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Request for Tender

Drug and Alcohol Testing Services

Office of the National Rail Safety Regulator (**ONRSR**)

Dated: 29 November 2018

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Request for Tender

1 Background and Scope

1.1 Background

- (a) ONRSR has been established as Australia's single national rail safety regulator to administer a rail safety law under the *Rail Safety National Law (RSNL)*. The primary objectives on ONRSR are encouraging safe rail operations, enforcing compliance with the RSNL and promoting and improving national rail safety.
- (b) As part of its functions under the RSNL, ONRSR undertakes Australia-wide, independent drug and alcohol testing of rail safety workers. The three primary objectives of this drug and alcohol testing are:
 - (i) to improve safety by reducing risks associated with rail safety workers undertaking work while under the influence of drugs or alcohol;
 - (ii) to monitor compliance with the law; and
 - (iii) to monitor the effectiveness of rail transport operators' drug and alcohol management programs.
- (c) ONRSR requires an external testing organisation to perform this drug and alcohol testing across Australia on its behalf.

1.2 Tenders sought

ONRSR has publically invited organisations who consider they have suitable qualifications and expertise to respond to this RFT.

1.3 Scope

An indicative scope and specification of the drug and alcohol testing services required to be undertaken by the Respondent, including the methods of testing, geographical coverage, standards and procedures, reporting obligations and differing requirements (such as time periods, documentation, equipment, approvals and procedures) of the relevant state and territory legislation implementing the RSNL is at Schedule 1 and Appendices 1 and 2 (**Services**).

2 Representatives

2.1 ONRSR Representative

All notices, instructions, information and other communications that the Respondent is required to give to ONRSR in relation to the RFT Process must be given to Melissa Radke, 0429 044 436, Melissa.radke@onrsr.com.au or such other person notified by ONRSR from time to time ("**ONRSR Representative**").

2.2 Authorised Spokesperson

- (a) Respondents must identify the Authorised Spokesperson in the Respondent's Intention to Respond.

- (b) Respondents must notify ONRSR of the details of any replacement Authorised Spokesperson.
- (c) The Authorised Spokesperson represents and acts for the Respondent at all times and the Respondent will be bound by the actions of the Authorised Spokesperson. Matters within the knowledge of the Authorised Spokesperson are taken to be within the knowledge of the Respondent.
- (d) Any notices, instructions, information and other communications ONRSR provides to the Authorised Spokesperson will be deemed to have been delivered to the Respondent.

3 RFT Process

3.1 Invitation

- (a) The RFT is an invitation for Respondents to submit a Response for the provision of the Services on the terms set out in the RFT and in accordance with these RFT Terms.
- (b) The Respondent that is ultimately successful in being appointed to provide the Services, will subject to the rights of ONRSR provided in this RFT and at law, be required to enter into the Contract with ONRSR for the provision of the Services.

3.2 Appointment period

The proposed period of appointment of the Respondent will be for a 48 month period from the date of execution of the Contract, unless the Contract is terminated earlier or extended in accordance with its terms.

3.3 Submission of Response

- (a) In submitting a Response, Respondents must:
 - (i) submit the Response by the 5.00 pm (AWST) on Friday, 18 January 2019 (**Closure Date**);
 - (ii) submit soft copies of Responses to tender@onrsr.com.au;
 - (iii) mark each original document with the words 'original' and sequentially number each copy (in the event of a discrepancy between a copy and the original, the original will take precedence); and
 - (iv) include in the Response the required information specified in this RFT.
- (b) ONRSR may strictly enforce the Closure Date, but reserves the right to accept late Responses.
- (c) ONRSR may extend the Closure Date by giving Respondents notice in writing.

3.4 Timing

Any timetable for the RFT Process set out in the RFT does not create any legal obligation on ONRSR to take any action or exercise any right within the time frames specified.

3.5 Binding obligations

- (a) Respondents agree that submission of an Intention to Respond or a Response creates a contract between ONRSR and Respondents governing the RFT Process on the terms of the RFT, including these RFT Terms.
- (b) To the extent of any inconsistency between these RFT Terms and the RFT, these RFT Terms prevail.
- (c) A Response constitutes an offer binding on Respondents and capable of acceptance by ONRSR at any time before the expiration of the Validity Period.
- (d) By submitting a Response, Respondents agree:
 - (i) that the Response, including terms and prices, will remain valid and irrevocable until the end of the Validity Period;
 - (ii) not to replace, amend or supplement Responses unless requested to do so by ONRSR; and
 - (iii) any replacement, amendment or supplement to the Response will constitute a co-existing offer binding on Respondents and capable of acceptance by ONRSR.

