

CONDITIONS

1. INTERPRETATIONS AND GENERAL MATTERS

1.1 Definitions

- 1.1.1 "Background Intellectual Property" means any and all Intellectual Property Rights owned or licensed by the Supplier independently of this Purchase/Service Order and used in connection with the performance of the Services or which subsist in any materials provided to the Customer under this Purchase/Service Order.
- 1.1.2 "Purchase/Service Order Intellectual Property" means any and all Intellectual Property Rights developed by or on behalf of the Supplier in connection with the performance of the Services.
- 1.1.3 "Customer" means KDR Victoria Pty Ltd (ACN 138 066 074) trading as Yarra Trams.
- 1.1.4 "Customer Intellectual Property" means any and all Intellectual Property Rights owned or licensed by the Customer independently of this Purchase/Service Order.
- 1.1.5 "day" means a calendar day.
- 1.1.6 "FIS" means, in relation to delivery of the Goods, free in store and includes the responsibility (and associated costs) for packing, loading, transportation, delivery and insurance (for the full replacement value of the Goods) to the nominated delivery point for the Goods.
- 1.1.7 "Goods" means all goods, equipment, materials, articles, or any other property or parts to be provided to the Customer by the Supplier under the Purchase/Service Order and includes, without limitation, all ancillary activities such as design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and delivery as specified or required hereunder.
- 1.1.8 "Health Information" has the meaning given in the Health Records Act.
- 1.1.9 "Health Records Act" means the *Health Records Act 2001* (Vic).
- 1.1.10 "Health Services Commissioner" has the meaning given in the Health Records Act.
- 1.1.11 "HPP" has the meaning given to 'Health Privacy Principle' in the Health Records Act.
- 1.1.12 "Information Privacy Act" means the *Information Privacy Act 2000* (Vic).
- 1.1.13 "Intellectual Property Rights" mean all intellectual property rights subsisting anywhere in the world, whether or not such rights are registered or capable of being registered, including but not limited to, the following rights:
 - (a) patents, copyright, rights in circuit layouts, designs, trade and service marks (including goodwill in those marks), domain names and trade names and any right to have confidential information kept confidential; and
 - (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).
- 1.1.14 "IPP" has the meaning given to 'Information Privacy Principle' in the Information Privacy Act.
- 1.1.15 "Losses" means all loss, damage, liability, cost or expense arising from the performance or non performance (including any negligent or willful act or omission), any breach or default of parties' obligations under this Purchase/Service Order and includes any loss, damage, liability, cost or expense agreed to be paid by way of settlement or compromise.
- 1.1.16 "Personal Information" means any information or opinion about a natural person (whether true or not), including 'Personal Information' as that term is defined in the Information Privacy Act and 'Health Information' as that term is defined in the Health Records Act.
- 1.1.17 "Privacy Consent" means an individual's consent to the Customer or the PTV (as the case may be):
 - (a) collecting, using or disclosing Personal Information about them; and
 - (b) disclosing their Personal Information to the Customer, the PTV or any other person nominated by the PTV.
- 1.1.18 "Privacy Laws" means the Information Privacy Act, the Health Records Act, the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth) and all other laws, rules and regulations in Australia which relate to the privacy, protection, use or disclosure of Personal Information.
- 1.1.19 "Privacy Notice" means a notice provided for the purposes of satisfying IPP1.3 or 1.5 or HPP1.4 or 1.5 (as the case may be) in a format approved by the PTV after consultation with the Customer.
- 1.1.20 "Privacy Purpose" means, in relation to any Personal Information, the purpose for which the Personal Information was originally provided to the Customer or PTV by the individual.
- 1.1.21 "Public Transport Control and Information Systems Strategy 2009" means the document of that name, issued by the State and signed by the Customer and the State on or about 31 August 2009 for the purpose of identification, as amended, varied, supplemented, renamed or replaced from time to time, which strategy includes a guidance framework for the design, selection and management of future public transport sector information and communications technology assets.
- 1.1.22 "PTV" means the Public Transport Development Authority.
- 1.1.23 "PTV Intellectual Property" means any Intellectual Property Rights that are owned or licensed by the PTV and that are licensed to Yarra Trams, but excludes Contract Intellectual Property.
- 1.1.24 "PTV's Associates" means the State and any Victorian governmental agency and any officer, employee, agent, contractor or adviser of or to the PTV, the State or any Victorian governmental agency.
- 1.1.25 "Public Transport Development Authority" (trading as Public Transport Victoria) means a body corporate established under the Transport Integration Act 2010 (Vic).
- 1.1.26 "Purchase/Service Order" means the purchase order and/or service order issued by the Customer to the Supplier as evidenced by the documents listed in the Purchase/Service Order Form.
- 1.1.27 "Purchase/Service Order Form" means the section of the Purchase/Service Order to be completed by the Customer, which identifies the Supplier and includes but is not limited to a brief description of the Services and/or Goods and a list of the documents comprising the Purchase/Service Order.
- 1.1.28 "Related Privacy Purpose" means, in relation to any Personal Information, a purpose that is related to the Privacy Purpose of that Personal Information or, if the Personal Information is Sensitive Information or Health Information, directly related to the Privacy Purpose of that Personal Information, and for which the individual would reasonably expect the Personal Information to be used or disclosed.
- 1.1.29 "Rolling Stock Maintenance Services" means any maintenance services or other works to:
 - (a) rolling stock;
 - (b) rotatable items; or
 - (c) any tool (including an electronic diagnostic tool) that may be used in a specific activity for maintaining the rolling stock or rotatable items.
- 1.1.30 "Safety Law" means any law in relation to health and safety including the following:
 - (a) *Occupational Health and Safety Act 1991* (Cth);
 - (b) *Safety, Rehabilitation and Compensation Act 1988* (Cth);
 - (c) *Dangerous Goods Act 1985* (Vic);
 - (d) *Rail Safety Act 2006* (Vic); and
 - (e) *Occupational Health and Safety Act 2004* (Vic), or any replacement or equivalent law.

