, sub-contractors, auditors, advisors and other consultants of that party.

**Practical Completion** has the meaning given in clause 10.10 of this Agreement.

**Pre-Agreed Change** means any of the Changes listed in Schedule 16.

**Pre-Existing Material** means any material other than Software provided by or on behalf of the Supplier that is existing at the Commencement Date, was not developed specifically for the Principal or in contemplation of this Agreement and is:

- (a) incorporated with the System or any Deliverable; or
- (b) otherwise provided to the Principal under this Agreement.

**Preliminary Design Review** means the preliminary design review described in the SWTC (Delivery Services).

**Principal Confidential Information** means all Information disclosed (including inadvertently) by the Principal or any of its Personnel in connection with this Agreement, all Information disclosed by a third party which the Principal is required to keep confidential and all Information created by the Supplier in the course of providing the Services or in respect of Intellectual Property Rights owned by the Principal including:

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Principal or a third party to whom the Principal owes an obligation of confidentiality;
- (b) information derived partly or wholly from the Information including without limitation any calculation, conclusion, summary, computer modelling; and
- (c) trade secrets or information which is capable of protection at law or in equity as confidential information.

**Principal Data** means all data, information, text, drawings or other materials embodied in any electronic or tangible medium and which:

- (a) are supplied by the Principal to the Supplier under this Agreement; or
- (b) may be accessed by the Supplier in the course of performing the Services.

**Principal's Representative** means the person identified in the Contract Details as the Principal's Representative, as varied by notice to the Supplier from time to time.

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**Principal Supplied Third Party Software** means the Third Party Software listed in Schedule 6 as the "Principal Supplied Third Party Software" and all Updates and New Releases to that Software Accepted by the Principal.

**Principal Works** means the Specifications, the Principal Data and any Deliverables, including:

- (a) the Documentation; and
- (b) all other documents and material relating to the Services created by the Supplier for the purposes of providing the Services specifically to the Principal,

excluding the Supplier Licensed Software, Procured Third Party Software and the Included Open Source Software, but including the Developed Software.

**Privacy Legislation** means:

- (a) the Privacy and Personal Information Protection Act 1998 (NSW);
- (b) the Privacy Act 1988 (Cth);
- (c) any legislation (to the extent that such legislation applies to the Principal or the Supplier or any other recipient of Protected Information) from time to time in force in any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia) or non-Australian jurisdiction (to the extent that any Protected Information of the Supplier is subject to the laws of that jurisdiction) affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of data; and
- (d) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued thereunder, as amended from time to time

**Procured Third Party Software** means the Third Party Software listed in Schedule 6 as the "Procured Third Party Software" and all Updates and New Releases to that Software Accepted by the Principal.

**Project** means the project to design, supply, install and implement the System in accordance with this Agreement.

**Project Deed** means each of:

- (a) the WestConnex M4 Project Deed between the Principal and WCX M4 Pty Limited dated 4 December 2014; and
- (b) any agreement between the Principal or another Authority and a WestConnex Concessionaire governing the WestConnex Concessionaire's operation of the WestConnex Motorway (or any part of it).

**Project Management Plan** means the documents referred to in Schedule 14.

**Project Manager** means the person appointed by the Supplier in accordance with clause 15.4.

**Project Objectives** means the project objectives described in, and forming part of, the SWTC.

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**Proprietary Development Environment** means in respect of any Software, any proprietary device or programs used in the development environment for that Software, including compilers, workbenches, tools and higher-level (or proprietary) languages employed by the Supplier for the development, maintenance, and implementation of that Software, for which there is not a commercially available alternative available to the Principal on reasonable terms through readily known sources other than the Supplier.

**Protected Information** means any Personal Information (including tax file numbers, credit information files or credit reports or any other information about an individual), whether in a written, oral or other form, in respect of which the Supplier or the Principal:

- (a) has a duty not to engage in any act or practice which constitutes an Interference with Privacy;
- (b) or is required to undertake a specified act or practice, or to provide specified protection, where failure so to do or provide is an Interference with Privacy; and
- (c) any information which the Principal must at Law or in equity keep confidential.