3.6 Amendments

- (a) Respondents must not amend Responses or withdraw Responses during the Validity Period, unless ONRSR agrees.
- (b) If Respondents purport to amend or withdraw Responses (without the agreement of ONRSR), ONRSR may in its absolute discretion accept the Response in the amended form or in the form originally submitted.
- (c) ONRSR may ask any other Respondent to submit variations or additions to its Response. If so, ONRSR is not under any obligation to extend the same opportunity to Respondents.
- (d) Respondents must inform ONRSR promptly in writing of any material change:
 - (i) to any information in the Response;
 - (ii) in circumstances that may affect the truth, completeness, or accuracy of any of the information Respondents have provided in connection with the Response; or
 - (iii) which could impact adversely on Respondent's ability to perform the Services.
- (e) If ONRSR accepts any amendment or supplementary information provided by a Respondent, then such amendment or supplementary information will be taken to form part of the Respondent's Response.

3.7 Clarification

- (a) If Respondents find any discrepancy, error or omission in the RFT, Respondents may submit a Request for Clarification. A Request for Clarification form should be submitted to ONRSR Representative in writing, by the date specified in that form, in accordance with the provisions of the RFT.

- (b) ONRSR will acknowledge Respondent's submission of a Request for Clarification Form but may in its absolute discretion decline to answer the request.
- (c) If ONRSR decides to answer the Respondent's Request for Clarification, it may do so by notice in writing to all Respondents.
- (d) ONRSR will treat any Request for Clarification as confidential if the Respondent requests a confidential response and ONRSR agrees, in its discretion, that the question will be treated as confidential.
- (e) ONRSR will provide the Respondent with the opportunity to withdraw a question if ONRSR does not agree to treat the question as confidential.

3.8 Variations to RFT

- (a) ONRSR may amend or vary the RFT, including the RFT Terms and any other RFT document, and will notify the Respondent if ONRSR considers that any such amendment or variation is a material amendment or variation (**Material Change**).
- (b) If Respondents have lodged a Response to ONRSR on or before the date on which Respondents were notified of the relevant Material Change, Respondents may, within 5 Business Days, amend, vary or withdraw a Response by notice in writing to ONRSR.
- (c) Respondents agree that, except as set out in section 3.8(b), no amendment or variation will be deemed to be an amendment or variation which entitles Respondents to amend, vary or withdraw a Response.

3.9 Initial evaluation

- (a) ONRSR will initially review the Response for completeness to ensure that all the required information requested as part of the RFT has been provided.
- (b) If a Response is not complete, ONRSR will decide whether it should be considered in, or excluded from, the evaluation process and whether the missing information should be requested from the Respondent.
- (c) ONRSR may engage the services of external experts or advisers to assist with the evaluation of Responses.

3.10 Evaluation Criteria

- (a) If any Evaluation Criteria are specified in the RFT, ONRSR will evaluate the Responses by reference to the Evaluation Criteria.
- (b) The listing order of the Evaluation Criteria should not be interpreted as an indication of the weighting ONRSR will attribute to the Evaluation Criteria when reviewing the Responses.
- (c) In addition, ONRSR may in its absolute discretion have regard to:
 - (i) its previous dealings and experience with the Respondent (and the dealings and experience of ONRSR's advisers with the Respondent);
 - (ii) any information about the Respondent that is in the public domain;

- (iii) any information obtained pursuant to any meetings conducted with the Respondent.
- (d) ONRSR reserves the right in its absolute discretion to:
 - (i) vary or amend the Evaluation Criteria at any time;
 - (ii) seek clarification, additional information or further actions (including pricing structures, testing, trials) from one or more of the Respondents (but not necessary all) in respect of any aspect of their Response;
 - (iii) call for the submission of revised Responses from one or more Respondents;
 - (iv) enter into direct negotiations with one or more of the Respondents and invite preferred Respondent(s) to enter into a Contract in respect of the Services;
 - (v) short-list Respondents and invite tender submissions from or enter into direct negotiations with those short-listed Respondents; or
 - (vi) give preference to any one or more of the Evaluation Criteria over the other Evaluation Criteria.
- (e) Where ONRSR exercises its rights under section 3.10(d), it will give the Respondents notice of the variation or amendment and give the Respondents an opportunity to amend, vary or withdraw its Response by notice, in writing.
- (f) By submitting a Response, Respondents agree that:
 - (i) ONRSR is under no obligation to disclose any aspect of its assessment process, including but not limited to, any working papers produced when selecting the preferred Respondent; and
 - (ii) Respondents must not seek access to such information.