- 1.1.31 "Sensitive Information" has the meaning given to that term in the Information Privacy Act.
- 1.1.32 "Services" means the services as set out and further detailed in the Purchase/Service Order Form.
- 1.1.33 "Successor Operator" means a tram operator succeeding the Customer in the conduct or operation of all or any part of the Melbourne metropolitan tram business (and includes any related entity nominated by the Successor Operator to conduct part of the tram network).
- 1.1.34 "Supplier" means the person performing the Services and/or providing the Goods, as identified in the Purchase/Service Order Form.
- 1.1.35 "Warranty Period" means:
 - (a) in relation to Services, the period commencing on the date of completion of the Services and lasting for a period of one (1) year thereof;
 - (b) in relation to Goods, the date of the final supply of the Goods to the nominated delivery point and lasting for a period of one (1) year thereof.
- 1.2 Interpretations**
- 1.2.1 Words importing the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and must not be used to interpret the text. Words denoting a natural person shall include a corporation and vice versa.
- 1.2.2 Rights and remedies under the Purchase/Service Order are in addition to rights or remedies available at law (including under statute).
- 1.3 Supplier to Inform Itself**
- 1.3.1 The Supplier shall be deemed to have carefully examined all documents furnished by the Customer and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the performance of the Services and/or the supply of the Goods. No increase in the Purchase/Service Order price will be allowed for the Supplier's failure to ensure that it is fully informed regarding all the circumstances relating to the Purchase/Service Order.
- 1.4 Order of Precedence**
- 1.4.1 Unless otherwise stated, the order of precedence of any of the following documents listed in the Purchase/Service Order Form, will be as follows:
 - (a) The Purchase/Service Order Form
 - (b) General Terms and Conditions (this document)
 - (c) Specification(s)
 - (d) Drawing(s)
- 1.5 Ambiguities**
- 1.5.1 If the Supplier discovers any ambiguity in the Purchase/Service Order it shall immediately notify the Customer in writing. The Customer will then determine the correct interpretation of the Purchase/Service Order. The determination of the Customer will be final and binding on the Supplier and have no effect on the Purchase/Service Order price.
- 1.6 Use of Documentation and Equipment**
- 1.6.1 Documents prepared in relation to, or ancillary to the Purchase/Service Order, must not be copied or used for any other purpose than the performance of the Services and/or supply of the Goods by the Supplier to the Customer, without the prior written approval of the Customer.
- 1.6.2 The Supplier will keep any equipment included in the assistance provided by the Customer safe and return it to the Customer in its original state on expiry or termination of this Purchase/Service Order (fair wear and tear excepted), failing which the Supplier will pay the cost of repair or replacement (at the Customer's option).
- 1.7 Waiver**
- 1.7.1 No failure or delay on the part of the Customer in exercising any of its rights under the Purchase/Service Order shall be construed as constituting a waiver of any such rights.
- 1.8 Entire Agreement**
- 1.8.1 The Purchase/Service Order constitutes the entire agreement between the Customer and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase/Service Order has any effect on the Purchase/Service Order unless specifically incorporated herein. Without limitation, no quotation or Supplier standard terms and conditions of supply shall form part of this Purchase/Service Order unless otherwise agreed in writing by the Customer.
- 1.9 Communications**
- 1.9.1 Any notice or other communication required under the Purchase/Service Order shall be delivered in writing. Such written communication will be provided in English. Verbal instructions or directions from the Customer shall be confirmed in writing to the Supplier within a reasonable time. The notice shall take effect from the time when it is delivered to or received at the nominated address of the parties.
- 1.10 Licences and Laws**
- 1.10.1 The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, directions received from the PTV, orders and rules and with the lawful requirements of public authorities and other authorities in any way related to the supply of the Goods and/or the performance of Services. No change in licenses or laws will affect the Purchase/Service Order price.
- 2. PERFORMANCE AND QUALITY**
- 2.1 Materials and Workmanship**
- 2.1.1 All Services and/or Goods shall be fit for purpose. The Supplier must use new and undamaged materials, unless otherwise specified in the Purchase/Service Order and the workmanship must be of a high quality and standard. The work must be carried out in accordance with good engineering practice and comply with all applicable Australian standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws. Goods supplied must meet all applicable Australian standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation all statutory obligations in relation to occupational health and safety.
- 2.2 Supplier Qualifications**
- 2.2.1 The Supplier represents and warrants to the Customer that it has the necessary skills, resources and experience to successfully perform the Services and/or supply the Goods in accordance with the requirements of the Purchase/Service Order.
- 2.3 Testing and Inspection**
- 2.3.1 The Goods and/or Services must be tested in accordance with the requirements of the Purchase/Service Order, including any Specification. Unless otherwise stated in the Purchase/Service Order, any tests and the costs thereof will be the responsibility of the Supplier. The results of tests shall be promptly supplied to the Customer in writing.
- 2.3.2 The Customer will have the right to inspect, expedite and monitor performance of the Services and/or the delivery of the Goods and the Supplier must give the Customer access to the Supplier's premises for such purpose during its normal working hours. The Services and/or Goods will not be accepted by the Customer until inspected and approved in writing by the Customer. Any inspection by the Customer will not relieve the Supplier from its obligations to comply with the requirements of the Purchase/Service Order and will in no way impair the Customer's right to require subsequent correction or re-performance of non-conforming Services and/or Goods.

