

PART - C

DRAFT SUPPLIER AGREEMENT

RailCorp

Rail Corporation New South Wales
Level 6, 18 Lee Street
Chippendale NSW 2008

SUPPLIER AGREEMENT

WHITE COLLAR CONTRACT LABOUR SERVICES

Agreement No. **[XXXXXX]**

PARTIES

RAIL CORPORATION NEW SOUTH WALES
ABN 59 325 778 353

[NAME OF SUPPLIER]
[ABN XX XXX XXX XXX]

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DATE OF AGREEMENT:

PARTIES: **RAIL CORPORATION NEW SOUTH WALES** ABN 59 325 778 353
of Level 6, 18 Lee Street, Chippendale, New South Wales, 2008.
("RailCorp")

AND

The details described in Part A of Schedule 2.
("Supplier")

INTRODUCTION

- A. RailCorp is a statutory State-owned corporation constituted by the *Transport Administration Act 1988 (NSW)*.
- B. RailCorp carries on railway passenger services in New South Wales and other related operations ("**Business**").
- C. RailCorp wishes to use the expertise of the Supplier to further the Business.
- D. RailCorp has requested the Supplier to provide and the Supplier has agreed to provide certain services to RailCorp on the terms and conditions prescribed in this Supplier Agreement ("**Agreement**").

PROVISIONS

The interpretation provisions of this Agreement are set out in Schedule 1.

1. TERM OF AGREEMENT

1.1 Term

This Agreement will commence on the Commencement Date and continues until the Completion Date unless terminated earlier by either party pursuant to clause 11.

1.2 Condition Precedent

Notwithstanding clause 1.1 above, the Supplier must not commence any Services unless the Supplier has first complied with the insurance requirements in clause 3.3 of this Agreement.

1.3 Option to Extend Term

- (1) RailCorp may extend the Term by twelve calendar months by giving the Supplier written notice to that effect not earlier than three months and not later than one month before the Completion Date.
- (2) If the notice to extend the Term of this Agreement is not given by RailCorp in accordance with clause 1.3(1), this Agreement will, subject to clause 1.4 end on the Completion Date.

- (3) If RailCorp exercises its option under clause 1.3(1), the terms of this Agreement will continue except this clause 1.3 which will be deleted and be replaced with the following:

1.3 Option to Extend

- (1) RailCorp may extend the Term by twelve calendar months by giving the Supplier notice to that effect not earlier than three months and not later than one month before the Completion Date.
- (2) If the notice to extend the term of this Agreement is not given by RailCorp in accordance with clause 1.3(1), this agreement will, subject to clause 1.4 end on the Completion Date.
- (3) If RailCorp exercises its option under clause 1.3(1), this clause 1.3 will be deleted.

1.4 Holding Over

At the written request of RailCorp issued no later than 3 months prior to the Completion Date, the Supplier will continue to perform its obligations under this Agreement after the expiry of the Term and:

- (a) the terms of this Agreement will continue to apply to those obligations; and
- (b) either Party may terminate the continued performance of the Supplier's obligations by giving not less than 3 months written notice to the other.

1.5 Completion of Service Requests

If the term of any Service Request ends after the Completion Date, then the rights and obligations under this Agreement will continue to apply to that Service Request and the Services being provided under or pursuant to it, notwithstanding the expiration of this Agreement.

1.6 Exclusivity

The Supplier acknowledges this agreement is non-exclusive and that RailCorp may obtain similar services provided hereunder from alternative providers.

1.7 Refreshing the Panel

RailCorp reserves the right to refresh membership of the membership of Panel as it requires if the Supplier Agreement of a Supplier is terminated or if RailCorp needs to add additional panel members due to increased or changed business requirements.

2. SUPPLIER OBLIGATIONS

2.1 Services provided to RailCorp

- (1) RailCorp appoints the Supplier to provide the Services. The Supplier will provide the Services to RailCorp throughout the Term in accordance with this Agreement and any Service Request from RailCorp.

- (2) The Supplier must provide the Services in a timely manner, with due skill and care to the best of the Supplier's abilities and knowledge and at a rate of progress satisfactory to RailCorp to deliver the Services by the Completion Date. The Supplier shall be entitled to an extension to the Completion Date as is determined by RailCorp in its absolute discretion.
- (3) RailCorp relies on the skill and knowledge of the Supplier in providing the Services. The Supplier must ensure that all Contract Materials produced by it are suitable in all respects for the purposes for which they are specified.

2.2 Delay in delivery of Services by the Supplier

The Supplier must notify the RailCorp Representative in writing of any matter that delays or is likely to delay the performance of the Services.

2.3 Duties of Supplier

The Supplier must:

- (a) faithfully and diligently perform the Services defined in this Agreement
- (b) comply with all reasonable directions and Policies, practices and procedures given relating to the Services and the performance of the Services and ensure that all Contract Personnel comply with the directions and Policies, practices and procedures;
- (c) protect the property of RailCorp from theft, loss, damage or neglect and without delay give notice to RailCorp of any such theft, damage or neglect of such property of RailCorp. The Supplier will ensure that all Contract Personnel protect the property of RailCorp and notify the RailCorp Representative of any of the above events;
- (d) exercise the utmost good faith and fidelity in the best interests of RailCorp ;
- (e) without limiting any other provision of this Agreement, comply with all Laws including but not limited to Employment Law, OHS Laws, Australian Standards (to the extent that they are relevant) and the NSW Government's Code of Practice for Procurement;
- (f) comply with all RailCorp directions and Policies and practices and procedures relating to the security of RailCorp premises and facilities.
- (g) in the event that the Supplier or any Contract Personnel require access to the Rail Corridor, comply with all rail safety requirements and comply, and ensure that all Contract Personnel comply, with all requirements and directions of RailCorp concerning safety within the Rail Corridor or compliance with rail safety requirements when present on the Rail Corridor; and
- (h) have management systems in place to address RailCorp's requirements with regards to fatigue management and zero tolerance of drugs in the workplace.

For the purposes of this clause, Supplier shall include the Supplier's employees, agents and contractors as well as the Contract Personnel.

2.4 Supplier will procure the services of Contract Personnel

- (1) The Supplier will procure the services of the Contract Personnel to perform the Supplier's obligations under this Agreement including any Service Request and the Supplier will ensure that such Contract Personnel devote such time as is reasonably required in the performance of the Services.
- (2) The Supplier must ensure that the Contract Personnel comply with the obligations of the Supplier set out in this Agreement in connection with performance of the Particular Services.
- (3) Without limiting clause 2.4(2), the Supplier must ensure that the terms of employment of any Contract Personnel will not adversely affect the Supplier's obligations under clauses 2.6 and 19.3.
- (4) The Supplier shall incorporate without amendment, as a part of any and all agreements it may enter into with Contract Personnel to provide the Services the statement set out in Schedule 7.

2.5 Service Request

- (1) RailCorp may from time to time during the Term, issue a Service Request to the Supplier.
- (2) The Service Request must be in accordance with the matters set out in Annexure A to Schedule 4 and both the Service Request and the Particular Services provided pursuant to it are governed by the provisions of this Agreement. To the extent of any inconsistency between this Agreement and any Service Request, the Agreement shall prevail.
- (3) The Supplier will provide the Services in accordance with any Service Request and this Agreement.
- (4) The Particular Services will not be provided pursuant to a Service Request unless and until that Service Request has been signed by a RailCorp Business Representative and a Supplier Service Representative.
- (5) The Supplier shall nominate and authorise a minimum of three and no greater than six of its employees as Services Representatives.
- (6) The issue of a Service Request is at the sole and absolute discretion of RailCorp and RailCorp shall not be liable to the Supplier for any damage, expense (including legal fees) loss or liability (including loss of profit) as a result of RailCorp not issuing a Service Request (or any Service Requests) during the Term.

2.6 Employment of Contract Personnel by RailCorp

The Supplier acknowledges and agrees that RailCorp may at any time during the Term, employ any Contract Person providing the Particular Services. RailCorp may be required to pay an amount to the Supplier following that employment calculated in accordance with paragraph 3(c) of Schedule 5. If:

- (1) the Contract Person accepts a direct offer of employment from RailCorp, then RailCorp may by written notice to the Supplier, immediately terminate the relevant Service Request and/or the Agreement in which case the terms of clause 11.4 shall apply; or

- (2) the Contract Person accepts an offer of employment following a public advertisement of that employment, then RailCorp may by written notice to the Supplier, immediately terminate the relevant Service Request and/or the Agreement in which case:
 - (a) the terms of clause 11.4(a) shall apply; but
 - (b) the Supplier shall not be entitled to any loss, damages, costs (including legal expenses) or compensation of any kind (including loss of profit) save for any Fees or Reimbursable Expenses reasonably payable to or incurred by the Supplier prior to the termination of the Agreement under this clause.

2.7 Account Management

The Supplier will, at its own cost:

- (a) appoint an Account Manager as its representative to oversee the relationship between the Supplier and RailCorp and to oversee the resolution of any problems encountered by RailCorp during the term of this Agreement and any surviving Service Requests;
- (b) provide suitable phone and fax lines for RailCorp to receive customer support services; and
- (c) promptly notify RailCorp in writing of the identity of the Account Manager appointed in accordance with this clause, including any changes to this representative

3. MANNER OF PERFORMANCE OF THE SERVICES

3.1 Independent contractor

- (1) In the performance of the Services, and for all other purposes of this Agreement, the Supplier will be an independent contractor and neither the Supplier nor the Contract Personnel will be employees or agents of RailCorp for any purpose whatsoever.
- (2) Except to the extent authorised by RailCorp in writing, neither the Supplier nor the Contract Personnel will be or represent themselves in any manner as being an agent of RailCorp nor have any authority to enter into commitments on behalf of RailCorp.
- (3) If any of the obligations of the Supplier under this Agreement cannot be wholly discharged without the Supplier so representing itself, those obligations will be deemed not to arise until RailCorp delivers written authority to the Supplier.

3.2 Responsibility for taxation and other deductions

- (1) The Supplier will:
 - (a) be responsible for making all deductions and performing all acts necessary under Employment Law; and
 - (b) pay and be solely responsible for all entitlements under any Employment Law of its employees or others who make their services available to the Supplier, including, without limitation, the Contract Personnel, in relation to the obligations expressed or implied by this Agreement on the Supplier.