4 Licence to use intellectual property

Respondents hereby grant ONRSR, its Related Companies, and its personnel, advisers, contractors and consultants, an irrevocable, perpetual, world-wide, royalty-free, licence to copy, adapt, modify, disclose or otherwise use the Response, including any Intellectual Property incorporated in a Response, for the purposes of:

- (a) undertaking this RFT Process, including evaluating and clarifying the Response; and
- (b) negotiating, preparing, executing and performing the Contract (if any).

5 Costs

- (a) Respondent's must bear all costs Respondents incur during the RFT Process including in relation to the preparation, lodgement and evaluation of a Response and the negotiation of a resulting Contract (if any).
- (b) ONRSR is not responsible for, and will not pay, any costs, expenses or losses Respondents incur in the preparation, clarification or negotiation of a Response or in connection with the RFT Process.

6 Contracting

No enforceable contract with respect to delivery of the Services will exist between ONRSR and any other party including the Preferred Respondent unless and until the parties have signed a written Contract.

7 Confidentiality

- (a) Respondents shall keep confidential and not disclose to any person or copy, use or otherwise deal with for any purpose any information regarding the RFT Process except to the extent that:
 - (i) a Respondent is specifically authorised in writing by ONRSR; or
 - (ii) the information is necessarily disclosed to and used by others (who are also bound to keep the information confidential) for the purposes of enabling a Respondent to prepare its Response.
- (b) All information submitted by Respondents shall be treated as confidential. However, the identity of possible Respondents shall not be treated as confidential, and it should be noted that once a short listed Respondent is nominated, ONRSR may share with the other short listed Respondents any ideas tabled by other Respondents, except where the Respondent's claim of Intellectual Property Rights has been accepted.
- (c) ONRSR will not release any information relating to a Respondent's tendered price to any other Respondent and will only release such information to third parties (other than its professional advisers) if required by law.

8 Publicity

- (a) ONRSR reserves the right to publish the names of Respondents and to identify any Preferred Respondent and the successful Respondent.
- (b) Respondents must not make any press or other public announcements or releases relating to the RFT Process without the prior written consent of ONRSR.

9 Probity and conflicts

9.1 Conflicts of Interest

- (a) Respondents, officers, employees and professional advisors must not engage in collusive anti competitive conduct or any similar conduct with another Respondent or any other person in relation to the RFT Process or the Services, including:
 - (i) entering into an agreement with any other Respondent as to which Respondent should be successful;
 - (ii) meeting with other Respondents or their officers, employees, advisers, consultants, contractors or agents;
 - (iii) agreeing to fix prices or the terms of any contract; or

- (iv) agreeing to pay any amount of money or any other benefit to any unsuccessful Respondent.
- (b) In the event Respondents have a real or perceived conflict of interest, Respondents must:
 - (i) declare that interest to ONRSR in writing as soon as the conflict is identified;
 - (ii) ensure that it is assessed in consultation with ONRSR;
 - (iii) comply with any additional RFT Process requirements notified to Respondents by ONRSR in writing from time to time in connection with that real or perceived conflict of interest; and
 - (iv) ensure that it is resolved in favour of the public interest.
- (c) Respondents must ensure that Respondent's performance in respect of identifying, declaring and resolving any conflict of interest is beyond reproach.

9.2 Probity checks

- (a) By submitting an Intention to Respond or a Response, Respondents consent to probity checks being conducted on Respondents, including Respondent's officers and employees.
- (b) Probity checks may include (without limitation):
 - (i) inquiries as to Respondent's identity and standing, including the identity and standing of Respondent's officers, employees and any guarantor or referee named in any Response document;
 - (ii) independent investigation regarding Respondents and the information contained in a Response document;
 - (iii) investigations into probity and security issues, commercial structure, business and credit history, prior contract compliance and performance and any criminal records or pending charges;
 - (iv) interviews with any referees; and
 - (v) research into any activity that is, or might reasonably be expected to be, the subject of criminal or other regulatory investigation.
- (c) ONRSR may take into account any matters revealed as a result of probity checks in evaluating a Response.
- (d) ONRSR are under no obligation to provide Respondents with details of the results of ONRSR's probity checks.