- 2.4 Quality Standards**
 2.4.1 The Supplier must comply with the standards of quality specified in the Purchase/Service Order. If no standards are specified the Supplier must comply with the best practice industry standards applicable to the Services and/or Goods concerned.
- 2.5 Defects and Warranty**
 2.5.1 The Supplier warrants that the Goods shall:
 (a) be free from liens, charges, encumbrances, mortgages or other defects in title;
 (b) be new and made to the specified quality.
 (c) be free from defects in design, materials and workmanship; and
 (d) conform to the conditions and specifications of the Purchase/Service Order.
- 2.5.2 The Supplier warrants that the Goods and Services shall:
 (a) conform to all applicable laws and regulations to which the Services or Goods are subject; and
 (b) be performed in accordance with any performance standard specified in the Purchase/Service Order.
- 2.5.3 The Supplier warrants that it will comply with any of the Customers policies notified by the Customer to the Supplier from time to time, including without limitation any of the Customer's privacy policies.
- 2.5.4 The warranties noted in Clause 2.5.1 above are in addition to any statutory warranties applicable to the Services and/or Goods.
- 2.5.5 During the Warranty Period, the Customer may give written notice to the Supplier of any failure or defect in the Services and/or Goods. The Supplier must without delay and at no cost to the Customer:
 (a) correct any defect in the Services covered by the warranty, by way of re-performance of the Services in a manner acceptable to the Customer; or
 (b) correct any defect or failure in the Goods covered by the warranty, by way of repair, replacement, modification or other means acceptable to the Customer.
- 2.5.6 If the Supplier fails to correct any defects and failures, of which it has been notified by the Customer, within the time specified in the notice (which must not be unreasonable), the Customer will have the right to rectify the Services and/or Goods itself or have the rectification undertaken by a third party. All costs so incurred will be a debt due and payable by the Supplier to the Customer which may be deducted from moneys otherwise owing to the Supplier by the Customer.
- 2.5.7 Any Services re-performed or rectified and/or any Goods repaired under warranty may be subject to a further full Warranty Period, if required by the Customer, commencing on the date of completion of any such re-performance, rectification or repair.
- 2.5.8 Where the Supplier is not the original equipment manufacturer of the Goods the Supplier must obtain for the Customer's benefit such standard warranties, indemnities and rights as those outlined in this Purchase/Service Order and where more are offered, then the Supplier must provide such additional warranties, indemnities and rights to the Customer.
- 3. DELIVERY/DELAY**
 3.1 Unless otherwise specified in the Purchase/Service Order, Goods must be delivered FIS, adequately packaged and protected to ensure safe delivery, to the delivery point and by the delivery date(s) specified in the Purchase/Service Order Form
 3.2 Title in the Goods will transfer to the Customer upon payment for the Goods. Such payment is not, and will not be deemed to be, an acknowledgement of the acceptability of the Goods. Notwithstanding that the Customer has taken delivery of the Goods, the Supplier will remain responsible for any loss or damage to the Goods, which may have occurred prior to delivery, and for any non-compliance of the Goods with the requirements of the Purchase/Service Order.
 3.3 The Supplier must take all reasonable steps to minimise or prevent any delay in the performance of the Services or the delivery of the Goods. The Customer may grant an extension of time to the nominated delivery date or in the performance of the Services provided:
 (a) the delay is caused by a breach or act of prevention by the Customer, (without fault of the Supplier);
 (b) the Supplier has notified the Customer in writing within seven (7) days of the delay occurring (or such other time as may be specified in the Purchase/Service Order) of its claim for an extension of time. The Customer shall not be liable for any extension of time claim that is not lodged in writing with the Customer within seven (7) days of the delay occurring.
- 3.4 The Customer may in its absolute discretion (and with no obligation to do so) extend the time for performance or delivery for any other reason at any time prior to expiration of the Warranty Period.
- 3.5 If the Supplier fails to perform the Services in a timely fashion or fails to deliver the Goods by the specified delivery date(s), the Customer may terminate the Purchase/Service Order either in whole or in part for default, in accordance with the provisions of Clause 5.2 and/or deduct from monies due to the Supplier as liquidated damages, representing a genuine pre-estimate of the Customer's damages and not as a penalty, the amount specified in the Purchase/Service Order Form, for each week or part thereof in which the non-performance continues or delivery exceeds the specified delivery date.
- 4. VARIATIONS**
 4.1 The Customer may vary the work under the Purchase/Service Order or any condition thereof and the Supplier must carry out any such variation as directed by the Customer. In the event of any such variation, the Supplier's price (addition or reduction) will be varied together with the delivery date(s) for the Services and/or Goods. Any variation to the price will be consistent with prices charged by the Supplier in accordance with the Purchase/Service Order. If agreement cannot be reached in relation to a revised price or delivery date(s), the parties will seek to resolve the dispute in accordance with Clause 9.
 4.2 The Supplier must not vary the work under the Purchase/Service Order or any condition thereof, without the written consent of the Customer.
- 5. SUSPENSION/TERMINATION**
5.1 Suspension
 5.1.1 The Customer may, at any time by written notice, suspend all or part of the Purchase/Service Order for any reason whatsoever. Upon receipt of a notice of suspension, the Supplier will cease work in accordance with the directions of the notice. The Supplier must recommence the work under the Purchase/Service Order within forty-eight (48) hours of being directed to do so by the Customer.
- 5.2 Termination by Default**
 5.2.1 Without limiting any other rights it may have, a party (the "notifying party") may give a written notice stating its intention to terminate the contract pursuant to this Clause 5.2 to the other party (the "defaulting party") in the event that the defaulting party:
 (a) abandons or repudiates the Purchase/Service Order;
 (b) suspends performance of the contract for a significant time, or fails to pay monies due under the Purchase/Service Order, without reasonable cause;
