

PART C

DRAFT CONTRACT

Rail Corporation New South Wales

Contract No. SXXXXX
XXXXXX Region

Period Contract for the Provision of Security Services to RailCorp

Rail Corporation New South Wales

ABN 59 325 778 353

[insert Contractor details]

[insert Contractor ABN]

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PERIOD CONTRACT FOR THE PROVISION OF SECURITY SERVICES TO RAILCORP

DATE

PARTIES

Rail Corporation New South Wales ABN 59 325 778 353, a statutory State owned corporation constituted under the *Transport Administration Act* (NSW) 1988 (**RailCorp**) and whose principal place of business is set out at Item 1 of schedule 1.

[insert Contractor details] ABN [insert Contractor ABN] (**Contractor**) whose principal place of business is set out at Item 2 of schedule 1.

RECITAL

- A. The Contractor agrees to provide, and RailCorp agrees to accept, the Services on the terms of this Contract.

OPERATIVE PROVISIONS

CHAPTER 1 – PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Contract:

Access Device means any key or other device used to lock, unlock or otherwise gain access through any door, gate or barrier, including without limitation any electronically operated access device.

Alcohol and Drug Free means that a person must at all relevant times maintain:

- (a) an alcohol level below 0.02% blood alcohol concentration; and/or
- (b) a drug level below the cut off level stipulated by the Australian Standard AS/NZS 4308.

Alcohol and Drug Test means a test, whether random or targeted, carried out from time to time by an authorised RailCorp tester, on a person in order to detect whether they exceed the prescribed levels of alcohol or drugs.

Authorisation means any permit, consent, licence, authority, grant or agreement that the Contractor and its Security Guards must hold to perform the Services and includes without limitation a RailCorp Identification Card.

Business Day means a day (other than a Saturday or Sunday or public holiday) on which banks are open for general banking business in Sydney.

Blue RailCorp Security Vest means the blue vest issued by RailCorp to Security Guards for identification purposes which must be worn by the Security Guard in accordance with the Contract.

Change of Control means, in relation to a corporation, a change in:

- (a) Control of the composition of the board of directors of the corporation;
- (b) Control of more than half the voting rights attaching to shares in the corporation;
or
- (c) Control of more than half of the issued shares of the corporation (excluding any part which carries no right to participate beyond a specified amount in the distribution of either profit or capital),

where **Control** means a power or control that is direct or indirect or is, or can be, exercised as a result of, by means of, in breach of, or by revocation of, trusts, relevant agreements and practices, or any of them, whether or not they are enforceable.

Commencement Date means the date set out at Item 5 of schedule 1.

Confidential Information in relation to a Party, means information that:

- (a) is by its nature confidential;
- (b) is designated by that Party as confidential; or
- (c) the other Party knows or ought to know is confidential;
- (d) and includes:
 - (i) information comprised in or relating to any Intellectual Property Rights of that Party;
 - (ii) information relating to the financial position of that Party and in particular includes information relating to the assets or liabilities of that Party and any other matter that does or may affect the financial position or reputation of that Party;
 - (iii) information relating to the internal management and structure of that Party, or the personnel, policies and strategies of that Party;
 - (iv) information of that Party to which the other Party has access other than information referred to in paragraphs (i), (ii) and (iii) above that has any actual or potential commercial value to the first Party or to the person or corporation which supplied that information;

- (v) in the case of RailCorp:
 - (A) information relating to the policies, strategies, practices and procedures of RailCorp or the Government of New South Wales as they relate to RailCorp; and
 - (B) RailCorp's Confidential Information; and
- (vi) information in that Party's possession relating to the other Party's clients or suppliers, and like information.

Contract means this Contract and, unless otherwise indicated, includes each schedule to this Contract.

Contractor Representative means the person specified at Item 4 of schedule 1 (as may be replaced by the Contractor from time to time), and includes any authorised delegate notified to the RailCorp Representative in writing.

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

Disengagement Services means all assistance reasonably incidental to the efficient and effective transfer of the provision of the Services from the Contractor to any person nominated by RailCorp and includes:

- (a) co-operating with and providing information to any relevant third party; and
- (b) training any relevant person or persons in the provision of the Services.

Dispute means any dispute or difference arising out of or in connection with this Contract whether in contract, tort, equity, under any statute or otherwise..

Dispute Notice means a notice issued under clause 32.

Document includes all manuals, diagrams, graphs, drawings, charts, projections, specifications, estimates, records, concepts, documents, accounts, plans, formulae, designs, methods, techniques, processes, supplier lists, price lists, customer lists, market research information, correspondence, and software (including source code and object code versions), whether in written or electronic form, including all copies of and extracts from any of the same.

Emergency Service means any emergency services provided by emergency personnel including without limitation, the police service, ambulance service, fire brigade or state emergency service.

Expiry Date means the date set out at Item 6 of schedule 1 as amended by clause 3.2.

Foot Patrol means a patrol on foot by a Security Guard covering:

- (a) in relation to a railway station, the entry and exit points, platform access ways, platform area, waiting rooms, toilets, ticket vending areas and booking office, concourse area, ticket barriers, car parks and bus interchanges; or

- (b) in any other case as agreed by the RailCorp Representative and the Contractor.

Force Majeure means:

- (a) any industrial or labour dispute which disrupts the provision of security services throughout New South Wales (or throughout Sydney) which is not confined to the Contractor and which is not directly or indirectly caused by any act or omission of the Contractor or any of its Related Bodies Corporate; and
- (b) any natural disaster (including without limitation any fire, flood, accident (other than any rail accident) or emergency) which is declared by the NSW Government or the Federal Government to be a state of emergency, or a state disaster or national disaster respectively.

Government Agency means a government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

GST means any goods and services tax, value-added tax or similar broad-based consumption tax or tax on services including without limitation any tax imposed pursuant to the GST Law.

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

Guarantor means any person who provides a bank guarantee under clause 31.

Implementation Period means the period commencing on the date of execution of this Contract and finishing on the Commencement Date, unless terminated earlier.

Implementation Plan means the Contractor's plan for the undertaking of the Implementation Obligations.

Implementation Obligations means:

- (a) the obligations set out in schedule 12; and
- (b) all other actions required to be taken by the Contractor to ensure that the Contractor achieves the requirements set out in clause 4.1.

Incident means a breakdown, accident, emergency, event or circumstance that causes, or may reasonably be expected to cause:

- (a) the safety of a train to be placed at risk;
- (b) any injury (other than any superficial or inconsequential injury) to or death of any person;
- (c) material damage to the property of RailCorp or any person;
- (d) delay or obstruction to RailCorp Operations;

- (e) collision, derailment, signalling failure or serious safe working breach;
- (f) an actual or possible breach of the *Rail Safety Act 2002* (NSW) or the *Rail Safety (General) Regulation 2003* (NSW);
- (g) personal safety of RailCorp passengers or staff to be put at risk;
- (h) unlawful entry onto RailCorp property; and
- (i) theft of or vandalism (including but not limited to graffiti) to RailCorp property.

Independent Expert means any person appointed under clause 32.3.

Insolvency Event means in relation to the Contractor or a Guarantor:

- (a) a Receiver, Receiver and Manager, Trustee, Administrator, other Controller or similar official is appointed over any of the assets or undertaking of the Contractor or the Guarantor (as the case may be);
- (b) the Contractor or the Guarantor (as the case may be) suspends payment of its debts generally;
- (c) the Contractor or the Guarantor (as the case may be) is or becomes unable to pay its debts when they are due or is presumed to be insolvent within the meaning of the Corporations Act;
- (d) the Contractor or the Guarantor (as the case may be) enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) the Contractor or the Guarantor (as the case may be) ceases to carry on business or threatens to cease to carry on business;
- (f) the Contractor or the Guarantor (as the case may be) sells or attempts to sell all or substantially all of its assets and undertakings;
- (g) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator to the Contractor or the Guarantor (as the case may be); or
- (h) an application or order is made for the winding up or dissolution of the Contractor or the Guarantor (as the case may be), or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the Contractor or the Guarantor (as the case may be), otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of RailCorp.

Intellectual Property Rights includes copyright, trade mark, design, patent, semiconductor or circuit layout rights, trade, domain, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia, whether created before, on or after the date of execution of this Contract.

Law includes:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of New South Wales; and
- (b) certificates, licences, consents, permits, approvals and requirements of any Government Agency having jurisdiction in connection with the carrying out of the Services.

Location means any of the following locations:

- (a) RailCorp stations and station environs (including any car park controlled by RailCorp servicing a RailCorp station);
- (b) interchange areas for buses; and
- (c) any other areas that form part of the associated infrastructure necessary for the provision of RailCorp operations (for the avoidance of doubt, this may include areas not owned or operated by RailCorp).

Location Manager means the RailCorp employee in charge of a RailCorp railway station, or any other RailCorp property or premises at which a Security Guard is performing a Service.

Log Sheet means a log sheet that must be completed by a Security Guard performing a Service and substantially in the form set out at schedule 10.

Medical Certificate means the certificate required by the Rail Industry Safety Induction Course and as described in schedule 6.

Month means a calendar Month.

OHSR means Occupational Health, Safety and Rehabilitation.

OHSR Guidelines means the NSW Government Occupational Health, Safety and Rehabilitation Management Systems Guidelines 2001.

Parties or **Party** means each party to this Contract.

Patrol Monitoring System means an electronic or mechanical system that allows RailCorp to monitor the performance of a Service.

Payment Claim means a claim for payment submitted by the Contractor which complies with clause 10.3.

Police means the New South Wales Police Service (or, for matters within their jurisdiction, the Australian Federal Police).

Quality Management System means the system of management the Contractor is required to comply with under clause 19.1.

RailCorp means Rail Corporation New South Wales and, in relation to any provision concerning the performance by RailCorp of any right or obligation, includes any performance of that right or obligation by any employee, authorised representative or authorised agent of RailCorp.

RailCorp Code of Conduct means the document issued by RailCorp entitled “Code of Conduct” as amended from time to time during the Term and any like document which may replace that Code of Conduct during the Term of this Contract.

RailCorp’s Confidential Information means Confidential Information of RailCorp and includes without limitation:

- (a) the contents of this Contract;
- (b) any documentation or information marked confidential;
- (c) RailCorp's Intellectual Property Rights;
- (d) any reports or Documents generated under this Contract; and
- (e) contracts and other Documents or information provided by RailCorp to the Contractor which RailCorp nominates or which a reasonable person would consider as being of a confidential nature.

RailCorp Identification Card means a photo identification card with a serial number required to be displayed by a Security Guard after completing the RailCorp Security and Safety Course.

RailCorp Operations means the continuing provision by RailCorp of train services and the provision of facilities associated with those services.

RailCorp Operations Control means the control centre at which RailCorp trains are controlled and located at Sydney Central Station, Haymarket.

RailCorp Representative means the person specified at Item 3 of schedule 1 (as may be replaced by RailCorp from time to time) and includes any delegate authorised by the RailCorp Representative.

RailCorp RMC Security means the premises set out at Item 7 of schedule 1 or as otherwise notified by RailCorp in writing.

RailCorp's Safety Specification means the document entitled Safety Specification for Service Providers, Version 1 (Schedule 13) issued on 31 January 2007 as amended from time to time during the Term.

RailCorp Security and Safety Induction Course means the course of that name conducted by RailCorp and details of which are set out at paragraph 2.6 of schedule 2.

Rail Industry Safety Induction Course means the course of that name conducted by RailCorp and details of which are set out at subclause 2.6 of schedule 2.

Rail Track means the rails on sleepers or transoms including fastenings, associated mechanical and electrical components and as appropriate, the ballast or concrete bed.

Records means:

- (a) rosters issued by RailCorp under clause 5.1;
- (b) Security Guard pay and allowance records;
- (c) all Authorisations required to be held under clause 7.2;
- (d) all company and business name registration Documents;
- (e) all Log Sheets kept in respect of the Services;
- (f) all insurance policies in respect of this Contract; and
- (g) any other Document relevant to the provision of the Services.

Safety Declaration means the declaration set out in section 3 of schedule 6.

Security Control Facility means the facility required by Clause 22 which must meet or exceed the requirements set out in Schedule 8.

Security Guard means any employee, agent, licensee or contractor of the Contractor engaged or used by the Contractor to perform or attempt to perform Services under this Contract.

Security Reporting System means the centralised computer reporting system which logs, tracks and records details of Incidents occurring in connection with the rail network which is operated and maintained by RailCorp..

Security Licence means the Authorisation required to be held by each Security Guard under the *Security Industry Act 1997* (NSW) in order to perform security activities as defined under that Act.

Security Register means the register maintained in accordance with section 2 of schedule 3.

Service Charge means the charge payable by RailCorp to the Contractor under clause 10 for the Services and any Variations, as calculated in accordance with schedule 4.

Service Requirements means the requirements set out in section 2 of schedule 2.

Services means each of the services described in section 1 of schedule 2 and any Variations.

SOP means the standard operating procedures as set out in paragraphs 1.4(a), (l) and (n) of Schedule 2 and as communicated to the Contractor in writing by RailCorp during the Term.

Special Event means an event which requires RailCorp to provide additional or changed rail (and associated) services to the public than those that would normally be provided but for that event.

Tender means the tender issued by RailCorp numbered 2004/1001 for the provision of the Services.

Tenderer means a person that submitted a tender to RailCorp in response to the Tender (including the Contractor).

Term means the term of this Contract determined in accordance with clause 3.1.

Variation means:

- (a) Services additional to those set out in a roster issued by RailCorp under clause 5.1; or
- (b) a security service to be provided by a Security Guard, other than the Services, which is within the general nature of the Services. This may include security services for RailCorp other than at a Location.

WorkCover means the WorkCover Authority of New South Wales.