10 ONRSR rights

Without limiting section 3.8, ONRSR may, in its absolute discretion, do any one or more of the following:

- (a) alter or amend any aspect of the RFT Process at any time and withdraw from the RFT Process at any time;

- (b) repeat any stage of the RFT Process;
- (c) change any date in the RFT Process (eg extend or shorten timeframes);
- (d) not proceed with the Services or not proceed with the Services in the manner specified in the RFT documents;
- (e) change the scope of the Services or any or all goods or services required of Respondents, including any requirements set out in the RFT documents;
- (f) suspend, cancel or reinstate the RFT Process;
- (g) evaluate or not evaluate alternative Responses;
- (h) elect not to select any Respondent as a Preferred Respondent;
- (i) establish a short list of Respondents with which to negotiate to determine the Preferred Respondent;
- (j) hold one or more Respondents in reserve;
- (k) negotiate, discuss or clarify matters with one or more Respondents or any other person (whether or not such Respondents have been short-listed and whether or not a Preferred Respondent has been nominated) without prior notice to any other Respondent;
- (l) enter into one or more Contracts in respect of the Services without prior notice to any Respondent;
- (m) exclude any person from the RFT Process (whether on the grounds of capability, price, conflict of interest or otherwise);
- (n) allow further parties to participate in the RFT Process without notice at any time;
- (o) accept, reject or not consider all or any part of a Response, a partial Response or any Response that does not comply with the RFT;
- (p) obtain further, revised or replacement Responses from Respondents or any other Respondent;
- (q) reject a Response if Respondents do not comply with any reasonable request from ONRSR to lodge further information or documents;
- (r) decline to answer queries from any Respondent;
- (s) have any of ONRSR's representatives at any reasonable time inspect any of Respondent's property, or interview any of Respondent's personnel as part of the evaluation process;
- (t) not provide any reason for not short-listing a Respondent, not nominating a Respondent as a Preferred Respondent, not accepting a Response, not entering into a contract or proceeding with the Services or any reason why ONRSR exercised or elected not to exercise any of its other rights under the RFT Terms;
- (u) take such other action in relation to the RFT Process as ONRSR considers appropriate in its discretion;

- (v) waive any requirement or obligation of a Respondent under the RFT Terms. Any such waiver will not affect any other requirements or obligations of the relevant Respondent contained in the RFT Terms;
- (w) accept part Responses for any one or more parts of the Services and the goods or services the subject of the RFT; and
- (x) accept all or any part of a Response subject to satisfaction of stipulated conditions to which the Respondent may be asked to agree.

11 No Recourse for Unsuccessful Respondents

- (a) ONRSR's decision in the above matters will be final and (subject to statutory rights that cannot be excluded or modified) no Respondent is entitled to any redress or claim against ONRSR as a result of ONRSR exercising any or all of its rights as mentioned above or otherwise in the RFT including these RFT Terms.
- (b) ONRSR is not liable for any Indirect Loss suffered by the Respondent in connection with the RFT, including these RFT Terms and the RFT Process, whether under contract, tort (including negligence) or otherwise.

12 Agent's Commission

ONRSR is not liable for any commission or brokerage to any agent or broker responsible for introducing the successful Respondent to ONRSR. Any such agent shall be deemed to be the agent of the successful Respondent.

13 Warranties

13.1 No warranties by ONRSR

- (a) The RFT does not, and does not purport to, comprehensively describe the scope of the Services or contain all the information that potential Respondents would need to make a decision in relation to the Services. Respondents must form Respondent's own views as to what information is relevant to such decisions.
- (b) Neither ONRSR nor any of its employees, agents, advisors, contractors or consultants, warrants, guarantees or makes any representation or accepts any liability for the information in the RFT or any advice, correspondence, clarifications or information given by ONRSR with respect to accuracy, adequacy, suitability or completeness and ONRSR accepts no responsibility for any interpretations placed on the information by the Respondent.
- (c) By submitting an Intention to Respond or a Response, Respondents agree that Respondents have:
 - (i) read and understood the RFT documents and any other written information ONRSR makes available and have satisfied themselves as to the correctness and sufficiency of those documents;
 - (ii) examined all information relevant to the risks, contingencies and other circumstances having an effect on Respondent's Response;

- (iii) satisfied themselves by inspection or inquiry as to all other matters relating to Response, including in relation to the nature and effect of any Laws pertaining to the Services, and not relied on any warranty or representation made by or on behalf of ONRSR; and
- (iv) not relied on any letter, document or arrangement whether oral or in writing as adding to or amending the RFT (other than a formal amendment to or variation of the RFT).