**Quality Management System** means the Supplier's quality management system that will be applied to this Contract as described in the Quality Management Plan in clause 3.4.6 of the SWTC (Delivery Services).

**Release** means a discrete version or iteration of the System resulting from the performance of a particular Delivery Stage, being Release 1 or Release 2 as applicable.

**Release 1** means the Release resulting from or required to be delivered through the performance of Delivery Stage 1.

**Release 2** means the Release resulting from or required to be delivered through the performance of Delivery Stage 2 (incorporating a modified, enhanced or supplemented version of Release 1).

**Relevant Offence** means any offence which:

- (a) involves an element of dishonesty or violence;
- (b) involves behaviour which is, in the reasonable opinion of the Principal, inconsistent with the inherent requirements of the roles which the relevant person is or will be required to perform; or
- (c) is an offence which the Principal reasonably considers is of a nature that if a person who has been convicted of it were to perform services under this Agreement would reflect adversely on the reputation of the Principal or expose the Principal to adverse public comment.

**Relevant Future Road** means each of WestConnex Stage1b, WestConnex Stage 2, WestConnex Stage 3, the Sydney Harbour Bridge and the Sydney Harbour Tunnel.

**Resolution** means permanently fixing a Defect and does not include a temporary Workaround

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**Response** means notice by the Supplier to the Principal that the Supplier has received a Call relating to a Defect, has allocated one or more people to assess the Defect, and that those people have started assessing the Defect.

**Roadside Equipment** means any roadside equipment, including the gantries and associated equipment, which is used to facilitate toll collection.

**SEMP** has the meaning described in the SWTC.

**Service Levels** mean the service levels for the Services (including the Deliverables) as set out or referenced in Schedule 12.

**Service Level Rebates** and **Service Rebates** mean the service level rebates specified and calculated as set out in or referenced in Schedule 12.

**Services** means all services required to be provided by the Supplier under this Agreement, including the Deliverables and any ancillary or related services, functions or responsibilities which are required for the proper performance of the services described in this Agreement.

**Severity 1** means a critical Defect or Incident in the TRARM. Some examples of a Severity 1 Defect or Incident are Defects or Incidents that:

- (a) cause the TRARM to be completely unavailable, or so severely impacted that work cannot reasonably continue;
- (b) cause loss of tolling revenue;
- (c) cause widespread data loss or corruption or invalid results;
- (d) prevent critical business processes from occurring or critical transactions from being processed;
- (e) cause a senior executive of the Principal to be unable to perform a key function of their role;
- (f) prevent an essential component of the TRARM from being accessed or used;
- (g) consist of an essential component of the TRARM being missing; or
- (h) have the potential to have a significant negative impact on the Principals business operations, reputation or profitability.

**Severity 2** means a major Defect or Incident in the TRARM that is not a Severity 1 Defect or Incident. Some examples of a Severity 2 Defect or Incident are Defects or Incidents that:

- (a) cause a significant loss or degradation of function or performance;
- (b) cause data loss or corruption or invalid results; or
- (c) cause important functions or services to be unavailable, or partial loss of a critical function, however operations can continue in a restricted fashion.

**Severity 3** means a minor Defect or Incident in the TRARM that is not a Severity 1 or Severity 2 Defect or Incident. Some examples of a Severity 3 Defect or Incident are Defects or Incidents that:

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- (a) cause some loss or degradation of function or performance, however operations can continue with minimal impact; or
- (b) cause limited accessibility to the TRARM.

**Severity 4** means a trivial Defect or Incident in the TRARM that is not a Severity 1, Severity 2 or Severity 3 Defect or Incident. Some examples of a Severity 4 Defect or Incident are Defects or Incidents that:

- (a) are a cosmetic problem (such as an error on a screen layout or a formatting error in a report); or
- (b) have minimal or no impact on use of the TRARM (such as a typographical error).

**Severity Level**, in relation to a Defect or Incident, means Severity 1, Severity 2, Severity 3 or Severity 4, as determined by the Principal from time to time.

**Site** means the Site at which the Services must be performed as notified to the Supplier by the Principal, and varied or updated from time to time by notice from the Principal to the Supplier.