1.2 Interpretation

- (a) In this Contract unless the context otherwise requires:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) words which are gender neutral or gender specific include each gender;
 - (iii) other parts of speech and grammatical forms of a word or phrase defined in this Contract have a corresponding meaning;
 - (iv) an expression importing a natural person includes RailCorp, a partnership, joint venture, association, corporation or other body corporate and a Government Agency;
 - (v) a reference to a thing (including, but not limited to, a chose-in-action or other right) includes a part of that thing;
 - (vi) a reference to a clause, schedule or attachment is a reference to a clause, schedule of, or an attachment to, this Contract;
 - (vii) a reference to a Law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law judgment, rule of common law or equity or a rule of an applicable stock exchange and is a reference to that law as amended, consolidated or replaced;
 - (viii) a reference to a document includes all amendments or supplements to that document, or replacements or novations of it;

- (ix) a reference to a party to a document includes that party's successors and permitted assigns; and
- (x) a reference to an agreement, other than this Contract, includes an undertaking, deed, contract or legally enforceable arrangement or understanding, whether or not in writing.
- (b) Where the day on or by which something must be done is not a Business Day, that thing must be done on or by the preceding Business Day.
- (c) Headings are for convenience only and do not affect the interpretation of this Contract.
- (d) This Contract may not be construed adversely to a party just because that party prepared it.
- (e) A term or expression starting with a capital letter:
 - (i) which is defined in this Contract, has the meaning given to it in this Contract; and
 - (ii) which is defined in the Corporations Act but is not defined in this Contract, has the same meaning as in the Corporations Act.
- (f) A reference to Standards Australia or an Australian Standard includes a reference to:
 - (i) Standards Australia or an Australian Standard respectively but with a different name at any time; and
 - (ii) a Government Agency or an equivalent standard in Australia respectively (in the absence of Standards Australia and Australian Standards) at any time having or performing similar functions.
- (g) If a Party is a member of a GST group, references to GST which the person must pay and to input tax credits to which the Party is entitled include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.
- (h) If a Party is notionally liable to pay GST or is liable to pay an amount which is treated as GST under the GST Law, references to GST which the Party must pay extend to any notional liability of the Party to pay GST and references to an input tax credit extend to any notional input tax credit to which the Party is entitled.

2. CAPACITY

2.1 No agency or partnership

Unless expressly stated otherwise, this Contract does not create any partnership, trust, joint venture or agency relationship between the Parties.

CHAPTER 2 – PROVISION OF SERVICES

3. TERM

3.1 Term

The Term commences on the date of execution of this Contract and expires on the Expiry Date unless:

- (a) terminated earlier in accordance with this Contract; or
- (b) clause 3.2 applies.

3.2 Option to Extend Term

- (a) RailCorp may extend the Term by twelve Months by giving the Contractor notice to that effect not earlier than two Months and not later than one Month before the Expiry Date.
- (b) If the notice to extend the Term of this Contract is not given by RailCorp in accordance with subclause 3.2(a), this Contract will, subject to clause 3.3 expire on the Expiry Date.
- (c) If RailCorp exercises its option under subclause 3.2(a) the terms of this Contract will continue except this clause 3.2 which will be deleted. This clause 3.2 will be replaced with the following:

3.2 Option to Extend

- (a) RailCorp may extend the Term by twelve Months by giving the Contractor notice to that effect not earlier than two Months and not later than one Month before the Expiry Date.
- (b) If the notice to extend the term of this Contract is not given by RailCorp in accordance with subclause (a), this Contract will, subject to clause 3.3 expire on the Expiry Date.
- (c) If RailCorp exercises its option under subclause (a), this clause 3.2 will be deleted.

3.3 Holding over

- (a) If at the request of RailCorp the Contractor continues to provide Services to RailCorp after the Expiry Date:
 - (i) the terms of this Contract will continue to apply in respect of those Services; and
 - (ii) the Service Charge will be adjusted in accordance with schedule 4.
- (b) Either Party may terminate the continued provision of the Services by giving one Month's prior written notice to the other or as provided in this Contract.

4. **IMPLEMENTATION PERIOD**

4.1 **Implementation Obligations**

The Contractor must during the Implementation Period perform the Implementation Obligations in accordance with the Implementation Plan so that the Contractor is able to perform the Services on and from the Commencement Date in accordance with the Contract.

4.2 **Implementation Plan**

- (a) The Contractor must on the date of execution of this Contract provide to RailCorp for approval the Implementation Plan.
- (b) RailCorp may request that the Contractor resubmit the Implementation Plan if in RailCorp's reasonable opinion the Implementation Plan does not comply with the requirements of this Contract.
- (c) The Contractor must resubmit the Implementation Plan within the timeframe requested by RailCorp and subclause (b) will apply to any resubmitted Implementation Plan.

4.3 **Failure to perform Implementation Obligations**

If the Contractor does not comply with clauses 4.1 and 4.2 to the reasonable satisfaction of RailCorp, RailCorp may terminate this Contract immediately.

5. **PROVISION OF SERVICES**

5.1 **RailCorp may order Services**

- (a) RailCorp may on and from the Commencement Date order Services from the Contractor.
- (b) The initial roster in schedule 5 sets out the Services RailCorp has ordered for the period(insert date).
- (c) RailCorp must issue to the Contractor no later than 2 weeks prior to the start of each Month a roster setting out the Services required in that Month.
- (d) For the avoidance of doubt, where RailCorp does not issue a roster to the Contractor in accordance with subclause (c) the roster then in operation will continue to apply.
- (e) The number, location, type and rostering of Security Guards RailCorp orders under this clause to meet RailCorp requirements will be at RailCorp's discretion.
- (f) RailCorp may direct Security Guards to provide Services on a rostered shift other than in accordance with the roster issued under this clause without the requirement to direct a Variation if the direction does not change the total number of manhours to be performed by those Security Guards on that rostered shift.

- (g) For avoidance of doubt a direction under subclause (f) may include directing the Contractor to provide Services at a Location other than that specified in the roster.

5.2 Contractor must provide Services

The Contractor must on and from the Commencement Date:

- (a) supply to RailCorp or its Related Body Corporate the Services ordered by RailCorp under clause 5.1; and
 - (b) carry out any Variation ordered under clause 6,
- in accordance with the Service Requirements.

5.3 RailCorp may cancel Services

RailCorp may in its absolute discretion cancel Services ordered from the Contractor under clause 5.1.

5.4 Unavailability of Security Guards

- (a) RailCorp may (without limiting its rights under this Contract) engage a third party or third parties to provide Services without breaching this Contract if the Contractor fails to provide any Services requested under clause 5.1 for whatever reason.
- (b) Where RailCorp obtains Services from a third party under subclause (a), the Contractor will be liable to RailCorp for any extra expense RailCorp reasonably incurs as a result of obtaining the Services from a third party.

5.5 Additional responsibilities

The Contractor must comply with the requirements of schedule 3.

6. VARIATIONS

6.1 Variations

- (a) RailCorp may direct the Contractor in writing to carry out a Variation.
- (b) The Contractor must implement any Variation directed by RailCorp notwithstanding that the Contractor has disputed RailCorp's valuation of the Variation under clause 6.2.

6.2 The valuation of Variations

- (a) RailCorp will value Variations using the rates set out in section 1 of schedule 4.
- (b) If the Contractor disputes RailCorp's valuation under subclause (a), it must notify of its objection prior to or at the time of submission of the relevant Payment Claim under clause 10.2, otherwise the Contractor will be deemed to accept RailCorp's valuation.

- (c) If the Contractor disputes RailCorp's valuation, the Parties must use reasonable endeavours to agree the price for the Variation. If the Parties cannot agree the price within 10 Business Days of the direction under clause 6.1(a), then the matter will be referred for resolution in accordance with clause 32.

6.3 Availability to provide Services

The Contractor acknowledges that RailCorp, subject to providing the Contractor with reasonable notice, may by directing a Variation require the Contractor to provide Services at any time during the Term and at locations other than a Location but within New South Wales.

6.4 Special Event Services

Without limiting clause 6:

- (a) RailCorp may direct the Contractor to carry out a Variation in connection with a Special Event. That direction must:
 - (i) be in writing;
 - (ii) issued not less than 5 Business Days prior to the Special Event; and
 - (iii) specify the Services required by RailCorp from the Contractor to deal with that Special Event; and
- (b) on receipt of the direction, the Contractor must:
 - (i) comply with the direction; or
 - (ii) if unable to comply:
 - (A) respond in writing to RailCorp within 1 Business Day of receipt of the direction specifying the extent (in whole or in part) to which the Contractor cannot comply with the direction;
 - (B) comply with the direction to the extent the Contractor is able; and
 - (C) to the extent the Contractor cannot comply, clause 5.4 shall apply.

7. PERFORMANCE

7.1 Standard

The Contractor must ensure each Security Guard performs Services:

- (a) in a proper, competent and professional manner;
- (b) in accordance with the Service Requirements; and
- (c) in a manner that:

- (i) will not endanger the safety of rail traffic and RailCorp employees;
- (ii) delay, obstruct or stop rail traffic; and
- (iii) recognises that the Services are being provided in a customer service environment.

7.2 Compliance with Authorisations, Standards and Laws

The Contractor must:

- (a) at its own cost, hold and keep current (and ensure that each Security Guard holds and keeps current) all Authorisations required by any Law, industry code of practice or industry association to perform the Services; and
- (b) ensure each Service is performed in accordance with or so as not to breach:
 - (i) all applicable Laws;
 - (ii) all Authorisations required under clause (a);
 - (iii) the RailCorp Code of Conduct, a copy of which the Contractor acknowledges it has received from RailCorp; and
 - (iv) any further requirements of any Government Agency;
- (c) comply with the requirements detailed in the Australian Standard AS4421-1996 Security Guards and Patrols to the extent applicable to the Services;
- (d) comply with RailCorp's Safety Specification, a copy of which the Contractor acknowledges it has received from RailCorp;
- (e) ensure that its employees, Sub contractors and agents employed in the provision of the Services to RailCorp are advised that whilst on RailCorp premises they must be Alcohol and Drug Free; and
- (f) otherwise comply with all Laws.

7.3 Directions by RailCorp

- (a) Without limiting any other provision of the Contract entitling RailCorp to issue directions, the Contractor must carry out without undue delay any reasonable direction pertaining to the provision of the Services issued by RailCorp consistent with this Contract (including any direction under clause 7.4).
- (b) Where the Contractor does not comply with a direction given under subclause (a) to the satisfaction of RailCorp, RailCorp may immediately stop the Contractor providing the Services to which the direction relates pending full compliance with the direction.

7.4 Removal of Security Guards

- (a) The RailCorp Representative may in its absolute discretion direct the Contractor to stand down from a rostered shift any Security Guard where in the opinion of the RailCorp Representative, the Security Guard has:
 - (i) engaged in misconduct;
 - (ii) failed to perform the Services satisfactorily;
 - (iii) performed the Services in breach of the requirements of this Contract;
 - (iv) not obtained the qualifications required by this Contract to carry out the Services;
 - (v) failed to comply with the requirements of an authorised RailCorp tester; and/or
 - (vi) returned a positive alcohol or drug test.
- (b) RailCorp will have no liability to pay for the Services provided on a rostered shift by a Security Guard stood down under subclause (a).
- (c) The RailCorp Representative may in his absolute discretion direct the Contractor to not engage a Security Guard to perform Services where in the opinion of the RailCorp Representative the Security Guard has:
 - (i) engaged in misconduct;
 - (ii) failed to perform the Services satisfactorily;
 - (iii) performed the Services in breach of the requirements of this Contract; and/or
 - (iv) not obtained the qualifications required by this Contract to carry out the Services.
- (d) Without limiting subclauses (a)(v) and (a)(vi), the RailCorp Representative will in its absolute discretion direct the Contractor not to engage a Security Guard to perform the Services where in the opinion of the RailCorp Representative the Security Guard has:
 - (i) failed to comply with the requirements of an authorised RailCorp tester; and/or
 - (ii) returned a positive alcohol or drug test while engaged in the provision of Services.

7.5 Alcohol and Drug Testing

Without limiting any other provision of the Contract, the Contractor must and must ensure that Security Guards and any other of its employees, servants and agents, in connection with the carrying out or provision of the Services:

- (a) comply with the RailCorp Code of Conduct regarding an alcohol and drug free workplace;
- (b) be Alcohol and Drug Free; and
- (c) submit to a Alcohol and Drug Test.

7.6 Evidence of Compliance

If requested by the RailCorp Representative, the Contractor must produce to the RailCorp Representative satisfactory evidence of the Contractor's compliance with:

- (a) all or any of the requirements of this Contract; and
- (b) an obligation under any workplace contract or industrial award,

within a reasonable time of the request but no later than 10 Business Days after the request is made.

8. MEASUREMENT OF PERFORMANCE

8.1 Measurement of performance

The Contractor acknowledges and agrees that RailCorp will measure the performance of Security Guards against the criteria set out in clause 8.2 to ensure that RailCorp receives Services in accordance with this Contract.

8.2 Performance criteria

The Contractor agrees that RailCorp may reduce the Service Charge for non performance of the criteria set out in the table below:

No	Criteria	Failure	Percentage reduction of Service Charge
1.	Security Guard commences and completes Service as directed by RailCorp (Clause 5.2)	Non attendance. Late commencement or early departure.	100% of the rostered shift The percentage of the shift missed plus 10% of the rostered shift
2.	Security Guard is correctly uniformed and groomed as set out in the Service Requirements (Clause 5.2)	Security Guard not meeting standards (other than personal safety equipment requirements). Security Guard not wearing Blue RailCorp Security Vest. Security Guard will be stood down under clause 7.4(a). Security Guard not wearing safety shoes. Security Guard will be stood down under clause 7.4(a).	20% of the rostered shift for each failure to comply 100% of the rostered shift 100% of the rostered shift
3.	Security Guard must have an operable torch and an operable mobile phone as set out in schedule 2 and schedule 3 (Clause 5.5)	Security Guard not having an operable torch and an operable mobile phone. Security Guard will be stood down under clause 7.4(a).	100% of the rostered shift
4.	Security Guard must comply with the RailCorp Code of Conduct (Clause 7.2(b)(iii))	Security Guard not meeting policy (for example, smoking on RailCorp premises).	20% of the rostered shift for each failure to comply
5.	Security Guard in possession of Security Licence, as set out in the Service Requirements (Clause 5.2)	Security Guard not in possession of Security Licence. Security Guard will be stood down under clause 7.4(a).	100% of the rostered shift

No	Criteria	Failure	Percentage reduction of Service Charge
6	Security Guard in possession of and wearing RailCorp Identification Card as required, as set out in the Service Requirements (Clause 5.2)	<p>Security Guard not in possession of RailCorp Identification Card as required.</p> <p>Security Guard may be stood down under clause 7.4(a).</p> <p>Security Guard in possession of but not wearing RailCorp Identification Card as required.</p>	<p>20% of the rostered shift</p> <p>100% of the rostered shift</p> <p>20% of the rostered shift for each failure to comply</p>
7.	Security Guard in possession of shift roster and Log Sheet as set out in the Service Requirements (Clause 5.2)	Security Guard not in possession of shift roster and/or Log Sheet. Note: Security Guards carrying out a Variation may not have a shift roster.	20% of the rostered shift
8.	Security Guard in possession of RailCorp Industry Safety Induction certification as set out in the Service requirements (Clause 5.2)	Security Guard not in possession of RailCorp Industry Safety Induction certification. Security Guard will be stood down	100% of the rostered shift
9.	Security Guard must carry out Foot Patrols continuously as per SOPs as set out in the Service Requirements (Clause 5.2).	Security guard does not carry out Foot Patrols as required by SOPs.	20% of the rostered shift for each failure to comply
10.	Security Guard must take meal breaks at the correct times (Clause 5.2)	Security Guard found taking meal breaks at incorrect times without reasonable grounds.	100% of the rostered shift
11.	Security Guard must not park personal vehicle onsite without prior written permission from RailCorp (Clause 5.2)	Security Guard found inside or having parked personal vehicle onsite without prior written permission or reasonable grounds.	100% of the rostered shift

8.3 Non-performance of a Service

The Contractor agrees that RailCorp may charge the Contractor \$200 for each:

- (a) rostered shift not performed by a Security Guard and for the avoidance of doubt, supply of a mobile patrol is not an acceptable substitute;
- (b) failure to submit reports in accordance with Clause 22;
- (c) each failure to record a non real time security Incident in accordance with clause 21.1(c); and
- (d) failure to record or update the Security Register details as required by Schedule 3, paragraphs 2.1(b) and (c).