- (2) The Supplier hereby indemnifies RailCorp from any and all liabilities, obligations, Claims, penalties or costs it suffers or incurs in relation to taxation or employment matters referred to in this clause 3.2.

3.3 Insurance

- (1) The Supplier will at all times during the term of this Agreement keep in effect and current the following insurance policies without any exclusions covering itself and its Contract Personnel:
 - (a) a public liability insurance policy in an amount not less than the Minimum Public Liability Amount;
 - (b) professional indemnity insurance in an amount not less than the Minimum Professional Indemnity Amount;
 - (c) comprehensive vehicle insurance; and
 - (d) a workers compensation insurance policy which complies with requirements of Workers Compensation Law including insurance against common law claims by employees, agents and subcontractors.
- (2) The Supplier hereby indemnifies RailCorp in relation to any breach of the obligations in clause 3.3(1) above.
- (3) A copy of any of the insurance policies referred to in clause 3.3(1) above must be produced to RailCorp upon request including proof of the currency of these policies during the term of this Agreement.
- (4) The Supplier must notify RailCorp of any claims against the policies referred to in clause 3.3(1)(a) and (1)(b) above during the term of this Agreement.

3.4 Drug and Alcohol Policy and Testing

- (1) Without limiting any other provision of the Agreement, the Supplier must and must ensure that the Contract Personnel and any other of its employees, servants and agents, in connection with the carrying out or provision of the Services or Particular Services specified in a Service Request:
 - (a) comply with the RailCorp Code of Conduct regarding an alcohol and drug free workplace;
 - (b) be Drug and Alcohol Free; and
 - (c) submit to a Drug and Alcohol Test as may be required from time to time.
- (2) The Supplier will ensure that all Contract Personnel are aware of the requirements of this clause 3.4 and of the RailCorp Code of Conduct in general.
- (3) In addition to any other rights RailCorp may have under this Agreement, should any Contract Person fail to comply with clause 3.4(1):
 - (a) RailCorp shall by written notice, immediately:
 - (i) terminate the Service Request under which that Contract Person is providing Services without compensation of any kind whatsoever to the Supplier; or

- (ii) require that the Supplier immediately replace that Contract Person with another Contract Person of equivalent skill and experience and for the same or a lower cost to RailCorp for the duration of the relevant Service Request; and
- (b) then without compensation of any kind whatsoever to the Supplier, the Supplier will not supply that Contract Person for any future Service Requests.

4. CONSIDERATION

4.1 Fees

RailCorp will pay the Supplier in accordance with the terms and conditions set out at Schedule 5 and any Service Request.

4.2 Reimbursable Expenses

RailCorp will reimburse the Supplier for reasonable expenditure incurred and paid for by the Supplier or its Contract Personnel, where it has been pre-approved by RailCorp, in accordance with the terms of the Service Request pursuant to which the expenses were incurred.

4.3 Review

Where the term of the Agreement exceeds 12 months, RailCorp may, in its absolute discretion, review the Fees payable to the Supplier.

4.4 Lodgement of payment claims

The Supplier must lodge with RailCorp at the first day of each month, unless otherwise specified in Part G of Schedule 2, in a form satisfactory to RailCorp, a claim for payment for those Fees due to the Supplier (and for approved reimbursable expenses, if any, incurred and paid for by the Supplier or the Contract Personnel pursuant to clause 4.2) for the previous month, supported by evidence of the amount due to the Supplier and such other information that RailCorp may reasonably require. The Supplier's claim for payment must:

- (a) identify the Services to which the claim for payment relates;
- (b) quote any relevant Service Request Number and Purchase Order or Contract Number to which the Services relate;
- (c) identify claimed Fees separately for each Purchase Order or Contract Number under which Services were provided for the relevant month;
- (d) include separate invoices for payment (where relevant) for each Service Request; and
- (e) indicate the amount that the Supplier claims to be due for the Particular Services provided under a Service Request within the period covered by the claim supported by timesheets for relevant Contractor Personnel.

4.5 Set-Off

RailCorp may deduct and set-off from amounts otherwise payable to the Supplier under this Supplier Agreement any amount due or which may become due from the Supplier to RailCorp.

4.6 **Effect of payment of Fee**

Payment, in part or total, of the Fee:

- (a) does not constitute an acceptance by RailCorp of the Particular Services;
- (b) does not amount to a waiver of any right or action which RailCorp may have at any time against the Supplier; and
- (c) is payment on account only.

4.7 **Indemnity**

Without limiting any other provision of this Agreement, the Supplier agrees to indemnify RailCorp and hold it harmless with respect to all Claims giving rise to any liability on the part of RailCorp arising from the failure by the Supplier to comply with Employment Law or to ensure that any subcontractor of the Supplier has complied with Employment Law.

5. **CONFIDENTIALITY**

5.1 **Duty not to disclose**

The Supplier shall and will cause the Contract Personnel to:

- (a) keep confidential all Confidential Information;
- (b) ensure that all Contract Personnel keep all Confidential Information confidential; and
- (c) ensure that all Contract Personnel each execute and return to RailCorp a Deed of Confidentiality and Conflict of Interest Declaration in the form of Schedule 6.

5.2 **Remedies**

The Supplier acknowledges that the remedy of damages for breach of clause 5.1 would be inadequate and that temporary and permanent relief by way of injunction against it may be granted in any proceedings which RailCorp or any persons on its behalf may bring to enforce any of the provisions of that clause without the necessity of proof of actual damage suffered by RailCorp as the case may be.

5.3 **Protection of goodwill**

The Supplier acknowledges that having regard to the Services, the undertakings in clause 5.1 are reasonable and necessary for the protection of the goodwill of RailCorp.

6. **INTELLECTUAL PROPERTY**

6.1 **Intellectual Property**

The parties acknowledge that:

- (a) any Intellectual Property Rights arising as a result of or in connection with the provision of the Services or of the Particular Services provided under a Service Request will, from their creation, vest exclusively in RailCorp; and

- (b) in any event, the Supplier and Contract Personnel shall assign to RailCorp all its interest which it may have at present or in the future in such Intellectual Property Rights in connection with the provision of the Particular Services.

6.2 Vesting of Intellectual Property Rights

The Supplier undertakes to do all such acts and to execute all such documents necessary to vest the Intellectual Property Rights in RailCorp pursuant to this clause 6.

6.3 Covenant

The Supplier shall require the Contract Personnel and all its employees, officers and agents who perform services for the Supplier in relation to the Supplier's obligations under this Agreement to enter into a covenant in the form of Schedule 6 to the same effect as the covenant set out in clauses 6.1 and 6.2.

7. MORAL RIGHTS

The Supplier must provide RailCorp with a valid signed written consent in the form of Schedule 6 from each person ("Author") who creates or contributes to the creation of any Works used in or arising out of or in relation to the performance of this Agreement, consenting to RailCorp doing any acts or any omissions that constitute an infringement of the Author's Moral Rights in the Works, including:

- (a) not naming the Author as the author of the Works;
- (b) amending, changing, adding to or deleting/removing any part from the Works, but only if the Author is not named as the author of the Works,

whether any such acts or omissions occur before, on or after the date of this Agreement.

8. VARIATIONS AND CHANGES

8.1 Variation of Particular Services

RailCorp may direct a variation to the Particular Services provided such services are similar in nature to the Particular Services provided herein.

8.2 Variation of Particular Services binding

The Supplier must comply with a direction made by RailCorp in accordance with clause 8.1 to vary the Particular Services.

8.3 Consequences of variation or proposed variation

- (1) Before directing a variation to the Particular Services, RailCorp may request the Supplier to provide a written estimate of the time, cost and programming effects of a proposed variation. A written estimate so requested must be provided by the Supplier within a reasonable time nominated by RailCorp.
- (2) If:
 - (a) a variation is directed by RailCorp; or

- (b) no request has been made by RailCorp under clause 8.3(1) and the Supplier considers that the variation will affect the timing or cost of the Particular Services,

the Supplier must, as soon as practicable, and in any event no later than 7 days after the variation is either directed by RailCorp or identified by the Supplier under this clause, provide RailCorp with a written estimate of the time, cost and programming effects of the variation.

8.4 Valuation of variations

Unless otherwise agreed, the value of a variation to the Particular Service requested by RailCorp will be reasonably determined by RailCorp using the rates set out in Schedule 5.

If Schedule 5 does not include rates relevant to the variation, RailCorp shall reasonably determine the value of the variation to the Particular Services.

8.5 Entitlement to payment

The Supplier shall have no entitlement to claim, or to be paid for work the subject of a variation direction made by RailCorp unless RailCorp directs the variation in writing.

8.6 Notification of changes in scope

As soon as practicable after becoming aware of any matter which is likely to change or which has changed the scope of the Particular Services, the Supplier must give written notice to RailCorp detailing the circumstances and extent (or likely extent) of the change.

9. WARRANTY

9.1 Supplier Warranties

The Supplier warrants that:

- (a) it will provide the Services in a safe manner free from risks to health and safety;
- (b) all Contract Personnel have an appropriate level of skill, training and competence to perform the Particular Services they may perform pursuant to a Service Request safely and to a reasonable standard of workmanship expected in the profession or industry of the Contract Personnel;
- (c) the Supplier and the Contract Personnel will comply with all relevant Laws in the performance of the Particular Services;
- (d) it will and will ensure that the Contract Personnel will comply with the Policies;
- (e) the Supplier and the Contract Personnel are not engaged in any business or activity or have any other interest which could conflict with its or RailCorp's interests including the Supplier's obligations under this Supplier Agreement; and
- (f) the Supplier is aware that RailCorp is relying on these warranties.

9.2 Indemnity

The Supplier must indemnify RailCorp from any and all Claims giving rise to liability on the part of RailCorp should any of the representations made by the Supplier in performance of its Services be alleged or shown to be false.

9.3 No prohibitions

The Supplier warrants that it or its Contract Personnel are not prohibited or limited in any way from performing the Particular Services under this Agreement or from competing with prior employers also engaged in this industry. The Supplier further agrees to indemnify and hold RailCorp harmless with respect to all Claims giving rise to liability on the part of RailCorp should any of the representations made by the Supplier in performance of its Services be alleged or shown to be false.