**Site Access Schedule** means the table set out at Schedule 11.

**Site and Site Access Requirements** means the requirements related to the Site and access to the Site as notified by the Principal from time to time.

**SMP** means the Software Management Plan described in the SWTC.

**Software** means:

- (a) the Developed Software;
- (b) the Supplier Licensed Software;
- (c) the Procured Third Party Software and the Principal Supplied Third Party Software; and
- (d) the Included Open Source Software.

**Software Lock** means a mechanism (including but not limited to a software lock, software key or time bomb), the purpose of which is to disable or reduce the functionality or performance of all or any part of the Software, but does not include a security mechanism over which the Principal has unconditional control.

**Source Code** means, in respect of any computer program, the human readable programming code of that computer program, and includes associated software including scripts and applets (collectively comprised in a complete copy of all of the foregoing in executable code) and all documentation necessary to operate, maintain and modify the executable code copy of that computer program including all technical documentation and specifications in respect of that computer program.

**Source Code Materials** means, in respect of any Software:

- (a) the Source Code for that Software;



- (b) a copy of the that Software in a form ready for installation including compiled object code;
- (c) the Proprietary Development Environment for that Software;
- (d) documentation relating to the Source Code, object code or Proprietary Development Environment for that Software, including descriptions of code generation, database schemas, and operational and user manuals;
- (e) any pertinent commentary or explanation that may be necessary to render the Source Code for that Software understandable and useable by a reasonably competent and experienced computer-programming professional;
- (f) statements of principles of operation, and schematics, all as necessary or useful for the effective understanding and use of the Source Code for that Software; and
- (g) any other materials that are necessary to use, copy, modify, correct, enhance or maintain that Software.

**Specifications** means the following:

- (a) Laws and Standards, except as otherwise specifically directed by the Principal;
- (b) the SWTC;
- (c) specifications in the schedules of this Agreement;
- (d) the Design Documentation;
- (e) the Test and Master Acceptance Plan;
- (f) the Management Plans;
- (g) the Concept Design & Bill of Materials;
- (h) the published specifications for the Hardware, the Supplier Licensed Software and Procured Third Party Software;
- (i) any Documentation not incorporated elsewhere in this definition,

and to the extent of any inconsistency between these specifications, RMS will issue a direction as to which applies, and to the extent it has not done so:

- (j) the document imposing the higher standard, quality, level of service or quantum prevails; or
- (k) where paragraph (i) does not apply, the specifications listed earlier in this definition prevail over those listed later.

**Standards** means:

- (a) the Australian National Electronic Tolling Transaction Interoperability Specification AS 4962:2005 and the standards referenced in that standard; and

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- (b) any other standards applicable to the System which are issued by or under the authority of Standards Australia or an equivalent international authority.

**Supplier Confidential Information** means all Information, other than the Principal Confidential Information, disclosed to the Principal by the Supplier or any of its Personnel for or in connection with this Agreement including:

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Supplier;
- (b) information derived partly or wholly from the Information including without limitation any calculation, conclusion, summary, computer modelling; and
- (c) trade secrets and information which is capable of protection at law or in equity as confidential information.

**Supplier Group** means the Supplier and any person who Controls, is Controlled by or is under common Control with the Supplier.

**Supplier Key Personnel** means the persons (if any) specified in Schedule 3, as replaced from time to time in accordance with clause 17.4.

**Supplier Liability Cap** means the Supplier Liability Cap set out in the Contract Details.

**Supplier Licensed Software** means:

- (a) software components of the System, other than the Developed Software;
- (b) all Third Party Software other than Procured Third Party Software and the Principal Supplied Third Party Software; and
- (c) all Updates and New Releases to the Software components referred to in paragraphs (a) and (b) above Accepted by the Principal.

**Supplier Personnel** means the Supplier's officers, employees, agents, sub-contractors, auditors, advisors and other consultants that are not Supplier Key Personnel.

**Supplier Representative** means the Supplier's representative appointed under clause 39.1 and identified in the Contract Details.

**Supplier Statement** means the Principal's standard form of statement set out in Schedule 4.

**SWTC** means the scope of works described in the "Scope of Works and Technical Criteria" documents annexed as Annexure A and Annexure B.