8.4 Service charge reduction

The Contractor acknowledges and agrees that:

- (a) the percentage reduction of the Service Charge set out in clause 8.2 reflects the reduction in value of the Service suffered by RailCorp;
- (b) the charge set out in clause 8.3 is RailCorp's genuine pre-estimate of the loss it will suffer as a result of the non performance of a Service; and

neither constitutes a penalty.

8.5 Commencement and completion of a Service

For the avoidance of doubt a Service:

- (a) commences at the time the Security Guard arrives at the Location; and
- (b) ends at the time the Security Guard departs from the Location.

8.6 Operation of clause

This clause 8 is in addition to and does not derogate in any way from RailCorp's other rights under this Contract in relation to a breach by the Contractor of its obligations under this Contract.

9. RAILCORP PROPERTY

9.1 Access to RailCorp property

Where the Contractor must provide Services on RailCorp property, RailCorp must ensure reasonable access by Security Guards to that property subject to:

- (a) RailCorp Operations requirements; and
- (b) such conditions as the RailCorp Representative may specify from time to time.

9.2 Access Devices

- (a) RailCorp may give to the Contractor RailCorp Access Devices to facilitate the provision of the Services.
- (b) All RailCorp Access Devices in the custody or control of the Contractor remain the property of RailCorp at all times and may not be given to any person for any reason, other than with the written permission of RailCorp.
- (c) The Contractor must immediately hand over possession of any RailCorp Access Devices at any time upon demand by RailCorp.
- (d) If the Contractor fails to comply with subclause (c) the Contractor is liable for any costs incurred by RailCorp as a consequence of changing security devices in respect of the Access Devices not returned under subclause (c).
- (e) The Contractor must ensure the safe custody of RailCorp Access Devices and must bear all costs incurred in RailCorp in respect of changing locks and Access Devices whenever the Contractor loses any Access Devices, including the cost of replacing them.

9.3 Facilities on RailCorp property

RailCorp must use reasonable endeavours to provide to the Contractor's Security Guards appropriate and necessary facilities (including but not limited to toilets) as required by Law.

CHAPTER 3 – FINANCIAL PROVISIONS

10. SERVICE CHARGES

10.1 Liability to Pay Service Charge

RailCorp must pay to the Contractor the Service Charge for the Services provided by the Contractor and any expenses incurred by the Contractor under clause 12, subject to:

- (a) the Contractor satisfying the remaining requirements of this clause 10; and
- (b) any right of RailCorp under this Contract to withhold payment or to set off any part of the payment in accordance with clause 10.8.

10.2 The Contractor to send Payment Claim

- (a) The Contractor must provide a correctly rendered Payment Claim to the RailCorp Representative in respect of any payment required to be made by RailCorp under this Contract.
- (b) The Contractor must submit to RailCorp the Payment Claim in clause 10.2(a) for Services provided in each Month within 10 Business Days after the end of that Month.

10.3 Correctly Rendered Payment Claim

A Payment Claim is correctly rendered if:

- (a) the amount specified in the Payment Claim is correctly calculated in accordance with this Contract;
- (b) the Payment Claim is set out in the form approved by RailCorp;
- (c) the Payment Claim is accompanied by documentation that provides evidence that the amount specified in the Payment Claim has been calculated in accordance with this Contract, including without limitation:
 - (i) a completed statutory declaration in the form set out at schedule 7;
 - (ii) a statement which includes the information listed at Item 8 of schedule 1 in relation to each Service provided pursuant to a Variation order; and
 - (iii) the original Log Sheets (or readable copies) in relation to the Services actually provided by the Contractor, other than those Log Sheets already provided in accordance with clause 13.2;
- (d) the Payment Claim is accompanied by a signed statement from the Contractor Representative that the Contractor provided the Services to which the Payment Claim relates;
- (e) the Payment Claim is accompanied by:
 - (i) any information requested by RailCorp under clause 13.3 in the relevant Month which is outstanding at the date of the Payment Claim;
 - (ii) records of interviews generated in the relevant Month referred to in clause 21.3 which are due by or outstanding at the date of the Payment Claim; and
 - (iii) reports required under clause 22 which are due by or outstanding at the date of the Payment Claim;
- (f) the Payment Claim is addressed to and received by the RailCorp Representative and identifies this Contract; and
- (g) an electronic copy of the Payment Claim in MS Excel format is addressed to and received by the RailCorp Representative.

10.4 Incorrect Payment Claim

- (a) RailCorp:
 - (i) must promptly notify the Contractor in writing if it considers any Payment Claim to be incorrectly rendered or unable to be certified by RailCorp; and

- (ii) is not required to undertake its obligations under clause 10.5(b) until it is satisfied (acting reasonably) that the Payment Claim is correctly rendered.
- (b) If after payment a Payment Claim is found to have been rendered or certified incorrectly, any overpayment will, at RailCorp's option, be recoverable from the Contractor, or, without limiting recourse to other available remedies, be offset against any amount subsequently due by RailCorp to the Contractor.

10.5 **Payment Schedule and Recipient Created Tax Invoice**

- (a) The Contractor agrees to enter into a Recipient Created Tax Invoice arrangement with RailCorp in accordance with this clause 10.5 and the Contractor and RailCorp acknowledge and agree that:
 - (i) RailCorp can issue tax invoices in respect of the supplies;
 - (ii) the Contractor will not issue tax invoices in respect of the supplies;
 - (iii) both Parties will be registered for GST when they enter into this Contract and that each will notify the other Party if it ceases to be registered; and
 - (iv) RailCorp will not issue a document that would otherwise be a Recipient Created Tax Invoice on or after the date when RailCorp or the Contractor has failed to comply with either of clauses 10.5(a)(ii) and (iii).
- (b) Within 10 Business Days after receipt of a correctly rendered Payment Claim, RailCorp will provide the Contractor with a payment schedule and Recipient Created Tax Invoice ("Payment Schedule and Recipient Created Tax Invoice"), in a format similar to schedule 11, identifying the Payment Claim to which it relates and stating the payment, if any, which RailCorp will be making. If the payment is to be less than the amount claimed by the Contractor, the Payment Schedule and Recipient Created Tax Invoice must indicate reasons why it is less.
- (c) Reasons why the amount of a Payment Schedule and Recipient Created Tax Invoice may show an amount less than the amount claimed (excluding payments already made) include:
 - (i) amounts which RailCorp is entitled to withhold, set off or otherwise deduct; and
 - (ii) amounts shown as unpaid in a statutory declaration provided under clause 10.3.
- (d) If the Contractor enters into or has entered into a Voluntary Agreement for the withholding of Pay As You Go taxation and provides the necessary information in relation to the Voluntary Agreement to RailCorp in accordance with the requirements of the *Taxation Administration Act 1953* (Cth), as amended, the above paragraphs referring to Recipient Created Tax Invoices do not operate.

10.6 Time for Payment

Subject to the terms of this Contract, RailCorp must pay the amount specified in the payment schedule under clause 10.5 within 10 Business Days of the issue of the Payment Schedule and Recipient Created Tax Invoice.

10.7 Payment is not acceptance of the Services

The Contractor acknowledges that payment under clause 10.6 is on account only and is not (and will not be deemed to be) acceptance by RailCorp of the Services itemised in the Payment Claim.

10.8 Set off

RailCorp may deduct from amounts otherwise payable to the Contractor any amount due from the Contractor to RailCorp or any claim to money which RailCorp may have against the Contractor (whether for damages or otherwise) in connection with the Services.

11. TAXES, DUTIES AND CHARGES

11.1 Increase in taxes

If there is an increase in the cost of providing the Services resulting from an increase in existing taxes (other than GST), the increased cost must be borne by the Contractor.

11.2 GST

- (a) All rates and amounts under this Contract are exclusive of GST.
- (b) In addition to paying the consideration (which is exclusive of GST), the recipient must:
 - (i) pay to the supplier an amount equal to any GST payable on any supply by the supplier under or in connection with this Contract, without deduction or set-off or any other amount; and
 - (ii) make that payment as and when the consideration or part of it must be paid or provided, except that the recipient need not pay unless the recipient has received a tax invoice (or an adjustment note) for that supply.
- (c) The supplier must promptly create an adjustment note for, or apply to the Commissioner for, a refund of, and refund to the recipient any overpayment by the recipient for GST.
- (d) If the other Party requests written evidence of registration, the party claiming to be registered will promptly produce evidence satisfactory to the other party who is seeking such evidence.
- (e) If RailCorp is unable to issue Recipient Created Tax Invoice for any reason whatsoever, it may request the Contractor to issue a tax invoice to it, in which case the Contractor must issue a valid tax invoice to RailCorp within 5 Business Days of the request being made.

- (f) (i) If a payment to satisfy a claim or a right to claim under or in connection with this Contract (for example, for misrepresentation or for a breach of any warranty or for indemnity or for reimbursement of any expense) gives rise to a liability to pay GST, the payer must pay, and indemnify the payee on demand against the amount of that GST.
- (ii) If a party has a claim under or in connection with this Contract for a cost of which that party must pay GST, the claim is for the cost plus all GST (except any GST for which that party is entitled to an input tax credit).
- (iii) If a party has a claim under or in connection with Contract whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).
- (g) Words defined in the GST Law have the same meaning in this clause 11, unless this Contract makes it clear that a different meaning is intended.

12. EXPENSES OF SECURITY GUARDS

12.1 Court Attendance

- (a) Where Security Guards are subpoenaed to give evidence on behalf of the Crown in criminal proceedings arising out of the provision of the Services, RailCorp must reimburse the Contractor for the difference between:
 - (i) the hourly wage of the Security Guard and any labour on costs incurred by the Contractor; and
 - (ii) any witness expenses paid by the Court in respect of the attendance of the Security Guard.
- (b) The obligation of RailCorp in subclause (a) is limited to the hours the Security Guard was present at the Court and only arises after:
 - (i) the Security Guard has sought witness expenses from the Court; and
 - (ii) the Contractor provides RailCorp with a copy of the subpoena in respect of which the Court appearance was made together with a statutory declaration detailing witness expenses sought and any witness expenses granted.

13. VERIFICATION OF SERVICES

13.1 Inspections

RailCorp may at any time and without notice and by any authorised employee or agent of RailCorp, inspect Security Guards performing Services to determine if Security Guards are carrying out the Services as required by this Contract.

13.2 Log Sheet Requirements

- (a) Subject to subclause (b), the Contractor must provide to RailCorp's RMC Security:
 - (i) the originals or legible copies of all Log Sheets for each Service provided by the Contractor no later than 5 Business Days after the Contractor performs the Service; and
 - (ii) on a weekly basis, an electronic database setting out details of all Log Sheets submitted and not submitted.
- (b) Notwithstanding subclause (a), the Contractor must provide to RailCorp all Log Sheets on a Monthly basis with the Payment Claim the Contractor submits under clause 10.3. RailCorp is not required to pay for a Service undertaken during a Month if the Contractor submits the Log Sheet referable to that Service after the Contractor submits the Payment Claim.
- (c) The Log Sheets submitted to the RailCorp by the Contractor must be organised in chronological order (and in alphabetical order of the Security Guard's surname for each relevant day on which Services are provided) and separated by date and Location.

13.3 Further Information

In addition to the rights and obligations under Clause 14, the Contractor must, within 3 Business Days of the written request by RailCorp to do so, provide any other information the RailCorp Representative may reasonably require to verify the Contractor's compliance with this Contract.

14. INSPECTION AND AUDIT

14.1 Inspection of Records

To verify compliance with this Contract, the Contractor must upon reasonable notice (but in any event within 3 Business Days) of a request to do so, allow the RailCorp Representative to inspect the Contractor's Records during the hours of 9am to 5pm on any Business Day.

14.2 Audit of the Contractor's Records

RailCorp's authorised independent representative may, on 2 Business Days' notice and at RailCorp's cost, carry out an audit of the Contractor's Records to the extent reasonably necessary to verify the Contractor's performance under this Contract, including the Service Charges claimed by the Contractor in respect of any Month or Months during the Term.

14.3 Audit Report

RailCorp will provide to the Contractor a copy of the audit report (if any) produced in relation to an audit undertaken under clause 14.2.

14.4 Refund of Overpayments

- (a) If an inspection under clause 14.1 or an audit conducted under clause 14.2 demonstrates that the Service Charges paid by RailCorp for any Month exceeded the correct Service Charges (calculated in accordance with this Contract) for that Month, then the Contractor must reimburse RailCorp, on demand, for:
 - (i) the amount paid by RailCorp in excess of the correct Service Charges;
 - (ii) interest on the amount in subclause (a)(i) at a rate of 5% per annum from the date the excess Service Charges were paid by RailCorp until reimbursement of the excess Service Charges in full, capitalised Monthly; and
 - (iii) subject to subclause (b), RailCorp's costs of the audit.
- (b) The amount payable by the Contractor under subclause (a)(iii) will be the lesser of:
 - (i) the actual cost of the audit referable to verification of the Service Charges; or
 - (ii) an amount equal to that in subclause (a)(i).
- (c) RailCorp may recover any amount payable to it by the Contractor under subclause (a) as a debt due and owing by the Contractor to RailCorp.

14.5 Access to the Contractor's Premises

The Contractor must allow RailCorp, RailCorp's auditors, and other professional representatives or agents of RailCorp that RailCorp may authorise in writing from time to time, to have reasonable access to the Contractor's premises and the Security Guards to the extent necessary to inspect or audit the Contractor's records in accordance with clause 14.1 or 14.2.

14.6 Contractor to Assist

The Contractor must, at its own expense, provide RailCorp's auditors and inspectors with such assistance as they reasonably require in connection with their inspection or audit, including making the Contractor's Records available and installing and operating any compatible audit software.