10. GOODS AND SERVICES TAX

10.1 Definitions

In this clause:

- (a) “**GST**” means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended from time to time (“**GST Act**”) or any replacement or other relevant legislation and regulations;
- (b) words used in this clause which have a particular meaning in the “GST law” (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
- (c) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member; and
- (d) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

10.2 Exclusive of GST

The consideration expressed to be payable under any other clause of this Agreement for any supply made under or in connection with this Agreement excludes GST.

10.3 Taxable Supply

To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, and is payable at the same time.

10.4 Tax invoices

Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Agreement.

11. TERMINATION

The rights of the parties under this clause 11 are subject to the provisions of clause 2.6.

11.1 Termination by RailCorp

RailCorp may immediately terminate this Agreement by notice to the Supplier in writing if the Supplier or any of its Contract Personnel at any time:

- (a) commits a breach of the RailCorp Code of Conduct, Drug and Alcohol policy or any other Policies;
- (b) commits any serious or persistent breach of this Agreement;
- (c) materially breaches this Agreement and does not remedy that breach within 2 days after receiving notice from RailCorp specifying the breach;
- (d) goes into liquidation or becomes subject to receivership or official management or makes any arrangement or composition with its creditors; or
- (e) has conducted itself in a manner which, in the reasonable opinion of RailCorp, will detrimentally affect RailCorp;
- (f) repeatedly fails to meet Service Level Requirements set out in Schedule 3, clause 6

11.2 General termination

Either party, may at any time terminate this Agreement by giving 7 days written notice to do so, unless otherwise stated in Part D of Schedule 2 (**Termination Notice**).

11.3 No claim for compensation

- (1) If this Agreement is terminated by RailCorp under clauses 11.1 or 11.2, the Supplier will not be entitled to claim any amounts by way of liquidated damages or any other payments as a consequence of termination, other than any entitlements arising under clause 11.4.
- (2) Any payment by RailCorp under this clause 11 will be without prejudice to any rights or remedies RailCorp may have against the Supplier and will not constitute any admission of fact or liability.

11.4 Effect of termination

Upon termination of this Agreement for any reason:

- (a) the Supplier will immediately deliver up to RailCorp or its nominees all Contract Materials produced and all correspondence, documents, computer records, business cards, papers and property belonging to RailCorp or relating in any way to the affairs or business of RailCorp which may be in the possession or under the control of the Supplier or any Contract Personnel; and
- (b) any fees or expenses payable to the Supplier will be paid in accordance with clause 4.

11.5 Survival of Supplier's obligations on termination

Without prejudice to any of RailCorp's rights under this Agreement, clauses 11.3 and 11.4:

- (a) any and all indemnities provided by the Supplier survive the termination of this Agreement; and
- (b) all rights and obligations under any existing Service Request survive the termination of this Agreement and the rights and obligations in this Agreement will continue to apply to the Services being provided under or pursuant to those Service Requests.

11.6 Termination of a Service Request

- (a) RailCorp may at any time and in its sole and absolute discretion terminate any Service Request by giving written notice to the Supplier. In the event of termination of a Service Request, the provisions of clause 11.4 shall apply to the Particular Services being provided pursuant to that Service Request. However, in the event of a breach of the Agreement, no compensation of any kind shall be payable to the Supplier.
- (b) RailCorp may terminate a Service Request if the Contract Personnel fails to meet the requirements set out in the Particular Services of the Service Request. In such an event Supplier will provide a suitable alternative candidate at the same or lower cost to that provided in the original Service Request.

12. INDEPENDENT ADVICE

12.1 Acknowledgment

The Supplier acknowledges that it has had the opportunity to seek independent legal, financial and taxation advice in respect of this Agreement.

12.2 No reliance on RailCorp

The Supplier further acknowledges that it has not relied upon any legal, financial or taxation advice in respect of this Agreement provided by or on behalf of RailCorp.

13. GOVERNING LAW

This Agreement is governed by the laws of the State of New South Wales and the Supplier irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of New South Wales.

14. NO WAIVER

No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

15. DISPUTE RESOLUTION

15.1 Dispute

The Supplier and RailCorp will attempt to resolve any dispute speedily by negotiation in good faith.

15.2 Mediation or expert determination

If a dispute cannot be resolved by negotiation within 2 months of commencement of negotiations, either party may commence formal dispute resolution proceedings by mediation or expert determination.

15.3 Continuing Obligations

The parties must continue to perform their obligations under the Agreement despite the existence of a dispute.

16. NOTICES

Any notice required to be given under this Agreement by any party to another will be in writing addressed to the intended recipient at the address last notified by the intended recipient to the party giving the notice.

17. INDEMNITY

The Supplier agrees that during the term of this Agreement and at any time thereafter, to indemnify RailCorp and hold it harmless with respect to all Claims giving rise to any liability

on the part of RailCorp alleged or shown to have been caused by the negligent or intentional conduct of the Supplier, its Contract Personnel or employees, whether or not this conduct occurred in the course of the performance of this Agreement.

The Supplier's liability for any Claim shall be reduced to the extent that such liability is contributed to by any negligent or intentional conduct of RailCorp.

Notwithstanding any other provision of this Agreement, neither party shall be liable to the other for any indirect or consequential loss or damage, however caused or arising.

18. SEVERANCE

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability and will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

19. ASSIGNMENT AND NOVATION

19.1 No assignment

Subject to clause 19.2 and 19.3, the rights and obligations of each party under this Agreement are personal and cannot be assigned, charged or otherwise dealt with and no party will attempt or purport to do so, without the prior written consent of the parties.

19.2 Assignment in event of restructure

Notwithstanding clause 19.1 above, RailCorp may assign its rights and obligations under this Agreement if it becomes convenient for it to do so to give effect to a restructure or proposed restructure of RailCorp, the Department of Transport or any other Related Statutory Authority, that may have an interest in or an impact on the Services.

19.3 Novation

The Supplier acknowledges and agrees that RailCorp may by issuing a Novation Notice, require the Supplier to novate this Agreement in accordance with that Novation. Following receipt of a Novation Notice:

- (a) the provisions of clause 11.3 shall apply as if the Agreement had been terminated by RailCorp under clauses 11.1 or 11.2; and
- (b) the Supplier shall immediately do all things necessary and requested by RailCorp in order to effect the novation including (without limitation) the novation of any employment agreements of Contract Personnel to the third party nominated in the Novation Notice.

19.4 No subcontracting

The Supplier must not subcontract the performance of the whole or any part of its obligations under this Agreement except with the prior written consent of RailCorp. RailCorp is not required to give its consent or to justify the withholding of consent.

20. AMENDMENT

This Agreement may be amended only by a further agreement executed by both parties.

21. ENTIRE AGREEMENT

This Agreement forms the entire agreement between RailCorp and the Supplier and there are no agreements collateral to this Agreement. This Agreement supersedes all prior written, oral and other agreements between RailCorp and the Supplier with respect to the provision of the Services. No term or provision of this Agreement may be changed, waived or terminated except by a further written agreement between both parties.

EXECUTED as an Agreement

EXECUTED by **RAIL CORPORATION**)
NEW SOUTH WALES)
by its authorised officer:)

.....
Signature of Authorised Officer

.....
Signature of Witness

.....
Name of Authorised Officer
(BLOCK LETTERS)

.....
Name of Witness
(BLOCK LETTERS)

.....
Title of Authorised Officer
(BLOCK LETTERS)

.....
Title of Witness
(BLOCK LETTERS)

.....
Date

EXECUTED by the **SUPPLIER** in)
accordance with section 127 of the)
Corporations Act 2001 (Cth):)

.....
Director

.....
Company Secretary / Director

.....
Name of Director
(BLOCK LETTERS)

.....
Name of Company Secretary / Director
(BLOCK LETTERS)

.....
Date

Schedule 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this document, unless the context otherwise requires, the following words have these meanings:

“Account Manager” means the person appointed by the Supplier in accordance with clause 2.7 and as at the date of this Agreement, the person named at Part J of Schedule 2..

“Business” means the business carried on by RailCorp from time to time.

“Claims” includes any action, application, arbitration, cause of action, complaint, cost, debt due, demand, determination, inquiry, judgment and verdict:

- (a) at law;
- (b) in equity;
- (c) arising under any statute; or
- (d) arising under any award, certified agreement or other instrument made or approved under any law.

“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.

“Confidential Information” means all confidential information including, but not limited to, trade secrets, confidential know-how, client lists and computer software owned or used by RailCorp of which the Supplier or any of its Contract Personnel become aware (both before and after the date of this Agreement) touching upon the Services.

“Commencement Date” means the date specified in Part B of Schedule 2.

“Completion Date” means the date specified in Part C of Schedule 2 being the end of Term.

“Contract Materials” means all materials brought or required to be brought into existence as part of, or for the purpose of performing the Services including but not limited to documents, technical specifications and data, whether stored electronically or by any other means.

“Contract Personnel” or “Contract Person” means appropriately qualified, experienced and competent person(s) which have been approved in writing by RailCorp as suitable for the provision of the Services.

“day” means a calendar day.

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

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

“Drug and Alcohol 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 are affected by drugs or alcohol.

“Employment Law” means any Act, regulation or industrial instrument including awards and enterprise agreements, whether State or Federal, dealing with the entitlements, protection or income taxation of employees, including but not limited to income tax

legislation, superannuation legislation, payroll tax legislation, industrial relations legislation (including but not limited to *Industrial Relations Act 1996 (NSW)*, the *Annual Holidays Act 1944 (NSW)* and the *Long Service Leave Act 1955 (NSW)*) and workers compensation legislation, as amended from time to time.

“Engage in” means to participate, assist or otherwise be directly or indirectly involved as a members, shareholder, unit holder, director, consultant, adviser, contractor, principal, agent, manager, employee, beneficiary, partner, associate, trustee or financier.

“Fees” means the fees expressed in Australian currency and described in Schedule 5.

“Intellectual Property Rights” includes copyright, trademark, design, patent, semi-conductor and circuit layout rights and any rights to regulation of such rights.

“Invitation to Offer” means a request by RailCorp to a Supplier to provide a quote for the supply of anticipated Services in accordance with Schedule 3.

“Laws” means all legislation, regulations, notices, ordinances, ministerial directives, and Government guidelines including rail safety legislation.

“Minimum Professional Indemnity Amount” means the amount set out in Part F of Schedule 2.