**SWTC (Delivery Services)** means the part of the SWTC annexed as Annexure A.

**SWTC (Operations and Maintenance Services)** means the part of the SWTC annexed as Annexure B.

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**Sydney Harbour Bridge** means the road, tunnel and other physical works, facilities and systems known as the Sydney Harbour Bridge and all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements.

**Sydney Harbour Tunnel** means the road, tunnel and other physical works, facilities and systems known as the Sydney Harbour Tunnel and all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements.

**Sydney Motorway Corporation** means Sydney Motorway Corporation Pty Limited (ABN 47 601 507 591).

**System** or **TRARM** means the trip reconstruction and rating module required to meet the requirements of the Specifications and intended to act as an intermediary between the Roadside Equipment and the Tolling Back Office comprising (but not limited to) the IT hardware and equipment described in the Concept Design and Bill of Materials, the Licensed Software, the Procured Licensed Software, the Principal Supplied Third Party Software, the Included Open Source Software, and customisations, modifications, enhancements and extensions to that software, and any other computer hardware or computer software, needed to meet the requirements of the Specifications and otherwise supplied under or in connection with this Agreement from time to time. It includes each Release delivered under this Agreement from time to time.

**System Archiving and Data Deletion** means the controlled archiving and/or deletion of Data in accordance with configurable business rules and parameters according to the requirements of SWTC (Delivery Services).

**System Performance Criteria** means the system performance criteria set out in the Specifications.

**System Requirements Review** or **SRR** means the system requirements review described in the SWTC (Delivery Services).

**System Testing (Non Operational)** or **ST-NO** means the system testing (non operational) activities described in the SWTC (Delivery Services).

**System Availability** means the Availability of the System.

**System Backup** means the system backup described in the SWTC.

**Tax Invoice** has the meaning given to it in the GST Act.

**Taxes** means taxes, levies, imposts, charges and duties (including import, stamp and transaction duties) imposed by any Authority, together with any related interest, penalties, fines and expenses in connection with them except if imposed on, or calculated having regard to, the overall net income of the Principal, but excluding GST.

**Term** means the term of this Agreement which, unless terminated earlier or extended in accordance with its terms, commences on the Commencement Date and ends at the end of the Operations and Maintenance Phase.

**Test and Acceptance Master Plan** means the test and acceptance master plan to be prepared by the Supplier in accordance with clause 10.4 and Accepted by the Principal.

**Third Party Software** means all software components of the System, the copyright in which is owned by a person other than the Principal or the Supplier (or another member of the Supplier Group), but excluding the Included Open Source Software.

**Time and Materials Rates** means the rates specified in the schedule of rates in Schedule 2C.

**Tolling Back Office** means the back office toll revenue management system owned and operated by the Principal.

**Tolling Contract (Roadside)** means the deed between the Principal and the Tolling Contractor (Roadside) in relation to the WestConnex Project executed on or about 4 December 2014.

**Tolling Contractor (Roadside)** means the contractor engaged by the Principal to carry out the Tolling Work (Roadside) under the Tolling Contract (Roadside).

**Tolling System** means the tolling system consisting of equipment, Hardware, Software and associated Documentation, including the Roadside Equipment, the Tolling Back Office and the System, which operate together to facilitate the collection of tolls.

**Tolling Work (Roadside)** means physical works and systems works which the Tolling Contractor (Roadside) must design, develop, supply, install, test and commission for the operation of the Tolling System under the Tolling Contract (Roadside).

**Transition-Out Plan** means the plan to be developed by the Supplier and Accepted by the Principal in accordance with clause 44.1.

**Transition-Out Services** mean the services described in Schedule 13 and the approved Transition-Out Plan, including any other services that the Supplier must provide to ensure an orderly and seamless transition from the Supplier to the Principal or to the Principal's replacement supplier.

**Trip** has the meaning specified in the SWTC (Delivery Services).

**Update** in respect of any software means software which has been produced primarily to overcome defects in, or to improve the operation of, that software.