CHAPTER 4 – SUBCONTRACTING, ASSIGNMENT AND NOVATION

15. SUBCONTRACTING AND ASSIGNMENT

15.1 No subcontracting without consent

The Contractor must not subcontract the whole or any part of the Services without RailCorp's prior written consent. RailCorp may withhold that consent in its absolute discretion.

15.2 No assignment by Contractor without consent

The Contractor must not assign any of the Contractor's rights under this Contract unless the Contractor obtains RailCorp's prior written consent, which RailCorp will not withhold unreasonably.

15.3 Assignment or Novation by RailCorp

- (a) RailCorp may assign all or part of its rights under this Contract without the consent of the Contractor.
- (b) The Contractor must, if requested by RailCorp, execute a deed of novation in the form required by RailCorp.

15.4 Contractor Remains Liable

If consent is given in accordance with clause 15.2 to the Contractor assigning its rights, the Contractor is not relieved of any of its liabilities or obligations under this Contract by entering into assignment of the Contractor's rights under this Contract.

15.5 Liability for Subcontractors

The Contractor remains liable to RailCorp for the acts, defaults and neglects of any Subcontractor or any servant, employee or agent of any Subcontractor as if they were the acts, defaults or neglects of the Contractor.

15.6 Change of Control

A Change of Control of the Contractor is deemed to be an assignment of this Contract and a circumstance in which clause 15.2 applies.

CHAPTER 5 – MANAGEMENT AND REPORTING**16. RAILCORP REPRESENTATIVE****16.1 Appointment of RailCorp Representative**

- (a) RailCorp must ensure that at all times during the Term there is an RailCorp Representative.
- (b) RailCorp may by notice in writing replace the RailCorp Representative at any time.

16.2 Powers of RailCorp Representative

The RailCorp Representative may:

- (a) exercise all of the powers of RailCorp under this Contract; and
- (b) delegate any of its powers except the power to delegate.

16.3 RailCorp Representative to oversee

The RailCorp Representative must be available at all reasonable times to liaise with the Contractor Representative.

16.4 Directions by RailCorp Representative

- (a) The RailCorp Representative may issue any direction to the Contractor either orally or in writing except where otherwise specified in this Contract.
- (b) The RailCorp Representative must within a reasonable period confirm in writing an oral direction.

17. CONTRACTOR REPRESENTATIVE

17.1 Contractor Representative

- (a) The Contractor must ensure that at all times during the Term there is a Contractor Representative.
- (b) The Contractor must ensure that at all times the Contractor Representative:
 - (i) oversees the provision of the Services;
 - (ii) acts as the authorised representative of the Contractor in relation to all aspects of this Contract; and
 - (iii) ensures that he or she (or one of his or her delegates) is available on a 24 hour a day, 7 day a week basis to liaise with the RailCorp Representative.
- (c) The Contractor Representative may engage more than one delegate for the purposes of this clause 17.1.
- (d) The Contractor may by notice in writing and the prior written consent of RailCorp (which consent shall not be unreasonably withheld) replace the Contractor Representative.

18. OCCUPATIONAL HEALTH, SAFETY AND REHABILITATION

18.1 Safety requirements

The Contractor must comply with its obligations in schedule 6 and must otherwise ensure that:

- (a) all Security Guards:
 - (i) carry out their work in a manner which will ensure the safety of RailCorp traffic and employees, and which will not cause danger, delay, obstruction or stoppage to railway traffic or damage to RailCorp property;
 - (ii) wear appropriate protective clothing and footwear; and

- (iii) comply with RailCorp Safety Management System mandates which have been notified in writing to the Contractor by RailCorp from time to time during the Term;
- (b) no Security Guard moves onto any Rail Track at any time; and
- (c) vehicles or other plant of the Contractor are not be parked or placed within three (3) metres of the closest rail of a Rail Track at any time unless under the direct supervision of an RailCorp worksite protection officer.

18.2 Directions by RailCorp

- (a) In addition to any other powers of RailCorp under this Contract, RailCorp may give directions to the Contractor or its Security Guards in relation to:
 - (i) compliance by the Contractor or its Security Guards with any Law concerning safety when performing the Services or on RailCorp property; or
 - (ii) any unsafe practice or procedure of the Contractor or its Security Guards.
- (b) The Contractor must and must ensure that its Security Guards:
 - (i) fully comply with any direction given under subclause (a); and
 - (ii) take immediate steps to cease the practice or procedure and not resume performing the Services until a safe work method has been agreed with RailCorp.

18.3 RailCorp equipment

The Contractor must and must ensure that:

- (a) Security Guards do not interfere with any RailCorp equipment (including work signalling or communication circuits) at any time or under any circumstances; and
- (b) if a Security Guard damages RailCorp equipment, the Security Guard must:
 - (i) immediately report the Incident to RailCorp's RMC Security and to the RailCorp Representative; and
 - (ii) not cover up the damage or attempt to repair the damage.

18.4 OH&S Management Plan and risk management system

The Contractor must have in place during the Term:

- (a) an up to date OH&S Management Plan that complies with the *Occupational Health and Safety Act 2000* (NSW) (**OH&S Act**) and the requirements of WorkCover for the Services; and
- (b) a risk management system.

18.5 Contents of the OH&S Management Plan

The Contractor must ensure that the OH&S Management Plan:

- (a) is consistent with sections 6 and 7 and Appendix B of the NSW Government OHS&R Guidelines; and
- (b) includes:
 - (i) a statement of responsibilities listing the names, positions and responsibilities of all persons who will have specific responsibility for OHSR;
 - (ii) details of the arrangements for ensuring compliance with the requirements for OHSR induction training set out in Part 8.2 of the OH&S Act;
 - (iii) details of the arrangements for managing OHSR incidents, including the identity of and contact details for the person or persons who will be available to prevent, prepare for and respond to OHSR incidents;
 - (iv) details of the arrangements for reporting any OHSR incidents to WorkCover in accordance with the requirements of the OH&S Act;
 - (v) any site safety rules and details of the arrangements for ensuring that all Security Guards are informed of these rules; and
 - (vi) safe working method statements for all activities in connection to or with the Services assessed as having a safety risk including, but not limited to the following:
 - (A) a description of the activity in connection with the Services;
 - (B) the step by step sequence involved in carrying out the Services;
 - (C) the potential hazards associated with the Services;
 - (D) the safety controls that will be in place to minimise any hazards;
 - (E) all precautions to be taken to protect health and safety;
 - (F) all health and safety instructions to be given to all Security Guards;
 - (G) identification of the health and safety legislation, codes, standards applicable to the Services and where these are kept;
 - (H) the names and qualifications of those who will supervise the Services;
 - (I) a description of the training provided to Security Guards;

- (J) the names of those who will be or have been trained in the activities described in the safe working method statements, and the names and qualifications of those responsible for training them;
- (K) identification of the equipment that will be used in the delivery of the Services; and
- (L) details of the inspection and maintenance checks that will be or have been carried out on any equipment used in the delivery of the Services.

18.6 Review of the OH&S Management Plan

The Contractor must ensure that the OH&S Management Plan is regularly reviewed and updated in a manner acceptable to RailCorp and copies of the updated version of the OH&S Management Plan are provided to the RailCorp Representative when they are prepared.

18.7 OH&S Management Plan for inspection

The Contractor must ensure that a copy of the OH&S Management Plan is available for inspection at all times during Term by:

- (a) the RailCorp Representative; and
- (b) Security Guards.

18.8 Services in a safe manner

The Contractor must ensure that the Services are carried out in a safe manner in accordance with the relevant Laws and RailCorp Network Rules.

18.9 Safety apparatus and equipment

Without limiting the generality of the obligations under this Contract, the Contractor must provide all the necessary safety equipment including clothing and personal protection equipment for the protection of Security Guards.

18.10 Evidence of compliance by the Contractor

On request, the Contractor must provide the RailCorp Representative with evidence that during the performance of the Services, the OH&S Management Plan, risk management system and all Laws have been complied with.

18.11 Personnel records

The Contractor must ensure that the following records with respect to personnel are retained at the registered office of the Contractor:

- (a) full name, address and classification of each employee;
- (b) employment history of each employee with the Contractor for the last 2 years;

- (c) dates of hire for all employees;
- (d) hours of work of all Security Guards; and
- (e) shift rosters of all Security Guards.

18.12 Government Accreditation

The Contractor must develop its OH&S system to achieve government accreditation in accordance with the Construction Policy Steering Committee OHSR requirements.

19. QUALITY MANAGEMENT

19.1 Quality Management System

The Contractor must implement and maintain a Quality Management System in relation to all aspects of the provision of the Services in accordance with the requirements of ISO 9002.

20. EMERGENCY PROCEDURES PLAN

20.1 Emergency procedures

The Contractor must ensure that, if any Security Guard is required to request or engage an Emergency Service during the provision of a Service, the Security Guard complies with the requirements of schedule 9.

21. SECURITY INCIDENT REPORTING

21.1 Reporting of Security Incidents

The Contractor must ensure that:

- (a) for the duration of the Term it effects, operates and maintains a Security Control Facility;
- (b) real time security Incidents are immediately reported to RailCorp RMC Security; and
- (c) non real time security Incidents are recorded directly onto the Security Reporting System:
 - (i) by close of business on the day following the Incident, if requested by RailCorp; or
 - (ii) as soon as practicable and in any event no later than 5 Business Days after the Incident occurs.

21.2 Notice of Incidents

For the avoidance of doubt, an Incident may come to the attention of a Security Guard by direct observation or by information supplied from another source.

21.3 Interview of Security Guard

The Contractor must if requested by RailCorp:

- (a) interview a Security Guard who has completed a Security Incident Report;
- (b) put questions to that Security Guard as reasonably requested by RailCorp; and
- (c) provide a report of the interview to RailCorp within 5 Business Days of the request by RailCorp to interview the Security Guard.

21.4 Security Guard must cooperate

The Contractor must ensure that a Security Guard cooperates in any RailCorp investigation of an Incident the subject of a Security Incident Report filed by the Security Guard.

22. REPORTS

22.1 Contractor must provide reports

The Contractor must provide the following reports:

- (a) by 10.00 am on each Business Day, details of staff numbers rostered to meet RailCorp's requirements for the previous day or days, details of staff attendance levels and details of rostered shifts that the Contractor did not cover (in part or in whole) including any reason for non-coverage;
- (b) by 10.00 am each Wednesday, details of the Services provided for the preceding week (Monday to Sunday), including summary details of all Incidents reported for that week; and
- (c) by the 5th Business Day of each Month, details for the preceding Month of time lost by Security Guards due to injuries received travelling to and from each Location and while performing the Services.

CHAPTER 6 – REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS

23. CONFLICTS OF INTEREST AND FAIR DEALING

23.1 Representations and warranties

The Contractor represents and warrants that, at the date of execution of this Contract:

- (a) the Contractor has not engaged in any uncompetitive behaviour or other practice which has denied or may deny legitimate business opportunities to other Tenderers or other participants in the Tender process, including but not limited to:
 - (i) the payment of unsuccessful Tender fees; or

- (ii) the payment to any third party of money, incentives or other concessions contingent upon the success of the Tender which do not relate to the provision of bona fide services relevant to the object of the Tender;
- (b) the Contractor has not:
 - (i) accepted or provided any secret or corrupt commissions;
 - (ii) colluded with other Tenderers or any employees of RailCorp;
 - (iii) submitted an inflated bid to advantage another Tenderer;
 - (iv) entered any improper commercial arrangements with any persons;
 - (v) sought to influence contract decisions outside the Tender process; or
 - (vi) accepted or provided any incentives to provide contracts or services to any contractor, sub-contractor, supplier or agent;
- (c) the Contractor has not, directly or indirectly:
 - (i) paid or allowed or entered into any contract, arrangement or understanding to pay or allow any monies to a trade or industry associated (above the published standard fee) in relation to the subject matter of the Tender;
 - (ii) paid or allowed or entered into any contract, arrangement or understanding to pay or allow any money to or on behalf of any other Tenderer nor has it received or entered into any contract arrangement or understanding to receive any money or allowance from any other Tenderer;
 - (iii) entered into any contract, arrangement or understanding with anyone else which has had the effect of increasing the Tender price; or
 - (iv) provided any payments or other incentives to any RailCorp employees;
- (d) the Contractor is not aware of the Tender price or cover price or a price which has been used as a cover price of any other Tenderer;
- (e) no family relationship exists between:
 - (i) any employee, agent or licensee of the Contractor directly or indirectly involved in the preparation or submission of the Contractor's Tender; and
 - (ii) any employee of RailCorp involved in evaluation of the Tender or the administration of contracts or in possession of Confidential Information relating to the Tender or this Contract;
- (f) all family relationships were disclosed in writing by the Contractor to RailCorp prior to signing this Contract; and

- (g) the Contractor Representative has not been nor presently is an employee of RailCorp.

23.2 Probity Warranties

The Contractor represents and warrants that throughout the Term:

- (a) it will act honestly and fairly when carrying out its obligations under this Contract and when dealing with third parties in relation to the provision of the Services;
- (b) it will be ethical and impartial when carrying out its obligations under this Contract and when dealing with third parties in relation to the provision of the Services; and
- (c) it will act honestly, fairly and impartially in relation to all potential suppliers of goods or services to RailCorp.

24. CONTRACTOR REPRESENTATIONS AND WARRANTIES

24.1 General representations and warranties

The Contractor represents and warrants that, in respect of itself and each Guarantor:

- (a) if a corporation, it is a corporation limited by shares under the Corporations Act;
- (b) it has full legal capacity to enter into this Contract and to do all things which can be reasonably contemplated as being required by this Contract;
- (c) all necessary action has been taken by the Contractor to enter into this Contract and to render this Contract binding on, and legally enforceable against the Contractor in accordance with its terms;
- (d) this Contract has been sanctioned by and complies with all necessary Authorisations whether required by Law, governmental policy or administrative requirement or by any contract, order or award binding on the Contractor;
- (e) this Contract does not violate any Law or any Authorisation held by the Contractor or any contract, order or award binding on the Contractor;
- (f) the Contractor is not aware of any act, matter, thing or circumstance by reason of which the Contractor is not able to perform its obligations under this Contract;
- (g) it is not a trustee of any trust and none of the assets of the Contractor used or to be used in providing the Services are held on trust for the benefit of any person;
- (h) the Services will be carried out in a proper, competent and professional manner by appropriately qualified Security Guards;
- (i) all Security Guards used by the Contractor in the course of fulfilling its obligations under this Contract are properly qualified and licensed;

- (j) it will not, in the performance of the Services infringe any patent, registered design, trade mark, trade name, copyright or any other protected right of RailCorp or other person;
- (k) it will not do or permit to be done anything which might damage the name or reputation of RailCorp or result in RailCorp unreasonably being subjected to adverse public criticism or becoming the subject of any official investigation;
- (l) it will not engage in any conduct that is illegal, defamatory, obscene, false, misleading or deceptive or likely to be mislead or deceive;
- (m) the Contractor has not entered into any licence, agreement, arrangement or understanding with any person which conflicts with the obligations of the Contractor under this Contract; and
- (n) any information supplied to RailCorp by the Contractor at any time is true and correct and not misleading in any material particular.