“Minimum Public Liability Amount” means the amount set out in Part E of Schedule 2.

“Moral Rights” has the same meaning as that term in Part VIII of the *Copyright Act 1968 (Cth)*, as amended from time to time.

“Novation Notice” means a written notice issued by RailCorp to the Supplier under clause 19.3, specifying the third party to whom the Agreement is to be novated and the time for completion of that novation.

“OHS Laws” means the *Occupational Health and Safety Act 2000 (NSW)* and the *Occupational Health and Safety Regulation 2001 (NSW)* as amended from time to time.

“Particular Services” means those services performed by the Contract Personnel pursuant to a Service Request

“Policies” means the Code of Conduct, the Statement of Basic Ethics and any other human resources, environmental, occupational health and safety and rail safety policies including policies and procedures dealing with:

- (a) privacy obligations;
- (b) harassment including sexual harassment;
- (c) equal opportunity;
- (d) discrimination;
- (e) alcohol and other drugs; and
- (f) RailCorp’s Procurement Policies & Procedures.

which RailCorp has given the Supplier written notice of.

“RailCorp Representative” means the person nominated in Part H of Schedule 2 or any replacement notified by RailCorp in writing to the Supplier.

“RailCorp Business Representative” means the person nominated as the RailCorp representative for the Particular Services specified in a Services Request – as per Item C2 of the Service Request template provided at Annexure A to Schedule 4

“Rail Corridor” means any land used in relation to the operation of the Railway, being land defined by railway boundary fencing and in the absence of such fencing, is defined as everywhere within 15 metres of the outermost rails.

“**Railway**” means the guided system for transportation of passengers or freight or both (whether or not passengers, freight or both are being transported) on a railway track within the Rail Corridor.

“**Related Statutory Authority**” any other statutory authority concerned in delivering transport or related services in New South Wales.

“**Schedule**” means Schedules to this Agreement

“**Services**” means the professional services described in Schedule 3 provided by the Supplier under this Agreement including the sourcing and proposing of Contract Personnel in response to a Service Request and any Particular Services provided under or pursuant to a Service Request.

“**Supplier Service Representative**” means a person nominated in Part I of Schedule 2 or any replacement notified by the Supplier in writing to RailCorp.

“**Service Request**” means a written request by RailCorp for specified Services in accordance with clause 2.5 and in the form appearing as Schedule 4.

“**Statement of Business Ethics**” means the document issued by RailCorp entitled “Statement of Business Ethics” as amended from time to time during the Term and any like document which may replace that Statement of Business Ethics during the Term. “**Term**” means the term of this Agreement as determined in accordance with clause 1.1.

“**Workers Compensation Law**” means the *Workers Compensation Act 1987 (NSW)* and any related acts or regulations, as amended from time to time.

“**Works**” means all programs, programming, literary, dramatic, musical and artistic works within the meaning of the *Copyright Act 1968 (Cth)*, as amended from time to time.

1.2 Interpretation

- (1) (**singular/plural**) words denoting the singular include the plural and vice versa; and
- (2) (**reference to any instrument**) a reference to any instrument (such as a deed, agreement or document) is to that instrument, or, if required by the context to have part of it, as amended, novated, substituted or supplemented at any time and from time to time.

1.3 Schedules

The Schedules form part of this Agreement.

Schedule 2

PARTICULARS

PART A:	Supplier	Name:	
		Address:	
		ACN	
		ABN	
PART B:	Commencement Date	dd/mm/yyyy	
PART C:	Completion Date	dd/mm/yyyy [insert date]	
PART D	Termination Notice <i>(clause 11.2)</i>	[Insert 7 days or other applicable period]	
PART E	Minimum Public Liability Amount <i>(clause 3.3)</i>	\$20,000,000 per claim or occurrence	
PART F	Minimum Professional Indemnity Amount <i>(clause 3.3)</i>	\$2,000,000 per claim [insert amount if required, otherwise insert "nil"]	
PART G	Time for lodgement of payment claims <i>(clause 4.4)</i>	The first day of each month - (RailCorp shall pay the Supplier within 30 days from the date of receipt of correctly rendered Tax Invoice)	
PART H	RailCorp Representative <i>(clause 2.5)</i>	Name:	Robert Jarrett
		Position:	Manager Contracts & Procurement
		Address:	Level 1, North Wing 477 Pitt Street, SYDNEY 2000
		Telephone:	02 8922 0467
		Fax:	02 8922 0193
		Email:	Robert.Jarrett@railcorp.nsw.gov.au
PART I	Supplier Services Representatives <i>(clause 2.5) [insert up to 6]</i>	Name:	
		Position:	
		Name:	
		Position:	
		Name:	
		Position:	
		Name:	
		Position:	
		Name:	
		Position:	

.../

PART J	Account Manager (clause 2.7)	Name:	
		Position:	
		Address:	
		Telephone:	
		Fax:	
		Email:	

Schedule 3

SERVICES

1 Definitions

In this Schedule, the following words have the following meanings:

Actual Pay Rate has the meaning in Schedule 5;

RailCorp Location means the location specified in a Service Request where Particular Services are to be provided;

Role Type means a role type described in a Service Request; and

Transition Out Plan means the plan developed in accordance with paragraph 5 of this Schedule.

Other defined terms used in this Schedule have the meanings given in the Agreement.

2 Provision of Services

(a) The Supplier will provide RailCorp with a temporary contract labour service as more fully described in this Schedule on the terms of the Agreement. The temporary contract labour service includes but is not limited to the:

- (i) sourcing;
- (ii) provision to RailCorp;
- (iii) account management and service delivery; and
- (iv) management of payroll and human resource issues,

of suitable Contract Personnel for the Role Types described in Annexure A to this Schedule 3

(b) Subject to the indemnity provisions in this Agreement, all Contract Personnel supplied under this Agreement are to perform the Particular Services pursuant to a Service Request under the direct control and supervision of RailCorp Business Representative.

(c) The Supplier will provide to RailCorp the Particular Services specified in a Service Request.

(d) On receipt of an Invitation to Offer, the Supplier will

- (i) provide written acknowledgement of receipt of the Invitation to Offer in accordance with Service Level Requirements at paragraph 6 of this Schedule.
- (ii) submit proposed Contract Personnel of the appropriate Role Type who have been screened to meet the requirements specified in the Service Request;
- (iii) as necessary organise and co-ordinate interviews of proposed Contract Personnel by the RailCorp Representative; and
- (iv) inform successful and unsuccessful proposed Contract Personnel of RailCorp's selection decision.

- (e) Where RailCorp accepts any Contract Personnel submitted in response to Invitation to Offer the RailCorp Representative will issue the Service Request for those Contract Personnel specifying the nature, Charge Rate, RailCorp Location and duration of the Service Request.
- (f) The Supplier shall require Contract Personnel providing Particular Services to RailCorp to conform to at least the same standards of professional conduct as normally required by those performing similar services within RailCorp, particularly with regard to such matters as appearance and behaviour and assigning a high level of priority to the demands of RailCorp.
- (g) While performing Services, Contract Personnel must comply with the reasonable directions of RailCorp that are not inconsistent with the terms of this Agreement.
- (h) Whilst at a RailCorp Location, the Supplier will require Contract Personnel to comply with RailCorp's security and safety regulations and policies (including occupational health and safety policies) which RailCorp advises to the Supplier from time to time. RailCorp may deny access to RailCorp Locations to Contract Personnel who do not comply with the security and safety regulations advised by RailCorp.
- (i) The Supplier shall not replace, without RailCorp consent, any Contract Personnel then currently performing Particular Services until the relevant Service Request expires or is terminated.
- (j) The Supplier shall not actively approach Contract Personnel of another supplier to transfer from one supplier to another unless agreed between the Supplier and RailCorp under any Transition Plan.
- (k) To the best of its knowledge the Supplier represents that at the date of signing this Agreement no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement. If during the course of this Agreement a conflict or risk of conflict of interest arises for the Supplier, Contract Personnel, the Supplier's employees or agents, the Supplier will notify the RailCorp Representative immediately in writing of that conflict or risk of conflict. Where RailCorp receives notification pursuant to this sub-paragraph, RailCorp:
 - (i) shall notify the Supplier within 7 days of its consent or otherwise to the affected party continuing to provide Services;
 - (ii) may terminate the Service Request or the Agreement if in the opinion of RailCorp the conflict (or risk of conflict) of interest directly affects the Supplier or Contract Personnel;
 - (iii) may require the immediate removal of such affected Contract Personnel from involvement without affecting the Supplier's obligations under the Service Request or the Agreement.
- (l) The Supplier shall, in a timely manner, provide monthly activity reports in a format acceptable to RailCorp; these reports are to include:
 - (i) a list of all current Service Requests;
 - (ii) a record of all invoices submitted against Service Requests (with a breakdown of invoiced amount consistent with the cost elements specified in this Agreement); and
 - (iii) any other information reasonably requested by RailCorp.

3 RailCorp Obligations

During the term of this Agreement, RailCorp:

- (a) shall provide Contract Personnel with access to each RailCorp Location as may be reasonably necessary for the timely completion of Particular Services, subject to any RailCorp security requirements;
- (b) shall provide Contract Personnel with a reasonable work environment, in compliance with all applicable laws and regulations, and as mutually agreed upon by RailCorp and the Supplier all necessary equipment and supplies to enable Contract Personnel to perform the Particular Services;
- (c) shall designate an individual who shall be the Supplier's contact person for RailCorp during the term of the applicable Service Request and who shall have the authority and power to make management and logistical decisions relating to such Service Request on behalf of RailCorp;
- (d) subject to indemnities, shall direct and control the day-to-day activities of the Contract Personnel while performing the Particular Services for RailCorp; and
- (e) agrees to ensure that the Contract Personnel of the Supplier will be provided with a safe work environment that is free from risks to health, safety and welfare. In providing such safe workplace, RailCorp shall comply with all relevant occupational health and safety legislation including relevant regulations, codes of practice and other subordinate legislation.

4 Transfer Services

- (a) On termination or expiration of this Agreement (in whole or in part), the Supplier agrees to work with the RailCorp Representative to transfer their Contract Personnel to another supplier nominated by RailCorp in accordance with the Transition Out Plan.
- (b) The Supplier will work with RailCorp to develop a Transition Out Plan and provide all assistance reasonably necessary to ensure non disruption of Services to RailCorp.