 (c) breaches any of the terms and conditions of the Purchase/Service Order which is not remedied within seven (7) days of notice to do so; or
 (d) appears likely to become subject to an Insolvency Event described in Clause 5.3.
- 5.3 Termination for Insolvency**
 5.3.1 If either party becomes bankrupt or insolvent or makes any agreement with its creditors compounding debts or if, being an incorporated entity, any proceedings are begun in respect of it applying for the appointment of a liquidator, administrator, receiver or similar official for it or all or any substantial part of its assets or seeking an order of relief against it as debtor or under any law relating to insolvency, readjustment of debt, reorganisation, administration or liquidation (each such event or process referred to in these General Terms and Conditions as an "Insolvency Event"), the other party may at any time by written notice terminate the contract forthwith.
- 5.4 Termination at Customer's Option**
 5.4.1 Notwithstanding any other provisions of the Purchase/Service Order, the Customer may terminate the Purchase/Service Order at any time and for any reason whatsoever by giving seven (7) days written notice to the Supplier.
- 5.5 Supplier's Rights and Obligations on Suspension /Termination**
 5.5.1 In the event of suspension of the Purchase/Service Order, the Supplier will not be entitled to payment by the Customer for any costs it may incur as a result of any such suspension.
 5.5.2 In the event of insolvency of the Supplier or its default under Clause 5.2, the Customer shall immediately suspend any further payment to the Supplier. Any additional monies required by the Supplier to complete the Purchase/Service Order in excess of what the Customer would have paid under the Purchase/Service Order shall be a debt due and payable by the Supplier to the Customer.
 5.5.3 In the event of termination by the Customer under Clause 5.4, and provided the Supplier is not in default, the Customer shall pay the Supplier for Services performed or Goods delivered prior to termination. The Customer shall not otherwise be liable for any other costs, losses, damages or expenses of any kind whatsoever of the Supplier in respect of the termination.
- 6. PRICE AND PAYMENT**
 6.1 Unless otherwise stated in the Purchase/Service Order, prices shall be fixed and not subject to any variation, including but not limited to variations in the cost of labour, material or exchange rates.
 6.2 The Supplier shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, goods and services taxes, PAYG taxes applicable to the Supplier, duties and charges payable with respect to the Goods and/or Services. The Purchase/Service Order price will be deemed to be inclusive of all such taxes, duties and charges.
 6.3 Unless otherwise specified in the Purchase/Service Order, invoices for payment must be submitted to the Customer for payment following delivery of the Goods or following performance of the Services, and payment of the approved amount will be made by the Customer no later than thirty (30) days from the end of month during which the invoice was received.
 6.4 To the extent that any Taxable Supply occurs under the Purchase/Service Order then:
 (a) the party who is the supplier will, be entitled to increase the consideration for the Taxable Supply identified in the Purchase/Service Order ("net consideration") by the amount of any applicable GST calculated in accordance with the Act;
 (b) the recipient shall pay such increased consideration;
 (c) the supplier must in a situation such as described in Clause 6.4, issue to the recipient at the time of claiming payment a valid tax invoice (in accordance with Act) for the purpose of obtaining an input tax credit for any GST so paid;
 (d) in Clauses 6.4(a) and (b), "Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated legislation and regulations, "GST" means the goods and services tax imposed by the Act and "Taxable Supply" means a taxable supply under the Act.
- 7. SUPPLIER NOT TO SUBCONTRACT OR ASSIGN**
 7.1 The Supplier must not subcontract, assign, novate, transfer, mortgage, charge or encumber any right or obligation, in whole or in part, under this Purchase/Service Order without the prior written consent of the Customer (in its absolute discretion).
 7.2 The Supplier must obtain the approval of the Customer to full particulars of any work to be subcontracted together with details of the proposed subcontractor prior to entering into any subcontract. Approval of the Customer to any subcontract will in no way relieve the Supplier of any of its obligations under the Purchase/Service Order.
- 8. RELATIONSHIP**
 8.1 In relation to the performance of Services, the Supplier will provide the Services as an independent contractor and nothing in this Purchase/Service Order will be construed so as to constitute the Supplier as an employee of the Customer or constitute a partnership between the parties or so as to constitute either party as the agent or legal representative of the other party.
- 9. DISPUTES**
 9.1 Disputes or differences arising between the Customer and the Supplier must be settled quickly and by negotiation.
 9.2 In the event of any unresolved dispute between the Customer and the Supplier, the Supplier must ensure that the progress of the work under the Purchase/Service Order is continued without any effect on the specified delivery date.
 9.3 The preferred method of determination of unresolved disputes will be by amicable agreement at the senior management level of the Customer and the Supplier.
 9.4 If the parties cannot resolve a dispute within twenty-one (21) days the dispute is first raised between the parties, the parties agree that the dispute must then be referred to the Australian Commercial Disputes Centre ("ACDC") for mediation. The dispute must be heard within fourteen (14) days after it is referred to the ACDC.
 9.5 Neither party may litigate until the procedures in Clauses 10.1 to 10.4 above have first been complied with.
- 10. INSURANCE AND INDEMNITIES**
 10.1 The Supplier must maintain the insurances specified below from the commencement of this Purchase/Service Order until seven (7) years after the completion of the delivery of the Goods and/or Services;
 (a) The Supplier must maintain public and product liability insurance for an amount of not less than \$20,000,000, professional indemnity insurance for an amount of not less than \$5,000,000 and where applicable goods in transit insurance (for the total replacement value of the Goods);
 (b) the Supplier must ensure that its public liability and products liability policy each name the Customer as an additional insured and contain a cross-liability clause which allows the Customer to make a claim as though individual insurance policies had been issued to the Supplier and the Customer;
 (c) not reduce the level of insurance required by this Purchase/Service Order without the written consent of the Customer; and