24.2 Contractor acknowledgments

The Contractor acknowledges and agrees that:

- (a) it has not relied on any representation made by RailCorp or by any of its employees, agents or representatives which has not been expressly stated in this Contract or upon any description contained in any document produced by RailCorp; and
- (b) RailCorp has entered into this Contract in reliance on the Contractor's representations that it will provide each Service in accordance with this Contract.

25. CONTINUING REPRESENTATIONS

25.1 Repetition of representations, warranties and acknowledgments

The representations, warranties and acknowledgments in clauses 23 and 24 are taken to be made on the date of this Contract and throughout the Term.

25.2 Information

The Contractor must immediately inform RailCorp in writing of any matter, whether connected with the performance of the Services or otherwise, which gives rise to or is likely to give rise to any representation or warranty contained in this Contract being or becoming incorrect at any time during the Term.

CHAPTER 7 – DEFAULT, TERMINATION AND DISENGAGEMENT

26. DEFAULT OF CONTRACTOR AND TERMINATION

26.1 Notice to Remedy Breach

If the Contractor:

- (a) commits a breach of this Contract which would entitle RailCorp at common law to terminate this Contract; or
- (b) breaches in a material respect a representation or warranty given under this Contract;
- (c) fails to effect the insurances or provide the certificates of currency required by Clause; or
- (d) commits any other breach of this Contract and that breach, or the aggregate effect of that breach and any previous breaches of any terms of this Contract, has a material adverse effect on the quality or availability of the Services,

RailCorp may in writing:

- (e) if the breach is capable of being remedied, direct the Contractor in writing to remedy the breach and specify the time and date by which the breach must be remedied; and/or
- (f) require the Contractor to show cause in writing why the Principal should not exercise a right referred to in clause 27 and specify the time and date by which the Contractor must show cause.

26.2 Termination notice

RailCorp may issue a notice under clause 27.1 notwithstanding that it has not issued a notice under clause 26.1.

27. TERMINATION

27.1 Termination for default of the Contractor

RailCorp may, by written notice to the Contractor, immediately terminate this Contract or exercise its rights under clause 27.3, if:

- (a) the Contractor has failed to comply with a notice served on it under clause 26.1(e) or (f) to the reasonable satisfaction of RailCorp within the period specified in the notice;
- (b) the Contractor commits a breach of this Contract which would entitle RailCorp at common law to terminate the Contract;
- (c) the Contractor assigns, or attempts to assign its rights otherwise than in accordance with this Contract;

- (d) the Contractor subcontracts its obligations under this Contract otherwise than in accordance with this Contract, or attempts to do so;
- (e) the Contractor is a company and an Insolvency Event occurs in relation to it;
- (f) any Guarantor is a company and any Insolvency Event occurs in relation to it; or
- (g) the Contractor ceases or threatens to cease to carry on business or provide the Services.

27.2 Default of the Guarantor

RailCorp may, by written notice to the Contractor, immediately terminate this Contract if:

- (a) the Guarantee is or becomes unenforceable or void;
- (b) the Guarantor repudiates the Guarantee; or
- (c) an Insolvency Event occurs in relation to the Guarantor.

27.3 RailCorp's Rights on the Contractor's Default

If an event listed in clause 26.1, 27.1 or 27.2 occurs, RailCorp may, in addition to its rights of termination under this Contract, immediately by written notice to the Contractor exercise any or all of the following rights at its discretion:

- (a) withhold payment of all or part of any amounts due under this Contract in respect of Services provided, or which have failed to be provided whether that withholding of payment is by way of set off for amounts due and owing to RailCorp or for any loss, cost or expense suffered or incurred by RailCorp for any breach of this Contract by the Contractor, or is otherwise withheld;
- (b) require the Contractor to:
 - (i) assign to RailCorp the rights of the Contractor under; or
 - (ii) novate to RailCorp,

any and all agreements between the Contractor and any Subcontractors. In the event of any such assignment or novation, the Contractor indemnifies RailCorp against any loss or damage arising in contract, tort, under statute or in equity arising out of or in connection with the Contractor's conduct in connection with any assigned rights or novated agreement (as the case may be); and
- (c) cancel any Authorisation previously granted by RailCorp to the Contractor.

27.4 RailCorp may remedy the Contractor's breach or default

- (a) RailCorp may at any time remedy any breach of this Contract or default by the Contractor, at the Contractor's cost, but is not obliged to do so.

- (b) RailCorp may recover any reasonable costs incurred by it in performing its rights under this clause 27.4 as a debt, due on demand, from the Contractor.

28. NO FAULT TERMINATION

28.1 RailCorp to notify the Contractor

- (a) In addition to any other rights it has under this Contract, RailCorp may at its sole discretion terminate this Contract by written notice to the Contractor specifying the date of termination, which must not be earlier than 1 Month after the date on which the notice is received by the Contractor.
- (b) If RailCorp terminates this Contract under subclause (a) before the end of the Term, RailCorp will have no other liability to the Contractor in respect of its termination of the Contract other than under clause 30.3.

29. CONSEQUENCES OF TERMINATION OR EXPIRATION

29.1 Transition to new service provider

- (a) At any time until the end of the Month following the termination or expiry of this Contract, RailCorp may by notice in writing to the Contractor require the Contractor to provide the Disengagement Services.
- (b) If RailCorp provides a notice under clause 29.1(a):
 - (i) the Parties must meet to negotiate in good faith a fee for the Contractor to provide the Disengagement Services; and
 - (ii) if the Parties agree the fee,

the Contractor must provide the Disengagement Services to RailCorp from the time the fee is agreed and for a period of two Months after the Month in which notice under subclause (a) is delivered.

29.2 Duties of the Contractor on Termination or removal of Services

Upon termination of this Contract, the Contractor must:

- (a) upon demand, pay to RailCorp any money due to RailCorp under this Contract;
- (b) continue to comply with the provisions of this Contract which survive termination of this Contract (as set out in clause 39.8);
- (c) at its expense, remove its Security Guards, assets and property (if any) from RailCorp premises by the date specified in a written notice to the Contractor from the RailCorp Representative;

- (d) upon demand, immediately deliver to RailCorp all property belonging to RailCorp or a Related Body Corporate of RailCorp in the possession of the Contractor, including without limitation any:
 - (i) RailCorp Documents or Access Devices;
 - (ii) RailCorp Identification Cards; and
 - (iii) Blue RailCorp Security Vests; and
- (e) not represent itself as being in any way connected with or interested in the business of RailCorp or a Related Body Corporate.

29.3 Duties of RailCorp on termination

RailCorp must, subject to clause 27.3, pay the Contractor:

- (a) for the Services provided to RailCorp to the date of termination; and
- (b) any other amounts due under this Contract.

29.4 Rights of RailCorp on Termination

RailCorp may upon termination of this Contract under clause 27 procure from any other source substantially similar services suitable to RailCorp, and the Contractor will be liable to RailCorp for any extra expense incurred during the remainder of the Term, together with any loss sustained by RailCorp.

29.5 Termination is Without Prejudice

The termination of this Contract is without prejudice to any rights which have accrued to a party before the date of termination.

30. FORCE MAJEURE

30.1 Parties obligations are suspended

Subject to this clause 30, the obligations of a Party are suspended during the time and to the extent that a Party is prevented from or delayed in complying with its obligations by reason of any Force Majeure.

30.2 Parties obligations

If a Party is unable to perform its obligations due to Force Majeure that party must:

- (a) immediately provide to the other Party full particulars of the Force Majeure, the manner in which its performance is thereby prevented or delayed and the Party's expectation as to the duration of the Force Majeure Event;
- (b) promptly and diligently take all reasonable and appropriate action to enable it to perform the obligations prevented or delayed by Force Majeure; and

- (c) promptly advise the other Party when the Force Majeure Event is over.

CHAPTER 8 – GUARANTEES

31. BANK GUARANTEE

31.1 Contractor to provide bank guarantee

The Contractor must on execution of this Contract provide to RailCorp, a properly executed, and where applicable stamped bank guarantee (in a form approved by RailCorp) containing an undertaking to pay to RailCorp \$250,000. The Contractor must maintain the bank guarantee throughout the Term.

31.2 RailCorp to return bank guarantee

RailCorp must release the bank guarantee to the Contractor no later than one Month after the Expiry Date.

31.3 Use of bank guarantee

RailCorp may have recourse to the security provided under this clause 31 at any time in its absolute discretion on account of money payable under this Contract whether the liability to pay that money arises or will arise by way of damages or otherwise and whether or not any judgment or other order of the Court has been made in respect of that money, as RailCorp may in its absolute discretion determine.

CHAPTER 9 - DISPUTE RESOLUTION

32. DISPUTE RESOLUTION

32.1 Scope

- (a) This clause 32 sets out the dispute resolution procedures which are to apply to Disputes. A Party must not commence Court proceedings relating to a Dispute before it has complied with clauses 32.2 to 32.4, except:
- (i) where a Party seeks urgent injunctive relief;
 - (ii) where the Dispute relates to compliance with this clause 32;
 - (iii) where the Dispute relates to compliance with, or the enforcement of, a determination made by the Independent Expert under clause 32.5; or
 - (iv) where a Party claims that the Independent Expert has made an error of law in the determination of the Dispute.
- (b) Unless the Parties otherwise agree in writing, the Dispute resolution procedures in this clause 32 do not apply to disputes about matters other than Disputes.

32.2 Notification of Disputes

- (a) A Party claiming that a Dispute has arisen must give a Dispute Notice to the other Party.
- (b) Upon the giving of a Dispute Notice, the Parties must seek to promptly resolve the Dispute by negotiations between the chief executive officers of the Parties or their nominees.

32.3 Appointment of Independent Expert

- (a) If the Dispute is not resolved through such negotiations within 10 Business Days after the giving of a Dispute Notice, or within such further period as the Parties agree in writing, then either Party may give a notice to the other Party requiring a Dispute to be resolved by an Independent Expert.
- (b) RailCorp must within 10 Business Days of the giving of a notice under subclause (a):
 - (i) appoint an Independent Expert; and
 - (ii) advise the Contractor in writing of the name, qualifications and experience of the Independent Expert.
- (c) The Contractor must within 5 Business Days of the appointment of the Independent Expert disclose in writing the nature of any professional or personal relationship the Contractor or any directors of the Contractor have had with the Independent Expert. RailCorp may in its absolute discretion terminate the appointment of the Independent Expert within two Business Days after the receipt of such notice.
- (d) If RailCorp terminates the appointment of the Independent Expert in accordance with subclause (c), RailCorp must within three Business Days after such termination:
 - (i) appoint a new Independent Expert; and
 - (ii) advise the Contractor in writing of the name, qualifications and experience of the Independent Expert.
- (e) The provisions of subclause (c) apply to any further Independent Expert appointed by RailCorp.
- (f) The costs and expenses of the Independent Expert in resolving the Dispute must be paid equally by the Parties unless the Independent Expert determines otherwise.

32.4 Procedure

- (a) Each Party must, within 10 Business Days after the appointment of the Independent Expert, give the Independent Expert and the other Party a copy of:
 - (i) the Dispute Notice;
 - (ii) a statement of the facts upon which the Party relies in relation to the Dispute;
 - (iii) a statement of the Party's contentions in relation to each matter in Dispute; and
 - (iv) a document stating the names and the titles or positions of the persons who that Party intends will appear before or meet with the Independent Expert.
- (b) The Independent Expert must, in resolving the Dispute:
 - (i) act as an expert and not as an arbitrator, and the provisions of the *Commercial Arbitration Act 1984* (NSW) will have no application to the Independent Expert's determination;
 - (ii) not be bound by the rules of evidence;
 - (iii) receive evidence and submissions from the Parties in such form and at such times as the Independent Expert determines, and make copies of them available to the other Party;
 - (iv) permit the Parties to meet with or appear before the Independent Expert personally or be represented by any person at any meeting or hearing conducted by the Independent Expert;
 - (v) determine the times and places at which any such meeting or hearing will be held;
 - (vi) take into account any statements, evidence, submissions or other material received from any Party, and such other material from such other sources as the Independent Expert considers desirable for the purpose of resolving the Dispute;
 - (vii) require any Party to produce to the Independent Expert such Documents in the Party's possession or control as the Independent Expert considers desirable for the purpose of resolving the Dispute; and
 - (viii) take such steps as the Independent Expert considers are necessary to protect the confidentiality of any Documents or other material received by the Independent Expert.

32.5 Expert Determination

- (a) The Independent Expert must resolve the Dispute within 25 Business Days after his appointment (or such other date as the Parties agree) by issuing a written determination.
- (b) The Independent Expert's written determination:
 - (i) must set out the reasons for the determination; and
 - (ii) may include, as part of the Independent Expert's resolution of the Dispute, directions requiring:
 - (A) a Party to pay a sum of money to the other Party;
 - (B) a Party to pay interest on any such sum;
 - (C) a Party to pay the other Party's costs of complying with the Dispute resolution procedure in this clause 32; and
 - (D) a Party to do any other act or thing, or to refrain from doing any act or thing, as the Independent Expert considers desirable to resolve the Dispute.
- (c) Subject to any order of a Court to the contrary, a Party must comply with the Independent Expert's determination, including any directions contained in it.
- (d) The Independent Expert's determination is final and binding upon the Parties and is not subject to review or appeal except in the case of an error of law.

32.6 Contract Continues

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

CHAPTER 10 – LIABILITIES AND INDEMNITIES

33. INDEMNITY BY THE CONTRACTOR

33.1 Indemnity

The Contractor indemnifies and will keep indemnified RailCorp and its officers, employees, contractors and agents from and against all liability, actions, proceedings, claims, demands, losses, damages, costs, expenses, penalties and all legal costs and disbursements incurred on a solicitor and client basis or on a full indemnity basis (whichever is higher) and otherwise (including court costs) and demands by any person whether in respect of damage to property, injury to persons, death, delay or otherwise arising from or incidental to any act or omission of the Contractor or the Contractor's Security Guards in the performance of the Contractor's obligations under this Contract, except to the extent that the loss damage or liability arises from:

- (a) the Contractor's compliance with its obligations under this Contract; or

- (b) from its compliance with a direction by RailCorp; or
- (c) any other act or omission of RailCorp (including RailCorp's negligence).

34. **LIMITATION OF LIABILITY**

34.1 **No Exclusion if Contrary to Law**

Nothing in this Contract will exclude, restrict or modify any condition, warranty, right, or remedy implied or imposed by any statute or regulation if it cannot lawfully be excluded, restricted or modified.