5 Transition Out Plan

The Supplier must, in consultation with RailCorp, develop and implement the Transition Out Plan for the orderly transfer of Services to another supplier(s) nominated by RailCorp on the expiry or termination of this Agreement.

The Supplier and RailCorp will meet, develop and agree the Transition Out Plan within 3 months after the Commencement Date.

The essential elements of the Transition Out Plan will include:

- (a) Contract Personnel providing Particular Services under a current Service Request will be transitioned to a supplier nominated by RailCorp within 60 days of expiry or termination of this Agreement;
- (b) the Supplier will not charge, or seek to charge, a transition fee to any supplier who Contract Personnel are transferred to;

- (c) the Supplier will not charge or seek or charge RailCorp a transition fee for transitioning Contract Personnel to any other supplier(s); and
- (d) the Supplier will provide to RailCorp all assistance reasonably necessary during the 60 day transition period.

6 Service Level Requirements (SLR)

The Supplier will comply with the Service Level Standard outlined in the table below for each Performance Measure.

RailCorp may review and change the Service Level Requirements every calendar quarter and will provide Supplier with one-month prior notice of any change.

Performance Measure	Service Level Requirements	Service Level Standard	Measurement
Quality of Contract Personnel	Capability of the personnel in terms of experience, qualifications, skills, calibre, keyboard and applications, personal presentation, and cultural alignment to hiring managers requirement/satisfaction	90%	The proportion of hiring manager responses rating personnel as “meets” or “exceeds expectations” for Supplier as determined by an internal survey or an approved survey conducted by the Supplier (as agreed with RailCorp).
Quality of Supplier	The quality of the Supplier with regards to account management, responsiveness to hiring manager requests, issue resolution and overall relationship.	90%	The proportion of hiring manager responses rating Supplier as “meets” or “exceeds expectations” as determined by an internal survey or an approved survey conducted by the Supplier (as agreed with RailCorp).
Invoice Accuracy	Supplier invoices contain no material errors, such as an error in the invoiced amount when compared to the quoted rate and to rates agreed in the Supplier Agreement and any relevant Service Request. Invoices are issued in a timely manner and contain necessary information for approval by hiring manager.	98% 95%	As measured through RailCorp System or as determined by an internal survey or an approved survey conducted by the Supplier (as agreed with RailCorp) (98% and 95% respectively of hiring managers rate invoice accuracy and timeliness as “meets” or “exceeds requirements”).
Reporting	Supplier shall (a) submit correctly formatted, complete and accurate management and performance reports to RailCorp (b) submit monthly reports to RailCorp in a timely manner (to be determined by RailCorp and not unreasonably requested)	95% 98%	RailCorp review of supplier compliance to Service Level Requirement Proportion of Supplier’s Service Requests being correctly and regularly reported against each month as determined by RailCorp review of supplier compliance to Service Level Requirement

Performance Measure	Service Level Requirements	Service Level Standard	Measurement
Dealings with RailCorp	Supplier shall follow approved RailCorp procedures for approval and provision of Services including dealing through the appointed RailCorp white collar contract labour support team for all requisitions	100%	RailCorp review of supplier compliance to Service Level Requirement
Account Management	Supplier has: <ul style="list-style-type: none"> (a) one account representative to act as a single point of contact for RailCorp (Account Manager) and one back-up account representative. The Account Manger is to oversee the relationship between Supplier and RailCorp and to oversee the resolution of any problems encountered by RailCorp during the term of this Agreement. (b) one single point of contact for developing and distributing reports to RailCorp. (c) a dedicated email address for RailCorp for correspondence. 	100%	RailCorp nominated category managers are aware of each account management personnel identified above (including name, telephone number, mobile number, fax, email and address) at Commencement Date and within 24 hours of any change to those account management personnel.
Performance Management	Supplier to participate in six-monthly supplier performance meetings with RailCorp.	2 meetings in any 12 month period	The number of performance meetings attended by Supplier in any 12 month period.
Personnel Retention Rate	Personnel are retained for the full period of initial engagement.	95%	The ratio of Personnel whose engagement was for the full period of the initial request compared to the total number of Personnel engaged. To be measured monthly and results submitted to RailCorp (reasons should be provided where Personnel engagement is for less than the initial period)
Acknowledge Receipt of Request	Supplier is to acknowledge receipt of request from RailCorp for the following requirements: <p>Urgent : within 2 Hours</p> <p>Non Urgent: within 24 hours</p>	95%	RailCorp review of supplier compliance to Service Level Requirement
Offer Template	Supplier is to complete the Offer template for every Offer made in response to an Invitation to Offer	100%	RailCorp review of supplier compliance to Service Level Requirement

Performance Measure	Service Level Requirements	Service Level Standard	Measurement
Offers	Supplier will provide offers within the deadline listed in an Invitation to Offer. Registrant must notify RailCorp if it is unable or unwilling to submit an offer in relation to an Invitation to Offer	100%	RailCorp review of supplier compliance to Service Level Requirement
Reference Checking	Supplier is to complete pre-employment reference checks on all Contract Personnel prior to engagement with RailCorp. RailCorp may request specific checks be undertaken by Supplier (medical, police, probity etc).	100%	RailCorp review of supplier compliance to Service Level Requirement
Drug and Alcohol Policy and RailCorp Code of Conduct	Supplier is to ensure that all candidates are fully aware of the RailCorp Drug and Alcohol policy and Code of Conduct prior to attending an interview.	100%	RailCorp review of supplier compliance to Service Level Requirement
Deed of Confidentiality and Assignment	Supplier is to ensure all Personnel sign the RailCorp assignment of intellectual property and declaration of confidentiality prior to Personnel commencing with RailCorp.	100%	RailCorp review of supplier compliance to Service Level Requirement

Annexure A - ROLE TYPES

Role Classification	Role Types	Example Role Descriptions
Business Services		Business Services encompass professionals who support the organisation in a variety of areas including technical, personal and organisational skills related to functional areas within the business services industry.
	Administrative	<p>Administrative roles provide admin and clerical support functions through an application of PC and business skills and an understanding of policies and procedures required to complete assignments.</p> <p>Admin roles may need to reconcile reports, processes invoices, evaluate orders, complete admin forms, schedule appointments, coordinate meetings and take minutes. They may answer enquires and resolve questions via telephone or email. Administrative roles include:</p> <ul style="list-style-type: none"> • Office Manager • Administrative Assistant • Personal or Executive Assistant • Document Controller • Receptionist
	Project Delivery and Business Analysis	<p>Project Delivery roles are responsible for the delivery of projects to approved time, quality and budget to meet the needs of business stakeholders. They may manage, review and/or report on the progress of project schedules, milestones and budgets. They provide project management disciplines to project teams and manage stakeholder requirements as part of a change management framework. These roles include:</p> <ul style="list-style-type: none"> • Programme / Project Director • Programme Manager • Change Manager • Project Manager • Project Officer / Project Administrator <p>Business Analysts are responsible for analysing and interpreting qualitative and quantitative information to assess business opportunities. They possess extensive numerical skills and broad business knowledge that are used in various areas of the business. They interpret internally and externally sourced data to recommend and implement agreed strategies for business proposals, opportunity assessments, financial, trend and variance assessments and compliance and risk assessments.</p>

Role Classification	Role Types	Example Role Descriptions
Technical Business Services	Property/Facilities	<p>Property and Facilities roles are responsible for the construction and or purchase of new buildings, alterations, security and maintenance of existing RailCorp property. To provide comprehensive facilities management, using integrated systems and services. Property / Facility roles include :</p> <ul style="list-style-type: none"> • Asset Manager • Property Manager • Facilities Manger • Facilities Administrator • Engineers of multi-disciplinary categories
	Legal	<p>Legal roles are responsible for the provision of legal services and related areas including advice, quality control and decision making on freedom of information and access to classified archival records. Legal roles include:</p> <ul style="list-style-type: none"> • General Counsel • Compliance Manager • Legal Secretary
	Procurement	<p>Procurement roles identify and deliver sourcing opportunities and carry out associated procurement activities. They may provide services to RailCorp personnel undertaking procurement activities, To pursue management strategies that will minimise the overall cost of procurement, maximise its commercial performance and meet business requirements. Procurement roles include:</p> <ul style="list-style-type: none"> • Procurement Manager • Procurement Officer • Procurement Analyst • Category Manager • Strategic Sourcing Specialist • Contracts Officer • Tender Manager
	Risk Management / Insurance	<p>Risk management and insurance roles promote stability throughout the entire organisation. Specifically, internal risk management controls serve to protect the organisation against market, credit, liquidity, operational, and legal risks. Risk Management and Insurance roles include:</p> <ul style="list-style-type: none"> • Injury management specialists • Risk Manager • Business Risk Auditor

Role Classification	Role Types	Example Role Descriptions
Financial Services	Accounting	<p>Accounting roles plan, organise, set-up and administer accounting systems. Accountants interpret financial accounts and records and provide internal financial analysis. They design, develop and manage the reporting process and internal control procedures. Accounting roles include:</p> <ul style="list-style-type: none"> • Accounts Payable/Receivable Officer • Senior Accountant • Accountant • Analyst • Clerk
	Financial Audit	<p>Financial Audit roles examine and analyse the accounting and financial records to ensure accuracy and compliance with established accounting standards and procedures. They contribute to the design of audit systems and recommend changes to existing accounting systems based on analysis and interpretation of the systems. Financial auditor roles include:</p> <ul style="list-style-type: none"> • Financial Auditor • Audit Manager
	Finance	<p>Finance professionals plan, organise, direct, control and evaluate the operation of financial and accounting departments. They develop, implement and manage the financial policies and systems. Finance roles include:</p> <ul style="list-style-type: none"> • Commercial Manager • Finance Manager • Finance Officer • Financial Accountant • Financial Controller
Marketing & PR	Marketing Communications &	<p>Marketing and communication professionals implement policies, systems and frameworks for marketing strategies, brand management, public relations requirements, media management, internal and external communications, contact and relationship management, alliance management, campaign co-ordination and event management. They analyse and interpret product, service and industry statistics to recommend business development opportunities. Marketing and Communication roles include:</p> <ul style="list-style-type: none"> • Marketing Manager • Marketing Analyst • Marketing Co-ordinator • Professional Business Writer