13.2 Warranties by Respondents

- (a) By submitting a Response, Respondents warrant and represent that:
 - (i) the information contained in a Response is accurate and complete in all respects and is not misleading in any way;
 - (ii) there is no legal or other impediment to Respondents entering into the Contract and doing all things required of Respondents under the Contract;
 - (iii) Respondents are a solvent legal entity and are under no form of insolvency, administration or legal disability to contract of any kind;
 - (iv) no litigation, arbitration or administrative proceeding is presently taking place, pending, or to the knowledge of the Respondent threatened against or otherwise involving the Respondent which may cause a material adverse effect on the Respondent's business, assets or financial condition or any effect upon ONRSR's reputation if the Response is accepted or which could impact adversely on the Respondent's ability to provide any goods or services to ONRSR;
 - (v) Respondents have no conflict of interest or anticipated conflict of interest in entering into the Contract and doing all things required of Respondents under the Contract which has not otherwise been disclosed in writing to ONRSR prior to, or at the time of, lodging a Response; and
 - (vi) Respondents have, after diligent inquiry and investigation, fully disclosed to ONRSR in a Response all information (within Respondent's knowledge or which should have been within Respondent's knowledge) which could reasonably be regarded as affecting in any way the decision of ONRSR to accept or reject a Response.
- (b) The warranties in section 13.2(a) are given on the date the Response is lodged and will continue during the RFT Process and any subsequent stage of ONRSR's consideration of the Services and any Contract with Respondents.
- (c) Respondents must inform ONRSR immediately in writing if any change in circumstances renders any information in a Response inaccurate or incomplete.

14 Laws

The Respondent must comply with all applicable Laws and all requirements of Government Agencies. The Respondent must not do anything, or allow anything to occur, which may constitute a breach of any Law.

15 Implied Terms

Any implied terms, conditions warranties or representations are to the extent permitted by Law excluded from the RFT Terms.

16 General

16.1 Governing Law

The RFT is governed by the laws of South Australia. The parties submit to the exclusive jurisdiction of courts exercising jurisdiction there.

16.2 Invalidity and enforceability

If any provision of the RFT is invalid, the provision is enforceable to the extent that it is valid, whether it is in severable terms or not.

16.3 Waiver

Neither Respondents nor ONRSR may rely on the words or conduct of the other as a waiver of any right, unless the waiver is in writing and signed by the party granting the waiver, and stated to be a waiver granted under this clause 16.3.

17 Definitions and Interpretation

In these RFT Terms and the RFT:

Authorised Spokesperson means the person nominated as the Authorised Spokesperson in the Intention to Respond set out in Schedule 2 of this RFT.

Business Day means a day on which banks are open for business excluding Saturday, Sundays and public holidays in South Australia.

Closure Date means the date specified in section 3.3(a)(i) of this RFT.

Contract means the proposed contract to be entered into by ONRSR and the Preferred Respondent for the provision of the Services, an indicative copy of such contract being at Schedule 3 of this RFT.

Evaluation Criteria means the evaluation criteria specified in Schedule 1 of this RFT.

Government Agency means any government or any governmental administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

Indirect Loss means any:

- (a) indirect loss; and
- (b) any loss of revenue, loss of profit, loss of bargain or loss of business opportunities (including opportunities to enter into arrangements with third parties).

Intellectual Property Rights means all existing and future industrial and intellectual property rights, including copyright (including computer software), trade marks and designs (whether registered or unregistered), service marks, patents (including the inventions the subject of such patents), semiconductor and circuit layout rights, trade, business, company and domain names, database rights, confidential and other proprietary rights, trade secrets and know how, inventions, discoveries and processes, and the rights to apply for the registration of any such rights, and any similar or analogous rights from time to time, whether created before or after the date of these RFT Terms both in Australia and throughout the world.

Intention to Respond means an intention to respond as set out in Schedule 2.

Law means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time in any part of the world, and includes the common law and equity as applicable from time to time, and any mandatory standards or industry codes of conduct.