34.2 **Economic Loss**

RailCorp is not liable for any indirect or economic loss or damage in respect of any act or omission on the part of RailCorp in relation to its obligations under this Contract, including without limitation, payments to third parties, loss of revenue, profits or goodwill however caused whether or not:

- (a) the loss or damage was foreseeable or contemplated by either party; or
- (b) RailCorp is advised of the possibility of that loss or damage.

34.3 **Injury caused by third parties**

RailCorp is not liable for any losses, liabilities, damages, claims, actions incurred by the Contractor (including without limitation any indirect or consequential loss or damage) in respect of any act or omission by any third party, including without limitation, loss of revenue, profits or goodwill however caused whether or not:

- (a) the loss or damage was foreseeable or contemplated by either party; or
- (b) RailCorp is advised of the possibility of that loss or damage

and the Contractor irrevocably and unconditionally waives and releases RailCorp from any such liability.

34.4 **Proportionate Liability**

- (a) In this clause 34.4, Proportionate Liability Legislation means Part 4 of the Civil Liability Act 2002 (NSW).
- (b) To the maximum extent permitted by law, the operation of the Proportionate Liability Legislation is excluded in relation to all and any of the Contractor's obligations and liabilities under or in connection with the Contract or the Services whether such obligations or liabilities are sought to be enforced in contract (including breach of contract), in tort (including negligence), in equity, under statute or otherwise at law.
- (c) The Contractor agrees that in each subcontract into which the Contractor enters for the performance and completion of the whole or any part of the Services, the Contractor will include provisions that, to the extent permitted by law, effectively

exclude the operation of the Proportionate Liability Legislation in relation to all rights, obligations or liabilities under each subcontract whether such rights, obligations or liabilities are sought to be enforced in contract (including breach of contract), in tort (including negligence), in equity, under statute or otherwise at law.

CHAPTER 11 – INSURANCE

35. THE CONTRACTOR'S INSURANCE

35.1 Required insurance

The Contractor must effect and maintain at all times during the Term, insurance to cover the Contractor's indemnity to RailCorp under clause 33, to the extent coverable by insurance, including:

- (a) public liability insurance written on an occurrence basis with a limit of indemnity of not less than \$50 million each occurrence covering the liability of the Contractor and its employees for personal injury, illness or death or third party property loss, loss of use, or damage and which includes cover for the Contractor's liability for loss or damage to RailCorp property and which does not contain any exclusion in relation to claims involving the use of force (except for criminal acts); and
- (b) workers' compensation insurance as required by Law.

35.2 Reputable insurer

All policies of insurance required to be effected by the Contractor in accordance with this clause 35 must be taken out with reputable solvent insurers and be on terms approved by RailCorp, which approval must not be unreasonably withheld.

35.3 Certificates of currency

In respect of any policy of insurance to be effected by the Contractor under this clause 35, the Contractor must upon request by RailCorp at any time during the Term, produce to RailCorp without delay:

- (a) full policy wordings including schedules and all endorsements; and
- (b) certified copies of any cover notes; and
- (c) certificates of currency.

In respect of any policy of insurance to be effected by a Subcontractor, the Contractor must upon request by RailCorp at any time during the Term, produce certificates of currency to RailCorp without delay.

35.4 Endorsement of policies

Notwithstanding any other term in this Contract, the Contractor must ensure that the public liability insurance policy required to be effected under clause 35.1(a) includes RailCorp as an insured for its vicarious liability for the acts or omissions of the Contractor.

35.5 Prompt payment and policy compliance

- (a) The Contractor must promptly pay all premiums and other moneys payable in respect of insurances required by clause 35 and not commit any act or omission which would entitle insurers to void or cancel the policy or refuse any claim in whole or in part.
- (b) If the Contractor fails to effect the insurances required by clause 35.1 or to provide RailCorp with satisfactory evidence of them being effected as required by clause 35.3, RailCorp may effect the insurances and recover the cost of doing so as a debt from the Contractor.

35.6 No Exclusions

The Contractor must ensure that any policy of insurance required by clause 36.1 does not contain any exclusion or limitation on any right to be indemnified in relation to claims involving the use of force (save for the criminal use of force).

35.7 Subcontractors Insurance

The Contractor must ensure that each of its Subcontractors:

- (a) effect and maintain at all times during the Term, equivalent insurances to those required by clauses 35.1 and 35.6; and
- (b) provide the Contractor with certificates of currency for such insurance following receipt of a request from RailCorp under Clause 35.3.

CHAPTER 12 - GENERAL**36. CONFIDENTIAL INFORMATION****36.1 RailCorp Documents**

All RailCorp Documents in the custody or control of the Contractor:

- (a) remain the property of RailCorp at all times;
- (b) may not be given to any person for any reason, other than with the written permission of RailCorp; and
- (c) must be handed over to RailCorp at any time as deemed by RailCorp.

36.2 Confidential information

The Contractor will not disclose to any third party any Confidential Information acquired in the course of this Contract, unless:

- (a) such information is or becomes part of the public domain (other than due to breach of this Contract by the Contractor); or

- (b) the Contractor is authorised by RailCorp to make such disclosure or required by Law to make such disclosure.

37. **PUBLICITY**

37.1 **Public Announcements**

The Contractor must not make any public announcement or make any representation to any media representative about or concerning:

- (a) this Contract;
- (b) the performance of this Contract by any party;
- (c) any matter related to this Contract; or
- (d) RailCorp,

without RailCorp's prior written consent.

37.2 **Representations of the Contractor**

The Contractor must ensure that:

- (a) the Contractor and its Security Guards in no way infer or hold out to any person that they are RailCorp or an employee of RailCorp;
- (b) no advertisement or promotion of any nature makes any representations concerning the relationship which exists between RailCorp and the Contractor without the prior written consent of RailCorp;
- (c) no word or group of words, emblem or other design or marking which individually or when coupled with any other word, group of words, emblem or other design or marking, may infer a relationship with RailCorp or the Government of New South Wales on any of the Contractor 's stationery, vehicles or uniforms; and
- (d) the Contractor and its Security Guards do not under any circumstances intimate or hold out themselves as a member of any police service.

38. **NOTICES**

38.1 **Delivery of notices**

- (a) A notice under this Contract must be:
 - (i) in legible writing and in English;
 - (ii) addressed to the RailCorp Representative or the Contractor Representative as the case may be;

- (iii) must be signed by an Officer or under the common seal of a sender which is a Company; and
 - (iv) is deemed to be received by the addressee in accordance with paragraph (b).
- (b) Without limiting any other means by which a party may be able to prove that a notice has been received by another party, a notice is deemed to be received:
 - (i) if sent by hand, when delivered to the addressee;
 - (ii) if by post, three Business Days from and including the date of postage; or
 - (iii) if by facsimile transmission, on receipt by the sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent,
- (c) but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm it is deemed to be received at 9.00 am on the following Business Day.
- (d) A facsimile transmission is regarded as legible unless the addressee telephones the sender within 2 hours after the transmission is received or regarded as received under paragraph (b)(iii) and informs the sender that it is not legible.

38.2 Addressee for purposes of notices

In this clause 38, a reference to an addressee includes a reference to an addressee's Officers, agents or employees or a person reasonably believed by the sender to be an Officer, agent or employee of the addressee.

39. GENERAL

39.1 Amendments and waivers

- (a) This Contract may be amended only by a written document signed by the Parties.
- (b) A waiver of a provision of this Contract or a right or remedy arising under this Contract, including this clause, must be in writing and signed by the Party granting the waiver.
- (c) A single or partial exercise of a right, or a failure to exercise a right, does not preclude a further exercise of that right or the exercise of another right.

39.2 Costs

Each party will bear its own costs and expenses in relation to the negotiation, preparation, execution, delivery and completion of this Contract and any other related documentation.

39.3 Cumulative rights

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

39.4 Invalidity

- (a) If a provision of this Contract or a right or remedy of a party under this Contract is invalid or unenforceable in a particular jurisdiction:
 - (i) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
 - (ii) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.
- (b) This clause 39.4 is not limited by any other provision of this Contract in relation to severability, prohibition or enforceability.

39.5 Further assurances

Each party must do all things necessary to give full effect to this Contract and the transactions contemplated by this Contract.

39.6 Entire contract

This Contract supersedes all previous agreements about its subject matter and embodies the entire Contract between the Parties.

39.7 Third party rights

Only RailCorp and the Contractor has or is intended to have a right or remedy under this Contract or obtain a benefit under it.

39.8 Survival of provisions

The following rights and obligations under this Contract survive termination of this Contract: clauses 27.3, 27.4, 28.1, 29, 31 - 34, 36, 37 this clause 39.8, 39.9 and section 2.1 of schedule 3.

39.9 Governing law and jurisdiction

- (a) This Contract is governed by the law of New South Wales.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

SCHEDULE 1
CONTRACT DETAILS

<p>ITEM 1</p> <p>Place of Business of RailCorp:</p> <p>Facsimile:</p>	<p>c/- Manager Contracts and Procurement Level 1 North Wing 477 Pitt Street Sydney NSW 2000</p> <p>8202 2373</p>
<p>ITEM 2</p> <p>Contractor's principal place of business:</p> <p>Facsimile:</p>	<p>to be inserted</p>
<p>ITEM 3</p> <p>RailCorp Representative:</p> <p>Address:</p> <p>Facsimile:</p> <p>Phone:</p>	<p>Gary Love Contracts Manager Security Level 2 East Wing Central Station</p> <p>(02) 9379 6853</p> <p>(02) 9379 6819</p>
<p>ITEM 4</p> <p>Contractor Representative:</p> <p>Address:</p> <p>Facsimile:</p> <p>Phone:</p> <p>Mobile:</p> <p>Email:</p>	<p>to be inserted</p>

ITEM 5 Commencement Date	to be inserted
ITEM 6 Expiry date	to be inserted
ITEM 7 RailCorp's RMC Security Facsimile: Phone:	Level 3 RMC Central Station Sydney (02) 9379 4389 (02) 9379 4444
ITEM 8 Statement Details (clause 10.3(c))	<ol style="list-style-type: none"> 1. Service performed. 2. Location of Service. 3. Service Order number. 4. Log Sheet identifying number. 5. Time of commencement and conclusion of Service including total hours. 6. Service Charge applying to Service where applicable.

SCHEDULE 2

SERVICES AND SERVICE REQUIREMENTS

1. SERVICES

1.1 Description of Services

The Contractor must provide Security Guards to undertake the tasks specified in this schedule 2 and to:

- (a) take all reasonable action necessary to ensure that persons lawfully on RailCorp's property are not exposed to risk of injury, death or undue harassment;
- (b) take all reasonable action necessary to ensure RailCorp's property is secure and free from risk of damage or theft; and
- (c) take all reasonable action necessary to ensure that persons committing offences involving RailCorp's property or offences against persons lawfully at RailCorp locations are dealt with according to Law.

1.2 Performance of Services

The Contractor must allocate Security Guards in accordance with rosters issued by RailCorp or as otherwise directed by RailCorp.

1.3 Location of Services

The Contractor must provide Security Guards at the Locations specified in schedule 5 or as directed in accordance with clause 5.1(f).

RailCorp may by Variation order request Services to be provided at any time on any day of the year and elsewhere in NSW.

1.4 Provision of Services

The Contractor must ensure that an unarmed Security Guard:

- (a) conducts continuous Foot Patrols of the Location in accordance with the roster/s issued by RailCorp and as directed by RailCorp. In patrolling a Location, Security Guards must move continuously throughout the Location, subject to dealing with Incidents; and
- (b) attends any Location directed by RailCorp to protect property and perform a security check of the Location on foot;
- (c) completes a Log Sheet in respect of each Location for each provision of the Service;
- (d) makes available for inspection by the RailCorp at any time during an on-site inspection of the Service:
 - (i) all Log Sheets; and

- (ii) any other information required for time to time by the RailCorp.
- (e) does not leave the Location being secured:
 - (i) at any time prior to being relieved by another Guard; or
 - (ii) prior to the time notified by the RailCorp that the Service is to end.
- (f) if a Patrol Monitoring System is installed at the Location, is skilled in the use of the Patrol Monitoring System and complies with the requirements of its use;
- (g) carries at all times during the performance of the Service:
 - (i) an operable mobile phone;
 - (ii) pen, watch, notebook, operable torch, RailCorp Industry Safety Induction certification, RailCorp Identification Card, Security Licence and a Blue RailCorp Security Vest;
- (h) if requested by RailCorp, reports to the Location Manager and supplies him/her with their badge number before commencing Foot Patrols;
- (i) if requested by RailCorp, ascertains if the Location Manager has any concerns relating to security issues;
- (j) if requested by RailCorp, commences the Foot Patrol in any of the areas that the Location Manager may indicate as potential problem areas;
- (k) if requested by RailCorp, present their Log Sheet to the Location Manager every 45 to 75 minutes during their shift on each service for initialling by the Location Manager;
- (l) not enter the Location Manager's officer unless at the express invitation of the Location Manager;
- (m) make available for inspection by RailCorp at any time during an inspection of the Services under clause 14.1:
 - (i) all Log Sheets;
 - (ii) RailCorp Identification Card;
 - (iii) the shift roster for the Service (unless the Service is a Variation);
 - (iv) an operable mobile phone;
 - (v) Security Licence;
 - (vi) RailCorp Industry Safety Induction certification;
 - (vii) any certification required;

- (n) not leave the Location being patrolled at any time, unless:
 - (i) relieved by another of the Contractor's Security Guards; or
 - (ii) when necessary in respect to the safety or well being of customers and staff; or
 - (iii) when directed by RailCorp; or
 - (iv) when responding to or dealing with an Incident;
- (o) comply with their roster unless directed otherwise by RailCorp; and
- (p) when providing a Service has successfully undertaken the Rail Industry Safety Induction Course and carries the relevant and current Rail Industry Safety Induction Course certificate at all times during the performance of the Service.