Role Classification	Role Types	Example Role Descriptions
Human Resources	HR	<p>HR professionals analyse, implement and recommend, control and evaluate the operations of human resources and personnel departments. They interpret and implement business policies, programmes and procedures regarding HR planning, recruitment, collective bargaining, training and development, occupation classification and pay and benefit administration. HR roles include:</p> <ul style="list-style-type: none"> • HR Manager • HR Officer • Policy Advisor • Policy Writer
	Industrial Relations	<p>Industrial Relations involves all aspects of the relationships between employers and employees within the organisation including the distribution of industry rewards through the determination of wages and conditions and negotiation and resolution of conflicts in the workplace. Industrial relations roles include:</p> <ul style="list-style-type: none"> • Industrial Relations Manager • Industrial Relations Officer
	Organisation Development and Training	<p>Organisation development and training roles are responsible for facilitating workshops, developing customised courses and assisting with the implementation of new workplace structures. Organisation Development and Training roles include:</p> <ul style="list-style-type: none"> • Training Manager • Training Officer • Training Co-ordinator • Technical Writer
	Recruitment	<p>Recruitment professionals are responsible for sourcing qualified applicants to meet business requirements. Tasks may involve writing position descriptions and job advertisements, communication of roles through internally or externally channels. Recruitment roles include</p> <ul style="list-style-type: none"> • Panel Interviewer • Recruitment Administrator • Recruitment Officer
	Resource Management	<p>Resource Management roles are responsible for the effective deployment of an organisation's resources when they are needed. Such resources may include financial resources, inventory, human skills, production resources, or information technology. Resource management roles include:</p> <ul style="list-style-type: none"> • Resource Manager • Workforce Planning Manager

Role Classification	Role Types	Example Role Descriptions
Rail Specific and Technical	Design and Architecture	<p>Design and Architect roles are responsible for defining, designing and maintaining the structure of business solutions, and ensuring that it will meet the requirements. Design and Architect roles include:</p> <ul style="list-style-type: none"> • Designer • Architect • Senior Architect • Town Planner
	Engineering	<p>Engineering roles are responsible for investigating, analysing and assessing current engineering work practices, processes and product delivery to introduce new improved methods of doing work. Engineering roles include:</p> <ul style="list-style-type: none"> • Engineering Manager • Project Engineer • Engineer • CAD Drafter • Quantity surveyor
	Rail Technical Project Management	<p>Rail Technical Project Management roles are responsible for the scoping, planning and delivery and finalisation of technical rail project objectives achieved in accordance with all applicable safety standard guidelines. The roles include:</p> <ul style="list-style-type: none"> • Project Manager • Project Co-ordinator
	Rail Infrastructure	<p>Rail infrastructure roles are responsible for coordinating transport policy, strategy, funding and investment initiatives in relation to all rail infrastructure areas. They develop and implement policies, regulations and strategic plans to promote more effective and efficient rail systems. Rail Infrastructure roles include:</p> <ul style="list-style-type: none"> • Maintenance Manager • Operations Manager • Process Engineer • Quality Engineer • Signalling Engineer • Signalling Designer • Signalling Supervisor

Role Classification	Role Types	Example Role Descriptions
Safety and Environment	Safety	<p>Safety roles are responsible for implementing and maintaining environmental and safety practices with all of the activities pursuant to statutory and common law, as well as ensuring the provision of functional health and safety management across all project activities and maintain effective risk management processes. Safety roles include:</p> <ul style="list-style-type: none"> • Fire and Life Safety Project Manager • Safety Officer • Policy writer
	Environment	<p>Environment roles are responsible for developing solutions and policies to deal with environmentally related issues, ensuring that environmental damage and financial losses are kept to a minimum. Environment roles include:</p> <ul style="list-style-type: none"> • Environmental Managers • Environmental Officers
	Security	<p>Security roles are responsible for the delivery and management of security services throughout the RailCorp network and implementing security policy, to ensure the performance of safe and secure management practices. Security roles include:</p> <ul style="list-style-type: none"> • Security Project Manager • Security Co-ordinator

Role Classification	Role Types	Example Role Descriptions
General IT	IT Project Management	<p>IT Project Management</p> <ul style="list-style-type: none"> • Senior IT Project Managers plan, direct and coordinate a matrixed team's activities to manage and implement interrelated projects from business case through RFT and evaluation to implementation and final operational stage. Plans, schedules, monitors and reports on activities related to the project. Leads the project team(s) and/or manages delivery vendor in determining requirements and translating requirements into operational plans. Determines, monitors and reviews all project economics to include project costs, operational budgets, staffing requirements, project resources and project risk. Identifies and assembles the appropriate blend of talent and additional resources to meet project needs and requirements. Formulates contingency plans to address schedule revisions, resource adjustments, fund allocations and work requirements. Ensures adherence to legally binding requirements and long-term strategic goals. Controls project requirements, scope and change management issues. Meets with stakeholders to review project scope/progress and resolve project issues. Coaches and counsels members of cross-functional teams to accomplish projects meet established schedules and resolve technical/operational issues. Establishes appropriate metrics for measuring key project criteria. Develops, proposes and negotiates project proposals, quotations and change requests to leadership and/or the customer. May be responsible for preparing incoming management for transition from implementation to operating stage. Maintains currency on emerging technologies and project management techniques. • Project Managers: Lead project planning, scheduling, monitoring, and reporting activities for small to medium projects. Facilitates needs, assessment, and the development of recommended project control solutions to be used for planning, scheduling, and tracking projects through integration of various project management tools. Develops project controls and reporting procedures. Assists in the training of the project team on application of the procedures. Analyses project progress/costs and assists with development and evaluation of alternatives when the project falls behind schedule or exceeds budget. Develops and delivers presentations to the organisation and customer management. Identifies and develops project management growth opportunities. Integrates specific industry methodologies (i.e. systems development, product development, etc.) to appropriate project management solutions. • Project Administrator: Experienced in all facets of project office support, including project scheduling, report maintenance, KPI reporting and administrative duties. Must be proficient in Microsoft Office applications. <p>IT Project Management roles include:</p> <ul style="list-style-type: none"> • Senior IT Project Manager / Project Director • IT Project Manager • Project Administrator • Project Co-ordinator

Role Classification	Role Types	Example Role Descriptions
	IT Business Analysis	<p>IT Business Analysis</p> <ul style="list-style-type: none"> • Senior Business Analysts are business analysis experts with proven comprehensive experience in a broad range of business areas, particularly in systems integration, function and data analysis across multiple business functions. Experience in the required functional business areas may be requested. Ability to provide business support and advice on quality management. Extensive experience in providing specialist advice on the design of systems from the business perspective. Where applicable, comprehensive experience in business case development. • Business Analysts are business analysis experts with experience in a broad range of business areas, particularly in systems integration, function and data analysis across multiple business functions. Ability to analyse, interpret and translate business requirements into viable solutions. Experience in the provision of business support and advice on analysis and design. <p>IT Business Analysis roles include:</p> <ul style="list-style-type: none"> • Senior BA • BA

Schedule 4

SERVICE REQUESTS

1 Invitation to Offer (ITO)

Where a Supplier is invited to offer candidates as Contract Personnel to provide the Particular Services of a Service Request the Supplier will be required to provide details as per the Service Request template (Annexure A to this schedule) including:

- Supplier Service Representative details

and for each candidate:

- Candidate name
- Candidate CV
- Charge Rate
- Charge Rate breakdown (as per the items provided for in Schedule 5 clause 3)
- Any additional relevant details

Should a candidate be approved as the Contract Personal for a Service Request the details provided in response to the Invitation to Offer, or as subsequently agreed with RailCorp, will form the basis of the details required in the Service Request.

2 Service Request

The template provided in Annexure A to Schedule 4 contains the details, substantially in the form required by RailCorp for each Service Request. This template, or any subsequent template that RailCorp may choose to provide, will need to be completed for each Service Request.

The template may be amended in substance or form by RailCorp.

Annexure A - SERVICE REQUEST TEMPLATE

Item	Services and Role Type	
A1	Reference	Insert RailCorp Service Request reference number
A2	Job Title	Insert job title of Contract Personnel
A3	Role	Insert RailCorp standard job role breakdown
A4	Start Date	Insert start date
A5	Finish Date	Insert finish date
A6	Duration	Insert duration
A7	Particular Services	Insert description of the Particular Services to be provided under this Service Request (reference any attachments/PD etc as appropriate)
A8	Location	Insert location for the performance of these Services
A9	Notice Period	Insert agreed notice period for termination of the Services to be provided under this Service Request

Item	Contract Personnel / Financials	
B1	Contract Personnel	Insert name of Contract Personnel
B2	Charge Rate	Insert agreed charge rate excluding GST
B3	Charge units	Insert charge units (Days or Hours)
B4	Expenses	Insert reimbursable expenses (if any)
B5	Discount for Extended Services	Discount for extension of Service Request where the Duration including extensions is more than 9 months

Item	Executed	
C1	Service Request	This Service Request is issued pursuant to and is governed by the terms and conditions of Agreement No. [insert details]
C2	RailCorp Business Representative <i>RailCorp's Business Representative for this Service Request</i>	Name:
		Position:
		Address:
		Telephone:
		Fax:
		Email:
		Signature:
Date:		

Item	Executed	
C3	Supplier Service Representative	Name:
		Position:
		Address:
	<i>Supplier's Service Representative for this Service Request</i>	Telephone:
		Fax:
		Email:
		Signature:
		Date:

Schedule 5

FEES

1 Definitions

In this Schedule, the following words have the following meanings:

Agency Mark-Up Percentage means the relevant figure listed in Table 1, below;

Actual Pay Rate means the periodic (hourly/daily) dollar rate (inclusive of any income tax but excluding Superannuation Guarantee Charge) paid by the Supplier to Contract Personnel performing the Services;

Base Salary means the successful Contract Personnel's agreed RailCorp permanent annual salary at commencement not including superannuation, any potential bonuses or loadings;

Business Day means any day other than a Saturday, Sunday or a national or state holiday in New South Wales.