- (d) give evidence of the insurances, and their currency, acceptable to the Customer on request.
- 10.2 The Supplier indemnifies the Customer in respect of all Losses arising out of the Supplier's performance or non performance (including any negligent or wilful act or omission), or any breach or default of its obligations under this agreement to an amount equal to five (5) times the amount paid or payable by the Customer under this Purchase/Service Order, except for Losses arising from personal injury or death (including disease or illness), third party property damage, breach of a third party's Intellectual Property Rights, delays to tram passenger services, breach of confidence and loss arising from fraud or unlawful act, where no limitation applies.

11. APPLICABLE LAW

- 11.1 Unless otherwise specified, the Purchase/Service Order will be governed and construed in accordance with the laws of Victoria. The Customer and the Supplier submit to the non-exclusive jurisdiction of the courts of Victoria.
- 11.2 The United Nations Convention on Purchase/Service Orders for the International Sale of Goods does not apply to this Purchase/Service Order.
- 11.3 Clauses 1.1, 1.2, 1.3, 1.6, 1.7, 2.5, 3.5, 5.5, 7, 8, 9, 10, 11 and 12 survive the termination or expiry of this Purchase/Service Order as do any other provisions that by implication from their nature are intended to survive the termination or expiry, and any rights and remedies accrued prior to termination.

STATE MANDATED PROVISIONS

12.1 Confidential information and disclosure

- (a) The Supplier must treat all aspects of this Purchase/Service Order and all information provided to it by the Customer or any servant or agent of the Customer as confidential and only use that information for the purpose of performing its obligations under this Purchase/Service Order.
- (b) The Customer may disclose any or all of the Purchase/Service Order and any documents or information that the parties are required to keep confidential under the Purchase/Service Order, to:
- the PTV and its legal and other professional advisers, agents or representatives, the PTV's Associates, auditors and other suppliers and employees of the PTV; and
 - proposed or prospective Successor Operators, and their respective agents, contractors, suppliers and advisers, who have undertaken to the PTV to keep the Purchase/Service Order and any such information confidential.
- (c) The Supplier acknowledges and agrees that the PTV may also disclose any or all of the Purchase/Service Order and any document or information that the parties are required to keep confidential under the Purchase/Service Order, to the recipients referred to Clause 12.1(b).
- (d) The obligations under this Clause shall survive the completion or termination of the Purchase/Service Order and continue for a period of three (3) years from the completion or termination of the Purchase/Service Order.

12.2 Access by PTV

- (a) If the Supplier:
- maintains or stores any books, records, information, data or other material on behalf of the Customer; or
 - holds any rolling stock, parts, spares, tools or other items that relate to the Customer's business,
- the Supplier acknowledges and agrees that the PTV, the Principal and their agents or representatives may, at any reasonable time, attend the Supplier's premises and inspect those items and take copies of books, records and other material kept on behalf of the Customer.
- (b) The Customer will use reasonable endeavours to provide two days' notice to the Supplier prior to an inspection by the PTV or the Customer.