2. SERVICE REQUIREMENTS

2.1 General requirements

The Contractor must ensure that each Security Guard:

- (a) is adequately supervised and performs each Service in accordance with this Contract;
- (b) is careful, skilled and competent;
- (c) is in possession of all Authorisations required to undertake the Services, including being appropriately licensed under the *Security Industry Act 1997 (Act)* and eligible to obtain licences under the Act and the *Security Industry Regulation 1998 (Regulation)*;
- (d) complies with all aspects of the Act and Regulation and all other Law at all times;
- (e) is of good behaviour, order and discipline;
- (f) is free from alcohol or drugs whilst providing the Services;
- (g) complies with a request by an authorised RailCorp
- (g) wears the correct uniform (approved by the RailCorp Representative) which is clean and in a serviceable condition;
- (h) with respect to the wearing of jewellery, adopts practices consistent with the requirements of the New South Wales Police Service;
- (i) is neat and presentable (including hair, beards, moustaches, nails and hands) and courteous to all persons;
- (j) does not smoke while performing a Service;

- (k) does not light any fires as part of providing the Services;
- (l) is not accompanied by any unauthorised or unlicensed person;
- (m) does not interfere with any Rail Track, structure, equipment or installation owned or operated by RailCorp unless with the permission of and in accordance with any direction of RailCorp;
- (n) does not carry, consume or use alcohol or any drug unless the drug is prescribed by a medical practitioner and will not affect the Security Guard's performance of the Service;
- (o) causes as little disturbance as possible to RailCorp property, RailCorp Operations, premises or work systems and promptly removes all equipment when the Service has been completed;
- (p) in relation to any identified Incident and in this order:
 - (i) takes all reasonable action to immediately resolve it; and
 - (ii) contacts the applicable Emergency Service;
- (q) complies with any direction by RailCorp concerning the provision of the Services;
- (r) does not use RailCorp's facilities for purposes other than as authorised by RailCorp;
- (s) makes radio reports in real time;
- (t) is outfitted in the Contractor's prescribed uniform while providing the Services;
- (u) as directed, wears a Blue RailCorp Security Vest at all times when and only when performing the Services. Vests are free issue by RailCorp, it is however the responsibility of the Contractor to replace the vests for any reason other than fair wear and tear;
- (v) as directed, wears the correct numbered RailCorp Identification Card affixed to the left breast pocket area of the Blue RailCorp Security Vest such that it is clearly visible at all times when performing the Services. Replacement cards will be at the Contractor's cost of \$25 each;
- (w) is in possession of the RailCorp Industry Safety Induction certification and their photographic Security Licence when on duty, unless exempted by the Security Register;
- (x) is in possession of the Log Sheet and shift roster (where applicable);
- (y) complies strictly with RailCorp's requirements in relation to the time of commencement and the time of completion of the Services daily;
- (z) complies with all industrial relations policies and procedures, required by RailCorp or by Law;

- (aa) complies with the Communications Procedures issued by RailCorp;
- (bb) completes the Log Sheet, at the time the Services are performed;
- (cc) complies with any monitoring requirements introduced by RailCorp other than those contemplated in this Contract;
- (dd) does not carry a baton when performing a Service unless approved by RailCorp in writing; and
- (ee) is able to communicate effectively in English.

2.2 Fires

The Contractor must ensure that its Security Guards immediately notify RailCorp's RMC Security followed by other relevant RailCorp staff whenever the Contractor's Security Guards discover a fire or are informed of a fire on RailCorp's property.

2.3 Injured person

The Contractor must ensure that its Security Guards immediately notify RailCorp's RMC Security followed by other relevant RailCorp staff as applicable whenever the Contractor or the Contractor's Security Guards discovers a person on RailCorp's property who is injured.

2.4 Apprehension of persons

Where, in the course of providing the Services the Contractor's Security Guards find any person committing an offence on or involving RailCorp property or an offence against a person lawfully occupying RailCorp property, the Contractor must ensure that the Contractor's Security Guards take reasonable action to apprehend the person. In doing so, the Contractor must ensure that the Contractor's Security Guards:

- (a) immediately notify RailCorp's RMC Security where any person is apprehended by the Contractor's Security Guards during the provision of the Services;
- (b) only apprehend a person where the Contractor's Security Guard has a lawful power to do so;
- (c) ensure that any force used to apprehend a person is lawful in terms of degree, and that any force used on a person will be no more than absolutely necessary to apprehend the person;
- (d) ensure that the apprehended person is told the reason for that person's apprehension at the time that person is apprehended;
- (e) notify RailCorp's RMC Security of an arrest being effected by the Police; and
- (f) otherwise comply with the security Incident reporting obligations in this Contract.

2.5 Use of Handcuffs

Handcuffs or any similar restraints are not to be used or carried while performing the Services except with the prior written authorisation of RailCorp.

2.6 Training

- (a) The Contractor must provide any training necessary to ensure that Security Guards performing the Services are aware of and capable of performing their duties under this Contract.
- (b) The Contractor must not engage any Security Guard to perform any Services unless that Security Guard has undertaken and successfully completed the RailCorp Security and Safety Induction Course.
- (c) The Contractor must not engage any Security Guard to perform any Services unless that Security Guard:
 - (i) has undertaken and successfully completed the Rail Industry Safety Induction Course, details of which are below; and
 - (ii) is in possession of a current Rail Industry Safety Induction Course certificate at all times during the provision of the Services.

COURSE	DETAILS	COST
Rail Industry Safety Induction Course	<i>Maximum 16 people per class</i> <i>Conducted by RailCorp Training Colleague</i> <i>Times to be advised</i>	<i>\$150 per person</i> <i>payment required 2 weeks in advance along with enrolment form</i>

- (d) RailCorp will not be liable to pay the Contractor for the time taken by Security Guards to attend the courses described in this paragraph 2.6.

2.7 Maximum shift undertaken by a Security Guard

The Contractor must ensure that:

- (a) the duration of a shift undertaken by a Security Guard on any one day is, except with the prior written authorisation of RailCorp, limited to a maximum of 8 hours; and
- (b) Any 24 hour shift must be rostered as 3 shifts of 8 hours.

SCHEDULE 3**ADDITIONAL RESPONSIBILITIES****GENERAL****1.1 Contractor's general obligations**

The Contractor must:

- (a) ensure RailCorp is promptly informed of any changes to the issue of RailCorp Identification Cards;
- (b) ensure RailCorp is promptly informed of any loss of an issued RailCorp Identification Card;
- (c) replace any RailCorp Security for any reason other than fair wear and tear;
- (d) replace any lost RailCorp Identification Card at the Contractor's cost;
- (e) ensure all vehicles used in providing the Services are clearly marked with the Contractor's company logo or name, unless otherwise agreed to in writing by RailCorp;
- (f) ensure the strictest truthfulness and accuracy of any evidence obtained by Security Guards in the course of performing a Service;
- (g) comply with and ensure the compliance by Security Guards with any subpoena served in respect of any matter arising out of the provision of the Services;
- (h) reply in writing to any written correspondence received from the RailCorp Representative within 5 Business Days of receiving that correspondence;
- (i) provide first aid services to Security Guards engaged in performing the Services where necessary including without limitation, transport to hospital or other appropriate accommodation;
- (j) cooperate with RailCorp in any investigations carried out by RailCorp; and
- (k) allow RailCorp to check the contents of the Contractor's vehicles entering or leaving RailCorp property.

1.2 Restraint on employment

The Contractor must not, without the prior written consent of RailCorp, engage as a Security Guard for the purposes of this Contract any person previously employed by RailCorp.

2. SECURITY REGISTER

2.1 RailCorp Identification Cards and Security Register

- (a) RailCorp will, prior to the Commencement Date and thereafter within 3 Business Days of being requested to do so in writing by the Contractor, issue a RailCorp Identification Card to the Contractor free of charge in respect of each new Security Guard who will perform Services. The Contractor must ensure that the RailCorp Identification Card is provided to the Security Guard identified in the Security Register in relation to that RailCorp Identification Card.
- (b) The Contractor must maintain and keep up to date at all times the Security Register containing the following information in relation to each RailCorp Identification Card issued to each Security Guard:
 - (i) the name of the Security Guard to whom it is issued;
 - (ii) the serial number of the RailCorp Identification Card;
 - (iii) the residential address and Security Licence number of the Security Guard to whom the RailCorp Identification Card has been issued;
 - (iv) the full company name (and business or trading name, if different) of the employer of the Security Guard to whom the RailCorp Identification Card is issued;
 - (v) the date(s) on which the RailCorp Identification Card is:
 - (A) issued to the Security Guard; and
 - (B) returned to RailCorp or is reported lost or stolen.
- (c) The Contractor must ensure that each Security Guard who is issued a RailCorp Identification Card signs a statement (whether the statement is located in the Security Register or otherwise) verifying the accuracy of the information in the Security Register for that RailCorp Identification Card and an undertaking to return that RailCorp Identification Card on demand by RailCorp, by signing the relevant entry in the Security Register.
- (d) The Contractor must allow the RailCorp Representative to inspect the Security Register between 9am and 5pm on any Business Day upon demand.
- (e) Property in each RailCorp Identification Card and in the Security Register remains at all times with RailCorp.
- (f) The Contractor must ensure the safe custody of each RailCorp Identification Card in its possession or in the possession of its Security Guards. If, however, a RailCorp Identification Card is lost or stolen, RailCorp must issue a replacement RailCorp Identification Card in relation to the relevant Security Guard.
- (g) The Contractor must ensure that each RailCorp Identification Card is returned to RailCorp within 5 Business Days of the termination of this Contract.

- (h) If any Security Guard is removed from performing or otherwise ceases to perform any Services under this Contract for any reason, the Contractor must ensure that the Security Guard's RailCorp Identification Card is returned to RailCorp within 5 Business Days of the Security Guard ceasing permanently to perform Services.

SCHEDULE 4

SERVICE CHARGE

1. Service Charge

The Service Charge will be calculated by multiplying the quantity of Services (based on hours worked per day at the rates below for 24 hours in a day) performed by the Contractor (as evidenced by Log Sheets) by the applicable rate set out below:

No.	Working hours	Rate per hour (exc GST)
1	Monday to Friday	to be inserted
2	Saturday	to be inserted
3	Sunday	to be inserted
4	Public Holiday	to be inserted

The Service Charge will be adjusted for any deduction:

- (a) pursuant to clause 8;
- (b) for non performed Services which the Contractor has claimed but which RailCorp has determined that the Contractor did not provide, following an inspection under clause 13; and
- (c) for any other amount RailCorp is entitled to set off under the Contract.

2. Adjustment to Service Charge

The rates specified above will be adjusted from the first year anniversary of the Commencement Date and yearly thereafter on that anniversary for increases and decreases in:

- (a) award rates (or like labour adjustments);
- (b) superannuation contribution requirements; and
- (c) workers compensation insurance payments save where any increase is due to the Contractor's (or those for whom it is responsible) failure to maintain a safe work environment or methods of work.

The adjustment to the rates will reflect the actual increase or decrease in the cost to the Contractor of providing the Services and will be subject to verification and submission of supporting documentation and agreement by RailCorp in its absolute discretion. Should no adjustments be made to the Service Charge under this paragraph 2, then existing Service Charge will continue to apply.

SCHEDULE 5

INITIAL ROSTER

Initial Roster from [insert date]

North Region		South Region
Ashfield		
Blacktown		
Cardiff		18 Lee Street
Glenfield		Bankstown
Gosford		Bondi Junction
Granville		Cabramatta
Hamilton Depot		Campbelltown
Hornsby		Dapto
Katoomba		Fairfield
Lidcombe		Hurstville
Maitland		Kings Cross
Mt Druitt		Kogarah
Newcastle		Liverpool
North Sydney		Macathur
Parramatta		Miranda
Penrith		Punchbowl
Richmond		Sutherland
Springwood		Sydenham
St Marys		Thirroul
Strathfield		Town Hall
Wyong		Wollongong

With exception of Parramatta Station, Sunday Roster Applies on Public Holidays

SCHEDULE 6

SAFETY

1. Worksite Protection “On or About the Line”

- (a) Where a Security Guard is or may be deployed "on or about the line" (as described below) the Contractor must ensure that the Security Guard complies with all directions given by any authorised work site protection supervisor to permit the passage of rail traffic.
- (b) Work “on or about the line” refers to any work situation where a Security Guard is located, or is likely to be within the following distances at platforms
 - (i) between the yellow safety line and the platform edge; or
 - (ii) where there is no yellow safety line, 0.5 metres from the platform edge.

2. Directions by RailCorp

- (a) In addition to any other powers of RailCorp under this Contract, RailCorp may give directions to the Contractor or its Security Guards in relation to:
 - (i) any Law concerning safety when performing a Service or present or passing through RailCorp property; or
 - (ii) any unsafe practice or procedure of the Contractor or its Security Guards.
- (b) The Contractor must and must ensure that its Security Guards:
 - (i) fully comply with any direction given under paragraphs 1(a) and 2(a); and
 - (ii) take immediate steps to cease the practice or procedure and must not resume performing the Service until a safe work method has been agreed with RailCorp.

3. Safety Declaration

A Security Guard to be deployed "on or about the line" must sign a Safety Declaration in the form below:

SAFETY DECLARATION

- (a) A Security Guard must wear the approved Blue RailCorp Security Vest at all times.
- (b) A Security Guard must not interfere with working signalling or communication circuits or equipment at any time or under any circumstances.
- (c) If a Security Guard damages cables or wires or any other RailCorp equipment the Security Guard must immediately report the Incident to the Control Room and to the RailCorp. The Security Guard must not cover up the damage or attempt to

repair damaged cables, wires or other equipment. The Contractor will be held responsible for any damage found and not reported.

- (d) No Security Guard is allowed within 3 metres of any Rail Track.
- (e) If a Security Guard has been certified with spectacles or contact lens being worn then the Security Guard must wear these at all times when on duty.
- (f) The Contractor must remove from the Location any Security Guard who infringes this Safety Declaration and not again engage that Security Guard to perform any Service under this Contract.
- (g) All Security Guards must carry out immediately any instructions pertaining to safety given by a RailCorp employee. All Security Guards must respond immediately if advised by a lookout or an RailCorp hand signaller or other RailCorp employee to move clear of the track. If an audible warning is given by an approaching train, the Security Guard must acknowledge by rising one arm to shoulder height and moving off the track.
- (h) Any Security Guard who ignores or fails to adhere to any instructions about safety will be removed from the site.
- (i) The lighting of fires and the incineration of waste materials or rubbish on RailCorp property is not permitted at any time.
- (j) All Security Guards must carry out their work in a manner which will ensure the safety of RailCorp traffic and employees, and which will not cause danger, delay, obstruction or stoppage to railway traffic or damage to RailCorp property.
- (k) No Security Guard must move onto any Rail Track at any time including while in hot pursuit of any person, unless authorised to do so by RailCorp.
- (l) Vehicles or other plant of the Contractor must not be parked or placed within three (3) metres of the closest rail of a Rail Track at any time unless under the direct supervision of a RailCorp work site supervisor, handsignaller or traffic officer in accordance with SWU 913.
- (m) Hand held tools and other portable equipment which can be readily removed from a Rail Track may be exempted from the requirements of paragraph 11 at the discretion of the RailCorp Representative in accordance with SWU 912.
- (n) Three (3) copies of these rules are to be signed by the Security Guard, witnessed by the Contractor's Representative and the three (3) copies forthwith handed to, forwarded to and retained by, respectively:
 - (i) the Security Guard who signed the rules;
 - (ii) the RailCorp Representative; and
 - (iii) the Contractor Representative.