Charge Rate means the total periodic charge (excluding GST) levied on RailCorp by the Supplier, in accordance with Formula 1, below;

Discount for Extended Services means the discount given to Total Charge Rate by the Supplier for Particular Services where they are extended beyond the initial Finish Date for the Particular Services as specified in the Service Request and where the total Duration of the Particular Services (including any extension) exceeds 9 months – this discount is to be included in the Service Request

RailCorp System means the RailCorp Procurement system or any other system nominated by RailCorp in writing from time to time to be used to facilitate the provision of Services.

Insurance Charge means Workers Compensation, levied on RailCorp by the Supplier in accordance with Formula 5 below;

Invoice means a correct and valid invoice submitted by the Supplier to a RailCorp.

Invoice Receipt occurs when the RailCorp System successfully receives a the Supplier's Invoice for payment.

Mark-Up Amount means the amount calculated in accordance with Formula 2, below;

Maximum Referred Contract Personnel Mark Up Amount means the relevant figure listed in Table 2, below;

Paid (in relation to an Invoice) means RailCorp's accounts payable system has successfully instructed the relevant clearing house network to pay that Invoice.

Payroll Tax means the State Payroll Tax as payable under the applicable State or Territory legislation;

Period Worked means the number of hours / days worked by Contract Personnel;

Recruitment Conversion Services means converting temporary Contract Personnel to a permanent RailCorp employee;

Recruitment Conversion Fee means the fee levied on RailCorp for the provision of Recruitment Conversion Services, in accordance with Formula 3, below;

Recruitment Conversion Fee Percentage means the relevant figure listed in Table 2, below;

Referred Contract Personnel means Contract Personnel introduced to the Supplier by RailCorp for the purposes of pay-rolling;

Referred Contract Personnel Charge means an amount calculated in accordance with Formula 4 below;

Referred Contract Personnel Mark-Up Rate means the relevant figure listed in Table 3, below;

Review Period means for any review the consecutive 4 week period ending 5 Business Days immediately prior to that review.

Superannuation Guarantee Charge means the superannuation guarantee charge under the Superannuation Guarantee (Administration) Act 1992 (Commonwealth);

Taxes in this Schedule includes income tax (PAYE), and superannuation contributions;

Total Charge means the total charge (excluding GST) levied on RailCorp by the supplier, in accordance with Formula 1b, below

Total Remuneration Package means the Base Salary plus cash benefit of a successful Contract Personnel's package.

2 Price Schedule

The Prices as listed in this Schedule 5 are subject to adjustment in accordance with the terms of this Schedule. These Prices are inclusive of all taxes (other than GST), duties and customs charges that may be due in connection with the performance of Services for RailCorp, unless otherwise specified.

3 Charges for Contract Personnel

- (a) For Services (except for Referred Contract Personnel which are charged for in accordance with paragraph 3(d)), RailCorp will pay the Supplier a Charge Rate calculated in accordance with the following formula ('Formula 1')

Formula 1: $\text{Charge Rate} = (\text{Actual Pay Rate} + \text{Superannuation Guarantee Charge} + \text{Payroll Tax} + \text{Insurance Charge} + \text{Mark-up Amount})$

Formula 1b: $\text{Total Charge} = \text{Charge Rate} * \text{Period Worked}$

Formula 2: $\text{Mark-up Amount} = \text{Agency Mark-up Percentage} * \text{Actual Pay Rate}$

Table 1. Agency Mark-Up Percentage

Agency Mark-up Percentage	x.x %
---------------------------	-------

- (b) At the Commencement Date, incumbent Contract Personnel provided by the Supplier who are being charged to RailCorp at a percentage mark-up greater than the relevant Agency Mark-Up Percentage in Table 1, shall have their Charge Rate adjusted in accordance with the calculation in Formula 1. The Actual Pay Rate will not be adjusted.

Under no circumstances will the Charge Rate to RailCorp, for any incumbent Contract Personnel, increase as a result of the execution of this Agreement.

- (c) Right to Hire and Temporary to Permanent Guarantees

- (i) RailCorp may offer employment to and hire free of charge any Contract Personnel so long as the Contract Personnel has performed Services for RailCorp for a period of at least four continuous months or the Contract Personnel is currently being managed under the Referred Contract Personnel Charge Rate or the Contract Personnel independently applied to an advertised vacancy and was selected through the Merit Based Selection process.

- (ii) If the Contract Personnel has provided Services for RailCorp for a period less than four months and is not currently being managed under Referred Contract Personnel Charge Rate in paragraph 3(d), the Recruitment Conversion Fee will be paid by RailCorp to the Supplier and be calculated in accordance with the following formula ('Formula 3')

Formula 3: $\text{Recruitment Conversion Fee} = \text{Base Salary} * \text{Recruitment Conversion Fee Percentage}$

Table 2

Tenure of Personnel since commencing with RailCorp	Recruitment Conversion Fee Percentage
0 – 30 days	
31 – 60 days	
61 – 90 days	
91 – 120 days	
Over 120 days	0 %

- (iii) In the event that RailCorp does not calculate Base Salary, the charge for Recruitment Conversion Services will be equal to the Recruitment Conversion Fee Percentage multiplied by eighty five (85) percent (%) of the successful Personnel's Total Remuneration Package.
- (iv) In the event that Contract Personnel are hired permanently by RailCorp under paragraph 3(c)(ii) or 3(c)(iii) and that a Contract Person's employment ceases within three months of commencement of permanent employment for reasons other than redundancy, change in RailCorp ownership or change in role into which the Contract Person was employed, the Supplier shall refund to RailCorp any payment made under paragraph 3(c) in full.

(d) Referred Contract Personnel

For managing Referred Contract Personnel, RailCorp will pay the Supplier a Referred Contract Personnel Charge calculated in accordance with the following formula ('Formula 4'):

Formula 4: Referred Contract Personnel Charge = Referred Contract Personnel Charge Rate * Period Worked

Formula 4b: Referred Contract Personnel Charge Rate = (Actual Pay Rate + Superannuation Guarantee Charge + Payroll Tax + Insurance Charge + Referred Contract Personnel Mark-Up Rate)

Table 3

Referred Contract Personnel Mark-up Rate	
per Hour	per Day
\$x.xx	\$x.xx

(e) Shift and Overtime Mark-up

For Services, RailCorp will pay the Supplier for actual hours of work performed by Contract Personnel. Specifically, where the Actual Pay Rates may be enhanced by shift or overtime levies, the Agency Mark-up Amount remains as outlined in Formula 2 and Formula 4. In other words the Agency Mark-up Amount on any shift or overtime levies is zero.

Example – interpretation of formulae for Overtime:

Where ST = Standard Time and OT = Overtime (ie hours worked over and above standard hours)

Formula 1b: Total Charge = (Charge Rate (ST) * Period Worked (ST)) + ((Charge Rate (OT) * Period Worked (OT))

Formula 1: Charge Rate (ST) = (Actual Pay Rate (ST) + Superannuation Guarantee Charge + Payroll Tax + Insurance Charge + Mark-up Amount (ST))

Formula 1: Charge Rate (OT) = (Actual Pay Rate (OT) + Superannuation Guarantee Charge + Payroll Tax + Insurance Charge + Mark-up Amount (OT))

Formula 2: Mark-up Amount (ST) = Agency Mark-up Percentage * Actual Pay Rate (ST)

Formula 2: Mark-up Amount (OT) = Agency Mark-up Percentage * Actual Pay Rate (ST)

(f) Insurance Charge

(i) The Insurance Charge is calculated in accordance with the following formula ('Formula 5')

Formula 5: Insurance Charge = Insurance Rate * (Actual Pay Rate + Superannuation Guarantee Charge)

(ii) The Supplier must not raise the Insurance Rate to apply to Services available to RailCorp under this Agreement for a period of at least 6 months after the Commencement Date. Following this 6 month period, the Supplier may adjust, increase or decrease, Insurance Charges (subject to RailCorp

approval, which will not be unreasonably withheld) where the Supplier is able to substantiate a change to its Insurance Rate for the provision of Services.

- (iii) The Supplier must substantiate any adjustment in the Insurance Rate to RailCorp and must receive written authorisation from RailCorp prior to adjusting the Insurance Charge in the calculation of the Charge Rate.
- (iv) As of the Effective Date of this Agreement the Insurance Rate is set as a percentage of the Actual Pay Rate + Superannuation Guarantee Charge as outlined in Table 4.

Table 4

State	Insurance Rate (to 1dp)
New South Wales	x.x%
Victoria	x.x%
Queensland	x.x%
South Australia	x.x%
Northern Territory	x.x%
Western Australia	x.x%
Australian Capital Territory	x.x%
Tasmania	x.x%

(g) Discount for Extended Services

Where the duration of a Service Request is extended beyond the initial Finish Date for the Particular Services as specified in the Service Request, and where the total duration of the Particular Services (including any extension) exceeds 9 months, Supplier will be requested to provide a discount to Total Charge Rate as specified in the initial Service Request. This discount is to be included in the subsequent Service Request for the extended period.

Total duration including extension	Discount for Extended Services
	%
	%
	%

4 Price adjustments

- (a) The Supplier must not change the Agency Mark-Up Percentage for the duration of this Agreement (including any Extension Period)

5 Timesheets

- (a) Contract Personnel will conform to the time and expense reporting mechanism ('Timesheet') used or approved by RailCorp. All Timesheets must be completed and submitted weekly by Contract Personnel and approved by RailCorp.
- (b) Contract Personnel will be expected to work during the normal hours of RailCorp. For the purpose of this Agreement a Day represents eight (8) hours. Any shortfall in

hours will result in the actual days of work being adjusted accordingly. No loading of Charges will be made for work performed outside the normal hours of RailCorp except as agreed by RailCorp in writing.

- (c) Day Rates are all up rates and no overtime provisions are permitted unless explicit permission is sought from the RailCorp hiring manager and documented in the Service Request.

6 Taxation liabilities

- (a) The Charges outlined in paragraph 3 of this Schedule and GST are the only amounts payable by RailCorp under this Agreement, and the Supplier acknowledges and accepts that the Supplier is responsible for any and all Taxes and other like liabilities which may arise under any Commonwealth or State or Territory legislation as a result of or in connection with the Agreement.

Schedule 6

DEED OF CONFIDENTIALITY & CONFLICT OF INTEREST DECLARATION

DEED made on the xx day of <month> <year>.....