12.3 Rolling Stock Maintenance Warranties

- (a) If the Supplier is to provide Rolling Stock Maintenance Services under this Purchase/Service Order, the Supplier warrants that the Rolling Stock Maintenance Services will be provided with due care and skill and will be fit for the purposes required by this Purchase/Service Order.
- (b) The Customer may at any time, and without any restriction or cost, assign the benefit of the warranties provided under Clause 12.3(a) to the PTV or its nominee.

12.4 Safety Law requirements

The Supplier must comply with all Safety Laws.

12.5 Public Transport Control and Information Systems Strategy

The Supplier must comply with the Public Transport Control and Information Systems Strategy 2009.

12.6 Intellectual property rights

- (a) *Purchase/Service Order Intellectual Property*
- (i) The Supplier:
- acknowledges and agrees that all right, title and interest in and to the Purchase/Service Order Intellectual Property will be owned by the Customer;
 - assigns to the Customer all right, title and interest in and to the Purchase/Service Order Intellectual Property with effect from the date of creation of the Purchase/Service Order Intellectual Property (including by way of assignment of future Intellectual Property Rights); and
 - must procure that any employees, subcontractors or other persons who own any right, title and interest in and to the Purchase/Service Order Intellectual Property assign such right, title and interest to the Supplier with effect from the date of creation of the Purchase/Service Order Intellectual Property in order for the Supplier to comply with this Clause 12.6(a).
- (ii) The Customer grants to the Supplier a non-exclusive, royalty-free licence for the term of this Purchase/Service Order to use the Purchase/Service Order Intellectual Property for the sole purpose of providing the Services under this Purchase/Service Order, but solely to the extent that the Customer is able to grant such a licence without breaching any obligation it owes to any third party (including the PTV).
- (b) *Background Intellectual Property*
- The Supplier grants to the Customer an irrevocable, perpetual, non-exclusive, royalty-free licence (with the right to sub-license) to use, reproduce, adapt, publish and communicate any materials in which Background Intellectual Property subsists for the purpose of the Customer exercising its rights in and to the Purchase/Service Order Intellectual Property.
- (c) *Disclosure*
- The Supplier must disclose to the Customer on request:
- all Purchase/Service Order Intellectual Property and Background Intellectual Property, including by providing to the Customer:
 - any details of the Purchase/Service Order Intellectual Property or Background Intellectual Property requested by the Customer;

- copies of any works or other matter in which Purchase/Service Order Intellectual Property or Background Intellectual Property subsists if required by the Customer; and
 - in the case of any Purchase/Service Order Intellectual Property, all materials in which the Purchase/Service Order Intellectual Property subsists; and
- (ii) certificates of registration and currency in relation to any registered Background Intellectual Property,
- and the Supplier acknowledges and agrees that the Customer may disclose any information or materials provided under this Clause 12.6(c) to the PTV if required under the terms of any agreement between the Customer and the PTV.

(d) *Licence by the Customer*

- The Customer grants to the Supplier a non-exclusive, non-transferable, royalty-free licence to disclose, reproduce, copy, adapt, publish, perform, exhibit, transmit, communicate, rent or make other use of the:
 - PTV Intellectual Property; and
 - any Customer Intellectual Property which is made available to the Supplier by the Customer by notice in writing to the Supplier,for the sole purpose of providing the Services under this Purchase/Service Order, but (in the case of any PTV Intellectual Property) solely to the extent that the Customer is able to grant such a licence without breaching any obligation it owes to any third party (including the PTV).
- The licence granted under Clause 12.6(d)(i) expires on the earlier of the termination or expiry of this Purchase/Service Order and:
 - in the case of PTV Intellectual Property licensed to the Customer under the infrastructure lease between the Customer, the PTV and Victorian Rail Track, the termination or expiry of that infrastructure lease; or
 - in the case of PTV Intellectual Property licensed to the Customer under the projects agreement between the Customer and the PTV, the termination or expiry of that projects agreement.

(e) *Intellectual Property Warranties*

The Supplier represents and warrants that:

- it is entitled to grant to the Customer the assignment under Clause 12.6(a) and the licence under Clause 12.6(b);
- any use by the Customer of the Purchase/Service Order Intellectual Property or Background Intellectual Property pursuant to the rights granted to it under Clauses 12.6(a) and (b) respectively will not infringe the rights of any third party (including Intellectual Property Rights) nor give rise to any demand, claim, action or proceeding, however arising and whether present, unascertained, immediate, future or contingent ("Claim") threatened, made or brought against the Customer, whether for the payment of compensation, royalties or otherwise, or to make any attribution or acknowledgement or rectification, in relation to the Purchase/Service Order Intellectual Property or Background Intellectual Property;
- it will take all reasonable steps required to maintain registration of, and defend any challenges to the ownership or validity of, all Background Intellectual Property; and
- it will provide, and ensure that its employees provide, any reasonable assistance requested by the Customer to protect, enforce and defend the interest and right in and to the Background Intellectual Property and the Purchase/Service Order Intellectual Property of the Customer or any person to whom the Customer has assigned or sub-licensed any of its right or interest.