SECURITY GUARD: Are spectacles or contact lens to be worn on site? YES/NO

I have read and understand the above RailCorp rules and will adhere to them.

Name

Signature

Witnessed by
The Contractor Representative

Date

4. Medical Certificate

A Security Guard must hold a medical certificate in the form and as required by the Rail Industry Safety Induction Course.

SCHEDULE 7

STATUTORY DECLARATION: PAYMENT OF WAGES

STATUTORY DECLARATION OF WAGES

FOR CONTRACT NO: _____ (Contract)
 GENERAL DESCRIPTION: _____

STATUTORY DECLARATION

I,..... of, do solemnly and sincerely declare as follows:

1. I am [Position held in Contractor's organisation] of [Contractor's name] [ABN] (Contractor).
2. The Contractor has a contract with RailCorp of New South Wales to provide Security Services dated [Date] (Contract).
3. All suppliers and consultants engaged by the Contractor with respect to the provision of the Services have been paid all moneys due and payable to them in respect of work carried out for or materials supplied to the Contractor.
4. Attached to and forming part of this declaration is a subcontractor's statement given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the *Workers Compensation Act 1987*, *Pay-roll Tax Act 1971* and *Industrial Relations Act 1996*) (Acts) which is a written statement:
 - (a) under section 175B of the *Workers Compensation Act 1987*, in the form and providing the detail required by that legislation;
 - (b) under section 31H of the *Pay-roll Tax Act 1971*, in the form and providing the detail required by that legislation; and
 - (c) under section 127 of the *Industrial Relations Act 1996*, in the form and providing the detail required by that legislation.
5. The matters which are contained in this declaration and the attached subcontractor's statement are true.
6. The period of the Contract covered by this declaration and the attached subcontractor's statement is from _____ to _____.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the *Oaths Act 1900* (NSW).

Declared at _____ (place where declaration made) on

_____ (date of declaration) by

Signature of person making the declaration

before me: _____

Justice of Peace/Solicitor of the Supreme Court of New South Wales

SUBCONTRACTORS STATEMENT

REGARDING WORKERS COMPENSATION, PAY-ROLL TAX AND REMUNERATION (Note 1)

☐ Workers Compensation
S175B *Workers Compensation Act 1987*

☐ Pay-roll tax
Part 5B s31G-31J *Payroll Tax Act 1971*

☐ Remuneration
ss127, 127A *Industrial Relations Act 1996*

Subcontractor: _____ ABN: _____
(Business Name)

of _____
(Address of subcontractor)

has entered into a contract with _____ (Note 2)
(Business name of principal contractor)

ABN: _____ For work between ____/____/____ and ____/____/____ (Note 3)

and/or Payment Claim Details: (Note 4)

Nature of contract work: (Note 5)

DECLARATION

I, _____ a Director of/a person authorised by the subcontractor on whose behalf this declaration is made, hereby state that the abovementioned subcontractor:

Is either

☐ A sole trade or partnership without workers or subcontractors (*Note 6*)

OR

☐ has and will maintain in force valid workers compensation insurance, policy

(Policy number)

held with _____ as indicated on the attached Certificate of Currency

(Insurance Company)

dated _____, in respect of work done in connection with the contract,

during any period of the contract and has paid all workers compensation insurance premiums payable in connection with the contract (Note 7).

☐ Is ☐ Is not also a principal contractor in connection with the work under contract (*Note 8*).

☐ Has ☐ Has not been given a written statement by subcontractors in connection with the work.

☐ Is ☐ Is not required to be registered as an employer under the *Pay-roll Tax Act 1971*

(Pay-roll tax client No.)

☐ Has paid all pay-roll tax due in respect of employees who performed the work for the principal contractor, as required at the date of this statement (Note 9).

☐ Has paid all remuneration payable to relevant employees, for work done under the contract during the period outlined above (*Note 10*).

Signature _____ Full Name _____
(please print)

Position/Title _____ Dated _____ (please print)

WARNING

Any subcontractor, who knowingly provides a principal contractor with a written statement that is false, is guilty of an offence (Maximum penalty 100 units or \$11,000)

Any written statement will not relieve the principal contractor of liability if, at the time the written statement was provided, the principal contractor believed the written statement to be false.

The principal contractor must retain a copy of any written statement for a period of not less than five years (Pay-roll tax), six years (Remuneration) or seven years (Workers Compensation).

This statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*.

NOTES

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Part 5B section 31G-31J of the *Pay-roll Tax Act 1971* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, pay-roll tax and remuneration payable by the subcontractor.
2. For the purpose of this statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity), referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal.
3. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates

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

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

4. Payment claim details – Where a subcontractor has entered into a payment schedule with a principal contractor they must identify the period or payment to which the statement applies.
5. An accurate description of the work covered by the contract must be included.
6. In completing the statement, a subcontractor declares that they are sole trader or partnership without workers or subcontractors and is not required to hold workers compensation insurance.
7. In completing the statement, a subcontractor declares that workers compensation premiums payable up to and including the date(s) on the statement have been paid, and all premiums owing during the term of the contract will be paid.
8. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out work. If your business falls within this category you should also obtain statements from your subcontractors.
9. In completing the statement, a subcontractor declares that all pay-roll tax payable relating to work undertaken as part of the contract has been paid.
10. In completing the statement, a subcontractor declares that all remuneration payable has been paid.

It is noted that definitions of employer, employee, remuneration, and specific provisions for employers of outworkers in the clothing trades are as defined in s127A of the *Industrial Relations Act 1996*.

11. Failure to complete this statement may result in the principal contractor withholding any payment due to the subcontractor. Any penalty for late payment under the contract does not apply to any payment withheld under this subsection. Subcontractors may wish to keep a copy of the statement for their own records.

For more information, please visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Pay-roll Tax Act 1971* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

SCHEDULE 8
SECURITY CONTROL FACILITY

The Security Control Facility effected, operated and maintained by the Contractor during the Term must be:

- (a) continuously manned and monitored 24 hours a day, 7 days a week;
- (b) able to electronically receive, record and co-ordinate reporting of security Incidents from any and all Security Guards then performing the Services in a manner and to a standard to be approved by RailCorp;
- (c) able to electronically communicate all information regarding security Incidents to RailCorp in the time and in the manner required by the Contract;
- (d) able to maintain telephonic contact with any and all Security Guards then performing the Services; and
- (e) able to communicate by telephone, fax and broadband Internet based communication (including but not limited to email and secure web browsing capabilities).

SCHEDULE 9

EMERGENCY PROCEDURES PLAN

GUIDELINES - EMERGENCY PROCEDURES

1. The Contractor must ensure that each Security Guard follows the procedures set out in this schedule 9 when performing Services. If any of the situations or incidents described below arise, the Security Guard must contact RailCorp's RMC Security using an operable mobile phone.
2. RailCorp's RMC Security will coordinate the appropriate response.

Part B

GUIDELINES - SECURITY INCIDENTS

1. **Life Threatening Emergency**
1. A life threatening emergency is an Incident involving a serious injury or an immediate threat to the safety of commuters or RailCorp employees, including without limitation any:
 - (a) armed offender on RailCorp premises, a hold-up attempt on a booking office or a commuter;
 - (b) assault or other event occasioning serious injury;
 - (c) gang violence; or
 - (d) threat of any event set out in paragraphs (a) – (c).
2. In the event of an emergency arising under section 1, a Security Guard must:
 - (a) contact RailCorp's RMC Security and provide as much detail as possible in respect to the Incident, including:
 - (i) a brief summary of the Incident and its location;
 - (ii) what is currently happening;
 - (iii) the number of people involved;
 - (iv) any witnesses;
 - (v) any weapons and types involved; and
 - (vi) the name and contact number of the reporting Security Guard;
 - (b) ascertain whether or not there is a need to protect the crime scene;
 - (c) ensure the safety of RailCorp employees, commuters or any victim and render any assistance deemed necessary, if possible, considering own safety;

- (d) attempt where possible to obtain a description, the identity or location of the offender; and
 - (e) if requested by the RailCorp operator to remain on the line, then a Security Guard must where possible, stay on the line and provide updates as they occur.
- 3. Any decision or judgment to apprehend an offender in section 1 remains with the Security Guard.
- 4. On arrival of the police, Security Guard must:
 - (a) ascertain the investigating officers' details; and
 - (b) inform police of details surrounding the Incident.
- 2. **Immediate Police Response Required (Not Life Threatening)**
 - 1. An immediate police response is required where there is an Incident involving injury or threat to the safety of commuters, RailCorp employees or a threat to RailCorp property including without limitation any:
 - (a) assault where the offender has left the area, such as a minor altercation or a gang violence situation;
 - (b) damage to RailCorp property where the offender is still on RailCorp property or where the damage is deemed to be extensive;
 - (c) anti-social behaviour offences including without limitation youths involved in disruptive activities, abusing staff, throwing objects or dealing in drugs; or
 - (d) break and enter into RailCorp property or extensive damage to an automatic ticketing machine.
 - 2. In the event of a situation under section 1 arising, Security Guard must:
 - (a) contact RailCorp's RMC Security and provide as much detail as possible in respect of the Incident, including:
 - (i) a brief summary of the Incident and its location;
 - (ii) what is currently happening.
 - (iii) the number of people involved;
 - (iv) any witnesses;
 - (v) any weapons and types involved; and
 - (vi) the name and contact number of the reporting Security Guard;
 - (b) ascertain whether or not there is a need to protect the crime scene;

- (c) ensure the safety of RailCorp employees, commuters or any victim and render first aid or any assistance deemed necessary, if possible, considering own safety;
 - (d) attempt where possible to obtain a description, the identity or location of the offender; and
 - (e) if requested by the RailCorp operator to remain on the line, the Security Guard must where possible, stay on the line and provide updates as they occur.
- 3. Any decision or judgment to apprehend an offender in section 1 remains with the Security Guard.
- 4. On arrival of the police, Security Guard must:
 - (a) ascertain the investigating officers' details; and
 - (b) inform police of details surrounding the Incident.
- 3. Other Incidents**
- 1. Incidents other than life threatening emergencies and immediate police responses involve damage to RailCorp property or Incidents occurring whilst RailCorp employees are absent including:
 - (a) graffiti or vandalism;
 - (b) evidence that some activity has occurred over night, such as extensive bottle smashing; or
 - (c) damage to boom gates.
- 2. A Security Guard must submit details of the Incident on the relevant Security Incident Report in accordance with this Contract.

Part C

GUIDELINES - PROTECTION OF CRIME SCENE

A Security Guard must if required under this Contract, assist Police in securing the crime scene until such time as RailCorp advises the Security Guard that the Police no longer require the crime scene to be secured.

SCHEDULE 10

LOG SHEET

RAILCORP SHIFT LOG SHEET

The Security Guard must record the actual start and finish time worked (not the rostered time) and only sign off on this sheet at the completion of your shift. You also must initial any changes you make to details recorded.

[illegible]

DO NOT WRITE ON THE BACK OF THIS PAGE

SCHEDULE 11

PRO FORMA PAYMENT SCHEDULE/RECIPIENT CREATED TAX INVOICE

This is a Recipient Created Tax Invoice under *A New Tax System (Goods and Services Tax Act 1999)*

Recipient/Respondent:
WALES

RAIL CORPORATION NEW SOUTH

ABN No. 59 325 778 353

.....

(Address of officer on behalf of
Recipient/Respondent)

Phone Fax

Supplier/Claimant:

.....

(Name of Supplier/Claimant)

Supplier:

.....

ABN.....

of.....

(Address of Supplier/Claimant)

Phone Fax

Date:

..... day of 200

(Date of this Payment Schedule and Recipient Created
Tax Invoice)

Contract No:

Date of Payment Claim:

Payment Claim No:

Total amount of Payment Claim including GST:

1. The amount of payment that the Recipient/Respondent proposed to make is as detailed below:

A.	Taxable Supplies including GST <i>(Brief description of services/supplies)</i>	\$
B.	Other than Taxable Supplies <i>(Include services/supplies on which GST is not payable)</i>	\$
C.	Total Amount Payable (A + B)	\$
D.	Total Amount of GST Payable (1/11 X A)	\$
C.	Total amount excluding GST (C - D)	\$

2. The GST shown is payable by the Supplier.
3. The amount payable is less than the claimed amount for the reasons set out in the enclosed Schedule. *(delete if not applicable).*
3. The Recipient/Respondent is withholding payments for the reasons set out in the enclosed Schedule. *(delete if not applicable).*

Signed:

(Name and Title of RailCorp Representative)

SCHEDULE

This Schedule is used where

1. The amount payable is less than the claimed amount for the reason set out below:
2. The Recipient/Respondent is withholding payment for the reasons set out below:

SCHEDULE 12

IMPLEMENTATION OBLIGATIONS

NO	IMPLEMENTATION OBLIGATION	CLAUSE	COMMENTS
1	Implementation Plan	Clause 4.2(a)	Contractor to provide Implementation Plan in accordance with Clause 4.2(a)
2	RailCorp Identification Card	schedule 3, section 2.1	Contractor must issue RailCorp Identification Card to each Security Guard.
3	Security Register	schedule 3, section 2.1	Contractor to establish Security Register
4	Blue RailCorp Security Vest	schedule 2, section 2.1	Contractor to issue to each Security Guard performing Services but who is not authorised to go within: (a) 3 metres of RailCorp Rail Track, or (b) within 0.5 metres of RailCorp Rail Track when on a platform
5	Bank Guarantee	Clause 31	Must be executed and provided to RailCorp
6	RailCorp Security and Safety Induction Course	schedule 2 section 2.6	As required
7	Rail Industry Safety Induction Course	schedule 2, section 2.6	As required
8	Quality Management System	Clause 19.1	As required under clause 19.1
9	OH&S Requirements	Clause 18	Contractor must provide OH&S Management Plan and risk management system in accordance with clauses 18.4 and 18.5
10	Signed Safety Declaration	schedule 6 section 3	Contractor must provide a safety declaration signed by each Security Guard who will be deployed "on or about the line".
11	Medical Certificate	schedule 6 section 4	Contractor must provide a completed Medical Certificate for each Security Guard as required by the Rail Industry Safety Induction Course.

SIGNED as an agreement.

**Executed on behalf of RAIL
CORPORATION NEW SOUTH WALES
by an authorised officer:**

.....

in the presence of:

.....

EXECUTED by [INSERT DETAILS]:

Signature of director

Name (print)

Signature of director

Name (print)

Signature of witness

Name (print)

Signature of witness

Name (print)

SCHEDULE 13
SAFETY SPECIFICATION FOR SERVICE PROVIDERS