ONRSR means the Office of the National Rail Safety Regulator, ABN 44 260 419 904 of Level 1, 75 Hindmarsh Square, Adelaide, South Australia, 5000.

ONRSR Representative means the persons nominated as such in section 0 the RFT.

Preferred Respondent means a Respondent that has submitted a Response to the RFT, which ONRSR nominates as a preferred supplier.

Request for Clarification means a request submitted in the form set out in Schedule 4 of this RFT.

Respondents means the persons identified in an Intention to Respond and/or a Response to the RFT.

Response means any material submitted by a Respondent in response to the RFT including any amendments or supplementary information lodged by a Respondent and accepted by ONRSR.

RFT means this RFT document and its Schedules and Appendices, as varied, clarified and supplemented by ONRSR during the RFT Process.

RFT Process means the process set out in this RFT commencing on the date the RFT is issued by ONRSR and ending on the date on which a Contract is executed or the RFT Process is terminated by ONRSR.

RFT Terms means the conditions set out in this RFT document.

Services means the services described in Schedule 1 of this RFT.

Validity Period means the period commencing on the release of this RFT and ending on [insert].

Schedule 1

Preliminary Scope & Specification

1 General

The Service Provider will be required to conduct drug and alcohol testing pursuant to the *Rail Safety National Law* and the Contract following a rail incident, for a show cause event or as otherwise directed by ONRSR.

The Initial Period of the Contract shall be 48 months from the Commencement Date unless otherwise extended, varied or terminated in accordance with the Contract. Note that ONRSR reserves the right to extend the Contract on the same terms and conditions for two further 24 month periods in accordance with the Contract.

ONRSR has absolute discretion in relation to the allocation and type of the relevant drug and alcohol testing required to be performed.

ONRSR as the Regulator is empowered to undertake drug and alcohol testing of rail safety workers in accordance with the RSNL. ONRSR testing is independent from the internal drug and alcohol testing undertaken by individual rail transport operators. In the event a rail operator also requests a Service Provider to perform testing in relation to the same incident, the Service Provider will be required to prioritise the request of ONRSR.

2 Materials

Service Providers will be required to supply all transport, equipment, materials, consumables and paperwork necessary for provision of the Services at their cost.

Note that additional certificate books may be provided by ONRSR as required by relevant Rail Safety Legislation.

3 Locations

Testing is required to be conducted in all jurisdictions in Australia and may occur along any railway lines, including remote locations. Please see Appendix 3 (Geographic Coverage) for further details.

For non-incident testing, ONRSR will notify the Service Provider each of month during the term of the Contract (or such other period as agreed by the parties in writing) of the types of workers and locations at which the testing is to be performed.

For incident testing, the location will be dependent on the location of railway occurrences (amongst other matters). This testing must occur within the time periods specified in the Rail Safety Legislation (which varies between jurisdictions). ONRSR's preference is that the Service Provider can get to the site of an incident anywhere in Australia within 2 hours, where practicable.

The Service Provider will also be required to have the capability to manage bulk screenings at various independent locations (including regional) if requested by ONRSR.

4 Legislative Requirements

The RSNL is effective pursuant to an 'applied law' scheme. The RSNL was first enacted in South Australia as a Schedule to the *Rail Safety National Law (South Australia) Act 2012 (SA)*. ONRSR was established under the RSNL to administer a national system of rail safety regulation. ONRSR's National Office is in Adelaide with offices in each mainland capital city.

Other jurisdictions have generally passed an 'application law', which explains that the RSNL (being the Schedule to the South Australian law) is the rail safety law in that jurisdiction. This application law contains jurisdiction-specific information, such as the method of drug testing and certain procedural and technical requirements relating to drug and alcohol testing (designed to mirror the testing processes currently used for roadside testing).

The Service Provider must be able to perform the drug and alcohol testing in accordance with the methods prescribed in the relevant legislation of each jurisdiction, including having complying procedures for documenting testing, conduct on site testing as well as associated tasks, such as reporting. Respondents who do not use these devices should provide the specifications of their devices as part of their Response.

In particular, the testing will need to be comply with the requirements for an 'authorised person' (as defined in the RSNL and implemented in the relevant legislation of each relevant State and Territory) conducting 'testing by the Regulator' in the relevant jurisdiction. The only person entitled to give a direction in relation to the Services is such an 'authorised person'.