(f) *Confidentiality*

The Supplier must hold in strict confidence, and not directly or indirectly disclose to any person:

- the Purchase/Service Order Intellectual Property;
- the PTV Intellectual Property; and
- any Customer Intellectual Property that is made available to the Supplier or of which the Supplier otherwise becomes aware in connection with this Purchase/Service Order, except with the prior written consent of the Customer or as strictly necessary for the Supplier to provide the Services in accordance with this Purchase/Service Order.

(g) *Rights granted to PTV*

- Clause 12.6(g)(iii)(A) does not apply to any Purchase/Service Order Intellectual Property assigned to the Customer in accordance with Clause 12.6(a).
- Clause 12.6(g)(iii) does not apply to any PTV Intellectual Property.
- Notwithstanding anything to the contrary in this Purchase/Service Order:
 - The Supplier grants to the Customer the right to grant to the PTV a perpetual, irrevocable, non-exclusive, royalty-free, transferable licence (with the right to sub-license) to disclose, reproduce, copy, adapt, publish, perform, exhibit, transmit, communicate, rent or make other use of the intellectual property provided or developed under or used in connection with this Purchase/Service Order ("Intellectual Property") or any adaptation of the Intellectual Property (or any part of the Intellectual Property or any such adaptation) ("Use"), for the purposes contemplated by this Purchase/Service Order.
 - The Supplier will provide to the Customer, or procure and provide to the Customer from the appropriate individual able to provide the consent described below, an irrevocable and unconditional consent, to the fullest extent permitted by law (either present or future), to the PTV and any third party nominated by the PTV (each a "Licensee"):
 - Using the Intellectual Property anywhere in the world, in whatever form and in whatever circumstances the Licensee thinks fits, including the making of any distortions, additions or alterations to the Intellectual Property or any adaptation of it (or any part of the Intellectual Property or of such adaptation) as so Used;
 - Using the Intellectual Property anywhere in the world without making any identification of the Supplier or appropriate individual (as the case may be) in relation to it; and
 - doing anything in relation to the Intellectual Property that (but for these consents) would otherwise infringe any moral rights or similar rights of the Supplier or appropriate individual (as the case may be) anywhere in the world.
 - In procuring consents in accordance with paragraph (B) above, the Supplier undertakes that it will not (and will ensure that no one else does) apply any duress to any person or make a statement to any person knowing that the statement is or was false or misleading in a material particular, or knowing that a matter or thing is or was omitted from the statement without which the statement is or was false or misleading in a material particular.
 - The Supplier indemnifies and agrees to keep indemnified, the Customer and the PTV against all debts, obligations, liabilities, losses, expenses, costs and damages of any kind and however arising, including penalties, fines, and

interests and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable, which are directly or indirectly incurred, suffered or sustained by the Customer or the PTV as a result of, or in connection with, a Claim threatened, made or brought against the Customer or the PTV by a third person that the Use of the Intellectual Property by the Customer or the PTV infringes the rights (including intellectual property rights, moral rights or similar personal rights which by law are non-assignable) of any third person or gives rise to a right entitling any third person to make a Claim against the Customer or the PTV whether for the payment of compensation, royalties or otherwise, or to make any attribution or acknowledgement or rectification in relation to the Intellectual Property.

- (E) The Supplier acknowledges that the Customer is entitled from time to time assign all or any of its rights and obligations under this Purchase/Service Order to the PTV or any third party nominated by the PTV. The Supplier further acknowledges that, in the event of such assignment, the PTV or any third party nominated by the PTV will obtain the benefit and the burden (as the case may be) of this Purchase/Service Order. Without limiting the foregoing, immediately, upon demand from the Customer, the Supplier will execute a novation agreement (in a form submitted to the Supplier by the Customer) to confirm that the Customer's assignee is a party to this Purchase/Service Order in place of the Customer.

- (F) The Supplier must ensure that the Customer has at all times an up-to-date copy of any object code comprised in the Intellectual Property, and the corresponding source code, for the purposes of providing it to the PTV.

(h) *Reporting and other obligations*

The Supplier must, at any time on request by the Customer and at its own cost, provide the Customer with details of any Background Intellectual Property or Purchase/Service Order Intellectual Property, and copies of any materials in which Background Intellectual Property or Purchase/Service Order Intellectual Property subsists, for the purpose of the Customer complying with any obligations it owes to the PTV.

12.7

Novation

The Supplier agrees that it will consent to allow the Customer to assign, novate, transfer, mortgage, charge or encumber any right or obligation under this Purchase/Service Order, in whole or in part, including (but not limited to) the Customer assigning, novating or transferring all of its rights and obligations under this Purchase/Service Order, to the PTV or a Successor Operator. The Supplier must do all things reasonably requested by the Customer to give full effect to such an assignment, novation, transfer, mortgage, charge or encumbrance, including the signing of documentation.