BY **The Person named in Part A of Annexure B to this Deed**
 (**"Individual"**)

BENEFICIARY **RAIL CORPORATION NEW SOUTH WALES** ABN 59 325 778 353 a
 statutory State-owned corporation constituted by the *Transport Authorisation*
 Act 1988 (NSW), of Level 6, 18 Lee Street, Chippendale, New South Wales,
 2008
 (**"RailCorp"**)

INTRODUCTION

- A. The Supplier has entered into an agreement (Agreement No. XXXXX, dated dd/mm/yy) for the provision of Services to RailCorp (**"Contract"**).
- B. Individual is employed by the Supplier in the provision of Services under the Contract.
- C. In order to give effect to the provisions of the Contract, the Individual has agreed to the following.

PROVISIONS

The interpretation provisions to this Deed are contained in Annexure A.

1. **CONFIDENTIAL INFORMATION**

1.1 **Duty of Confidentiality**

Without limiting any statutory and common law obligations, the Individual must:

- (1) keep Confidential Information confidential; and
- (2) not disclose Confidential Information to any person unless required by law in which case the Individual must notify RailCorp in advance.

1.2 **Notification of Breach of Duty**

The Individual must immediately notify RailCorp of any suspected or actual disclosure of Confidential Information.

2. INTELLECTUAL PROPERTY

2.1 The Individual acknowledges that:

- (1) any Intellectual Property Rights arising as a result of, or in connection with the provision of Services under the Contract will, from their creation, vest exclusively in RailCorp; and
- (2) in any event, the Individual assigns to RailCorp any interest it may have at present or in the future in such Intellectual Property Rights.

2.2 The Individual undertakes to do all such acts and to execute all such documents necessary to vest the Intellectual Property Rights in RailCorp pursuant to this clause.

3. MORAL RIGHTS

3.1 The Individual hereby irrevocably consents to RailCorp doing any acts or any omissions that constitutes an infringement of the Individual's Moral Rights in any Works, including:

- (1) not naming the Individual as the author of the Works;
- (2) amending, changing, adding to or deleting/removing any part of the Works, but only if the Individual is not named as the author of the Works;
- (3) whether any such acts or omissions occur before, on or after the date of this Deed.

4. POLICIES

The Individual warrants that they have been provided with access to the RailCorp Code of Conduct, Drug and Alcohol policy and other relevant Policies and will comply with these Policies in the provision of the Services under the Contract.

5. CONFLICT OF INTEREST

The Individual warrants that:

- (1) they are not Engaged in any business or activity or have any other interest which may conflict with RailCorp's interest including the provision of the Services;
- (2) they are aware that RailCorp is relying on this warranty.

In the event that the Individual becomes aware of any conflict of interest in accordance with this clause, they must immediately notify the RailCorp Representative in writing and if directed by RailCorp, must cease carrying out Services under the Contract immediately.

6. SEVERABILITY

If anything in this Deed is unenforceable, illegal or void then it is severed and the rest of this Deed remains in force.

7. GOVERNING LAW

This Deed is governed by the laws of the State of New South Wales and the Individual irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of New South Wales.

8. HEADINGS

Headings are for reference only and do not affect the meaning of this Deed.

EXECUTED as a Deed

SIGNED SEALED AND DELIVERED by the)
Individual in the presence of:)
)

Signature of Individual

Signature of Witness

Date

Name of Witness (BLOCK LETTERS)

Address of Witness (BLOCK LETTERS)

Annexure A - INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this document, unless the context otherwise requires, the following words have these meanings:

“Confidential Information” means all confidential information including, but not limited to, trade secrets, confidential know-how, client lists and computer software owned or used by RailCorp of which the Supplier or any of its Contract Personnel becomes aware (both before and after the date of this Deed) touching upon the Services.

“Supplier” means the person set out in Part B of Annexure B to this Deed.

“Engage in” means to participate, assist or otherwise be directly or indirectly involved as a member, shareholder, unit holder, director, consultant, adviser, contractor, principal, agent, manager, employee, beneficiary, partner, associate, trustee or financier.

“Intellectual Property Rights” includes copyright, trademark, design, patent, semi-conductor and circuit layout rights and any rights to regulation of such rights.

“Moral Rights” has the same meaning as that term in Part VIII of the *Copyright Act 1968 (Cth)*, as amended from time to time.

“Policies” means human resources, environmental, occupational health and safety and rail safety policies including policies and procedures dealing with:

- (a) privacy obligations;
- (b) harassment including sexual harassment;
- (c) equal opportunity;
- (d) discrimination; and,
- (e) alcohol and other drugs.

“Services” means the services provided by the Supplier to RailCorp pursuant to the Contract.

“Supplier Services Representative” means the Supplier representative listed in Part B of Schedule B to this Deed.

“RailCorp Representative” means the RailCorp representative listed in Part C of Schedule B to this Deed.

“Schedule” means schedules, annexures and appendices to this Deed.

“Works” means all programs, programming, literary, dramatic, musical and artistic works within the meaning of the *Copyright Act 1968 (Cth)*, as amended from time to time.

1.2 Interpretation

- (1) **(singular/plural)** words denoting the singular include the plural and vice versa; and
- (2) **(reference to any instrument)** a reference to any instrument (such as a deed, agreement or document) is to that instrument, or, if required by the context to have part of it, as amended, novated, substituted or supplemented at any time and from time to time.

1.3 Schedules

The Schedules form part of this Deed.

Annexure B - PARTICULARS

PART A: Individual

Name:
Position:
Address:

Telephone:

PART B: Supplier Services Representative

Name:
Position:
Email:
Address:

Telephone:

PART C: RailCorp Representative

Name:
Position:
Email:
Address:

Telephone:

Schedule 7

STATEMENT OF OBLIGATIONS AND RESPONSIBILITIES FOR ALL RAILCORP CONTRACT PERSONNEL

- A. RailCorp is a State Owned Corporation constituted under the Transport Administration Act 1988. Your employment at RailCorp is governed by Legislation, Regulations and applicable awards and certified agreements. Your Agreement with us shall not conflict with any rights or obligations arising under such Legislation, Regulations, awards or certified agreements and to the effect of any such inconsistency between such Legislation, Regulations, awards or certified agreements applicable to your engagement at RailCorp, such Legislation, Regulations, awards or certified agreements shall prevail.
- B. During your engagement at RailCorp you will at all times:
- i. carry out the duties and obligations imposed by law with respect to the position, including diligently and faithfully carrying out your work within the objectives, functions and powers of RailCorp as specified in the Transport Administration Act 1988 and State Owned Corporations Act 1989, together with RailCorp's policies and procedures;
 - ii. carry out the duties and obligations specified in Position Description and such other duties as are required by RailCorp from time to time;
 - iii. comply with any lawful direction given by RailCorp;
 - iv. report regularly to your supervisor at such times as are determined by your supervisor;
 - v. take leave only as approved by your supervisor at RailCorp;
 - vi. act ethically to ensure that the work practices within RailCorp maintain a high ethical standard; and
 - vii. not disclose or use any of RailCorp's trade secret, private or confidential information during or after your engagement at RailCorp except in the proper course of your duties, or to the extent that such information is required to be disclosed by law.
- C. While the duties and responsibilities of your position are set out in the Position Description, you may be required from time to time to perform other duties relevant to your role and within your skill level, even though such duties may not be specifically detailed in the Position Description.
- D. In addition to the terms and conditions set out in our Agreement, you shall while engaged at RailCorp observe and fulfil the following obligations and responsibilities, any Failure to comply with these requirements may result in immediate termination of your employment:
- i. RailCorp's first priority is provide you with a safe working environment, to ensure your safety and achieve this goal you must comply with RailCorp's health and safety policies and procedures.
 - ii. RailCorp is committed to protecting the health and safety of all employees, customers and members of the public by minimising accidents, incidents or injuries arising from the misuse of drugs or alcohol. This commitment involves maintaining an alcohol and drug free workforce whilst on duty. All staff must be drug and alcohol free whilst at work. There are legislative and policy procedures in place which allows RailCorp to undertake random drug & alcohol tests on any employee. Accordingly you may be required to undertake random drug & alcohol testing in accordance with RailCorp's procedures and as part of your agreement with us and agree to comply with any such request when made by a duly authorised officer of RailCorp.
 - iii. RailCorp's Code of Conduct sets out the standards required of its staff and you shall as part of your engagement with RailCorp comply with its Code of Conduct.

- Details of RailCorp's Code of Conduct will be provided to you during your induction at RailCorp.
- iv. RailCorp is an equal opportunity employer and as such you are obliged to comply with its EEO and antidiscrimination policies.
 - v. RailCorp is a smoke free workplace and as such you are obliged to comply with such policy.
 - vi. RailCorp may provide you with computer and internet access as part of your employment. You are obliged to comply with RailCorp's Information Communication Technology Service Access and Usage Policy pertaining to any use of RailCorp's computing environment, a copy of such policy will be provided to you during your induction at RailCorp.
 - vii. RailCorp as part of your engagement may require you to undergo a pre-employment medical examination. If a pre-employment medical examination is required by RailCorp any engagement with RailCorp will be subject to satisfactory completion of such medical examination.
 - viii. RailCorp may require you to hold certain qualifications, certificates and/or licences to fulfil the position requirements, you are required to obtain and maintain as current all such qualifications, certificates and licences which are relevant to your engagement at RailCorp. RailCorp may at any time require you to prove that your qualifications, licenses and safe working certificates are current and you shall provide such substantiation as and when requested by RailCorp.
 - ix. RailCorp maintains a secure workplace and you maybe requested by a security or authorised officer of RailCorp to submit to a search at any time, you must if so requested agree to and permit an inspection of any parcels, bags or other containers in your possession or control, any motor vehicle driven by you, and/or any lockers or desks used by you.

Any breach of RailCorp Code of Conduct, policies and procedures may result in the termination of your employment.

- E. Your employment may be terminated summarily and without notice if you are found guilty by RailCorp of any serious misconduct. "Serious misconduct" includes but is not limited to, theft, fighting, verbal abuse, and consumption of alcohol and/or drugs and other matters set out in RailCorp's policies and procedures.
- F. Upon the termination of your engagement at RailCorp for any reason you shall return to RailCorp, or its named representative all property, documents, records, papers, computer disks and other materials (together with all copies) in your possession or control which RailCorp owns or administers, or which relate in any way to RailCorp's business or activities.

PART C
SCHEDULE 8