Further information on the relevant legislation and prescribed methods is contained in Appendix 1 (Rail Safety Legislation) and Appendix 2 (Jurisdictional Requirements) of this Schedule 1. Note that the requirements of the relevant Rail Safety Legislation may change from time to time, particularly to maintain alignment with road traffic requirements.

5 Testing Requirements

5.1 Standards and Procedures

In addition to the relevant requirements of the Rail Safety Legislation, the Service Provider's testing procedures, analysis, equipment and reporting will also need to comply with the following standards (as updated or amended from time to time):

- AS/NZS 3547:1997 – Breach alcohol testing devices for personal use (under review)
- AS/NZS 4308:2008 – Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine
- AS 4760:2006 – Procedures for specimen collection and the detection and quantitation of drugs in oral fluid (under review)

Samples will be required to be analysed at laboratories approved under the Rail Safety Legislation (Racing Analytical Services Ltd and Chem Centre), or forensic laboratories (in some jurisdictions).

The Service Provider will be required to develop documented procedures in accordance with the relevant legislative requirements as well as these standards and procedures for testing, conducting on site testing and associated tasks (including reporting).

5.2 On-Site Testing

Testing will generally be required to take place on railway premises and may include worksites, trackside, incident site, depots, workshops and stations. An ONRSR representative may but is not required to accompany the Service Provider's personnel undertaking the testing. ONRSR will identify the relevant workers or class of workers to be tested and advise the Service Provider.

For post-incident testing, the Service Provider will prioritise ONRSR's testing requirements over testing on behalf of a rail transport operator or other party related to the incident where, for example, there may be an existing relationship or contract.

The Service Provider will be required to provide sufficient qualified personnel to undertake testing and associated activities. Whilst testing on-site (which is generally unannounced), the Service Provider will be responsible for:

- (a) Liaising with on-site managers to secure suitable facilities for testing;
- (b) Liaising with on-site managers to ensure that workers present for testing;
- (c) Liaising with police officers or others at the site of an occurrence;
- (d) Communicating of test requirements with rail safety workers during the collection process;
- (e) Collection and handling of samples in accordance with pre-determined procedures; and
- (f) Communicating with ONRSR staff, on-site management and police regarding non-negative or positive test results.

When on railway premises, the Service Provider's personnel must comply with all relevant safe working practices and follow the reasonable direction of the rail transport operator.

5.3 Mobile Testing Facilities and Transport

The Service Provider will be required to organise transport for all testing personnel to and from sites.

In the event testing is required at a location that does not have adequate facilities for testing, the Service Provider is required to have the capacity for mobile testing facilities or otherwise provide transport for the worker to an appropriate facility.

In the event of a non-negative the Service Provider will immediately contact ONRSR and work together with the rail operator to arrange transport and stay with them for the duration of testing.

5.4 Volume and Frequency

It is estimated that drug and alcohol testing is required following approximately 200-300 rail occurrences per year across Australia, with one to five rail safety workers to be tested at each location as directed by ONRSR. Further to this, approximately 1,500 non-incident related tests are estimated to be required per year.

These estimates are indicative only. ONRSR makes no guarantee regarding the actual testing frequency, volume or geographical spread (or, as a result, the method of testing) of the Services which shall be required under the Contract.

5.5 Times

The Service Provider shall be available on call 24 hours a day, 7 days a week for incident related testing. Non incident related testing may be scheduled for any time, 7 days a week.

The Service Provider will take all reasonable steps to ensure the availability of testing personnel at the date and time directed by ONRSR. If the Service Provider is not available at the specified date and time, the Service Provider will provide written advice as to why the request of ONRSR has not been met.

5.6 Personnel

The Service Provider's personnel shall be trained and highly competent in the use of equipment and testing procedures. From time to time, personnel may be required to undergo additional training, such as rail safety training or site-specific induction. The Service Provider shall ensure that personnel are available to undergo such training.

The Service Provider is responsible for ensuring a network of testing personnel is available and trained for use by ONRSR upon request. ONRSR is not responsible for compensating for or maintaining training of testing personnel.

The Service Provider's personnel must behave in a manner that is professional, courteous, polite, impartial, objective and shall obtain the test subject's consent to conduct testing. The Service Provider shall ensure that personnel follow agreed Standard Operating Procedures (**SOPs**), including the administration of certificates as required in a state/ territory. If personnel fail to follow the SOPs (including the administration of certificates as required in a state/ territory) or otherwise do not behave in the required manner, ONRSR reserves the right to direct the Contractor not to use that personnel for testing on ONRSR's behalf.