12.8

Privacy

(a) *Compliance with Information Privacy Act*

Without limiting any obligation the Supplier is subject to under any Privacy Law, the Supplier is bound by and must comply with:

- (i) the IPPs and any applicable code of practice under the Information Privacy Act with respect to any act done or practice engaged in by it, in the same way and to the same extent as the PTV would have been bound by the IPPs and any applicable code of practice in respect of that act or practice had it been directly done or engaged in by the PTV;
- (ii) all other Privacy Laws that apply to the Customer;
- (iii) any Privacy Notice or other privacy statement or policy issued, or Privacy Consent obtained, in connection with the collection of Personal Information; and
- (iv) any protocol, guidelines or direction issued by the Customer or the PTV regarding how to comply with the IPPs and any applicable code of practice, the Information Privacy Act, any other such Privacy Laws, Privacy Notice, privacy statement or policy,

in connection with any Personal Information which the Supplier receives or has access to in connection with Melbourne metropolitan tram passenger services or the operation of the Customer's business.

(b) *Collection of Personal Information*

The Supplier must, in relation to any Personal Information which the Supplier collects or gains access to in connection with Melbourne metropolitan tram passenger services or the operation of the Customer's business:

- (i) provide a Privacy Notice at the time of collecting the Personal Information to the extent necessary for the Customer to comply with the Information Privacy Act, the Health Records Act and any other applicable Privacy Law;
- (ii) assist the PTV to comply with its obligations under IPP 1.5 or HPP 1.5 (as the case may be) by stating in the Privacy Notice that the Supplier may disclose the Personal Information to the Customer and the PTV and any other person nominated by the PTV from time to time;
- (iii) obtain Privacy Consents from individuals to the extent necessary to allow the Customer and the PTV and any person nominated by the PTV to collect, use, disclose and store any Personal Information, including Sensitive Information and Health Information, in a manner compliant with the Information Privacy Act, the Health Records Act or any other applicable Privacy Law, and otherwise satisfy his or her obligations under any Privacy Law;
- (iv) notify the Customer promptly in writing if a Privacy Consent which is required to be obtained in accordance with paragraph (iii) is not obtained; and
- (v) keep the Customer informed about its procedures for collecting or handling Personal Information or obtaining Privacy Consents, including notifying the Customer promptly in writing if there is any change to such procedures.

(c) *Protection of Personal Information*

The Supplier must, in relation to any Personal Information which it collects or accesses by in connection with the provision by the Customer of the Passenger Services or the operation of the Customer's business:

- (i) only use or disclose the Personal Information for the Privacy Purpose of that Personal Information or a Related Privacy Purpose or any other purpose authorised by law and approved by the Customer, except where it obtains a Privacy Consent to any other use or disclosure which is approved by the Customer;
- (ii) ensure that Sensitive Information or Health Information is not collected without the prior written approval of the Customer;
- (iii) only disclose Personal Information to the Customer, the PTV, other persons nominated by the PTV or as required by law;
- (iv) take appropriate technical and organisational measures to prevent:
 - (A) unauthorised or unlawful use or disclosure of; and
 - (B) accidental loss or destruction of, or damage to, Personal Information;
- (v) destroy or de identify Personal Information as soon as practicable after the Supplier no longer requires the Personal Information for the Privacy Purpose of that Personal Information or any other purpose for which the Supplier may use or disclose the Personal Information under law; and

- (vi) immediately on expiry or termination of this Purchase/Service Order, or otherwise on request by the Customer or the PTV:

- (A) transfer Personal Information to the Customer or the PTV or another person nominated by the PTV; or
- (B) destroy or de-identify Personal Information, at the Customer or the PTV's election.

(d) *Cooperation with the PTV*

The Supplier must:

- (i) allow the Customer or the PTV an opportunity, on reasonable request, to review and audit its procedures for collecting, handling and using Personal Information to ensure the Customer is complying with its obligations to the PTV;
- (ii) promptly provide to the Customer or the PTV details of any complaint alleging a breach of the Information Privacy Act or any other Privacy Law or any other improper use or treatment of Personal Information by the Supplier;
- (iii) comply promptly with any direction issued by the Customer or the PTV requiring it to take action to prevent future breaches of this Clause;
- (iv) upon request by the Customer or the PTV, cooperate in:
 - (A) the resolution of any complaint alleging a breach of the Information Privacy Act or any other Privacy Law or any other improper use or treatment of Personal Information by the Supplier,
 - (B) providing access to any record of Personal Information following a request from an individual;
 - (C) correcting or updating any Personal Information following a request from an individual; or
 - (D) anything else reasonably requested by the Customer or the PTV; and
- (v) upon request by the Privacy Commissioner or the Health Services Commissioner, cooperate with the Privacy Commissioner or the Health Services Commissioner in resolving any complaint received by him or her alleging a breach of the Information Privacy Act or the Health Records Act or any other Privacy Law or any other improper use or treatment of Personal Information by the Customer or the Customer's Associates.

(e) *Indemnity*

The Supplier must indemnify and keep indemnified the Customer and the PTV from and against all losses, damages, liabilities, actions, suits, claims, demands, costs and expenses of every kind that may be incurred or sustained by the Customer and the PTV in respect of or arising from any breach of this Clause.