**Verification Cross Reference Matrix** means the matrix supplied by the Supplier in accordance with Schedule 1.

**Warranty Period** means the period determined in accordance with clause 11.2.

**WDA** means WestConnex Delivery Authority, a body corporate constituted under section 51B of the Transport Administration (General) Regulation 2013 (NSW).

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**WestConnex Associate** means:

- (a) any entity that is a related body corporate (within the meaning of section 50 of the Corporations Act) of any WestConnex Concessionaire;
- (b) any body corporate in which all of the shares are owned by one or more WestConnex Concessionaires; and
- (c) any incorporated or unincorporated joint venture formed by one or more WestConnex Concessionaires.

**WestConnex Concessionaire** means:

- (a) M4 Co; and
- (b) a person contracted by the Principal or an Authority to operate any part of the WestConnex Motorway.

**WestConnex Motorway** means each of:

- (a) the road, tunnel and other physical works, facilities and systems known as the M4 East Motorway and the M4 West Motorway;
- (b) WestConnex Stage 1b;
- (b) WestConnex Stage 2;
- (c) WestConnex Stage 3; and
- (b) any other road and other physical works, facilities and systems forming part of the WestConnex Program of Works.

**WestConnex Program of Works** means the 33-km motorway that will link Sydney's west with the airport and Port Botany precinct, and will include the M4 extension and duplication of the M5 East to King Georges Road, as described at <http://www.westconnex.com.au/index.html>.

**WestConnex Stage 1b** means the road and other physical works, facilities and systems forming part of the WestConnex Program of Works, and designated by RMS as at the date of this Agreement as the "WestConnex M4 East".

**WestConnex Stage 2** means the road and other physical works, facilities and systems forming part of the WestConnex Program of Works, and designated by RMS as at the date of this Agreement as the "WestConnex M5".

**WestConnex Stage 3** means the road and other physical works, facilities and systems forming part of the WestConnex Program of Works, and designated by RMS as at the date of this Agreement as the "WestConnex M4-M5 Link".

**Workaround** means taking reasonable measures to enable the Principal to use the System, so that the System can be used for its intended purpose even though it does not fully comply with the Specifications.

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## 48.2 References to certain general terms

Unless the contrary intention appears, a reference in this Agreement to:

- (a) **(Change or replacement)** a document (including this Agreement) includes any Change or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, Schedule, Annexure, Attachment or Exhibit is a reference to a clause in, or a Schedule, Annexure, Attachment or Exhibit to, this Agreement;
- (c) **(references to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Authority;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors and substitutes (including persons taking by novation) and assigns;
- (h) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) **(dollars)** an amount of money is a reference to the lawful currency of Australia;
- (j) **(calculation of time)** a period of time that dates from a given day or the day of an act or event is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to a calendar day and is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(meaning not limited)** the words "include", "including", "for example" or "such as" are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind;
- (m) **(next day)** if an act under this Agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day; and
- (n) **(time of day)** time is a reference to Sydney time.

## 48.3 Headings

Headings are included for convenience only and are not to affect the interpretation of this Agreement.



# Schedule 1 – Delivery Plan

(clause 5.2)

## 1. Key Milestones

The Supplier will meet the following Key Milestones:

	Event	Milestone Due Date*
1	Contract Execution	
2	System Requirements Review (SRR)	
3	Preliminary Design Review (PDR)	
4	Critical Design Review (CDR)	
5	Infrastructure and Oracle Purchase	
6	Factory Acceptance Testing (FAT) Release 1	
7	Installation	
8	Design Documentation Review (DDR) Release 1	
9	System Testing (Non Operational) (ST-NO) Release 1	
10	Operational Readiness Trial (ORT) Release 1	
11	Operational Acceptance Period (OAP) Release 1	
12	Practical Completion Release 1	
13	Factory Acceptance Testing (FAT2) Release 2	
14	Design Documentation Review (DDR2) Release 2	
15	Operational Acceptance Period (OAP2) Release 2	
16	Practical Completion Release 2	

\* the Principal may, acting reasonably, defer some or all Milestone Due Dates by notice to the Supplier (not requiring a Change) to schedule the Milestone Due Dates appropriately with the construction, testing, commissioning and opening schedule of the WestConnex Motorway.

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