5.7 Confidentiality

The Service Provider must respect the privacy of test subjects and handle information in a manner consistent with relevant privacy legislation and section 244 of the *Rail Safety National Law*. The Service Provider must not divulge the results of any test, or the response or behaviour of any person being tested to any person other than as agreed with ONRSR.

5.8 Reporting

The Service Provider shall report results in accordance with any relevant legislative requirements or standards. Non-negative or positive test results obtained on-site must be verbally reported to ONRSR's Representative immediately or as soon as reasonably practicable.

The Service Provider shall develop and manage reporting requirements including the provision for monthly reporting, in the manner and form approved by ONRSR, and the capability to produce ad hoc reports as requested.

6 Contract Management

6.1 Service Levels

ONRSR will measure the performance of the Service Provider against Service Levels that will be developed in consultation with the Service Provider and which will take into account ONRSR's operational and corporate objectives.

Service Levels will be based upon:

- (a) Capability of the Service Provider to provide the range of services and methods required;
- (b) Capability of the Service Provider to provide services in required locations, particularly on-call;
- (c) Capability of the Service Provider to meet and retain compliance with legislative obligations, standards and retain accreditation;
- (d) Capability of the Service Provider to follow agreed SOPs; and
- (e) Quality of work performed.

The Service Provider and ONRSR will meet quarterly during the term of the Contract to review performance against the established Service Levels. The frequency of the reviews will be as agreed between the parties. Service Credits may also be payable in the event of a failure to comply with Service Levels.

6.2 Annual Review

ONRSR will hold an annual contract review with the Service Provider. The objectives of this review include, but are not limited to:

- (a) Determining whether contract arrangements best meet the needs of ONRSR;
- (b) Determining whether any variations should be made to the contract to improve delivery of the services;
- (c) Reviewing previous Service Levels against previous years Service Levels; and
- (d) Determining Service Levels for the following year.

The Service Provider is required to participate in such reviews and to make available such information as may be required by ONRSR to undertake the review. ONRSR will provide a record of the annual contract review and its outcomes to the Service Provider.

ONRSR may, at its discretion, conduct additional reviews of the Service Provider's performance under the Contract.

7 Evaluation Criteria

Responses will be assessed using various criteria, including the factors listed below. ONRSR reserves the right to short-list Respondents during the evaluation process using the evaluation criteria contained below. This assessment process may also involve discussions with Respondents, reference, financial and corporate checks, or a meeting with the short-listed Respondents.

Mandatory Criteria:

- Capability of the Service Provider to meet legislative requirements and possess NATA accreditation where applicable with respect to testing procedures, analysis, equipment and reporting.
- Capability to provide the necessary geographical coverage, including remote locations.

- Capability to respond to incidents Australia-wide within legislative timeframes.
- Capability to respond to 24 hour a day, 7 days per week incident callouts.
- Capability to deliver scheduled testing services 24 hour a day, 7 days per week.
- Flexibility to respond to ad-hoc requests from ONRSR.
- Public Liability Insurance and Professional Indemnity Insurance to the value of \$20,000,000 each (certificates of currency for the insurances to be attached).

Desirable Criteria

- Capability to deliver testing using the currently prescribed devices and laboratories.
- Capability to respond to incidents Australia-wide within 2 hours.

Weightings

Responses will be evaluated against the following criteria:

- Capability
- Relevant Experience and Track Record
- Methodology (rigour of process)
- Price

8 Occupational Health, Safety and Welfare

8.1 General

The Service Provider shall at all times identify and exercise all necessary Occupational Health, Safety and Welfare (**OHS&W**) precautions for all persons, including the Service Provider employees, ONRSR employees and members of the public.

8.2 Compliance

The requirement to comply with the following is brought to the Service Provider's attention:

- (a) State and Territory Occupational Health, Safety and Welfare Legislation and Regulations
- (b) Australian Standards and Codes of Practice relevant to the Services under the Contract.

8.3 Hazard Management Plan

The Service Provider shall prepare and implement a Hazard Management Plan specific to the work under this Contract. This shall follow the methodology in AS4804 "Occupational Health and Safety Systems - General Guidelines on Principles, Systems and Supporting Techniques". The Service Provider shall reassess the risks in the event of any change to the work environment or methods of work.

The Service Provider shall immediately notify ONRSR's Representative of the occurrence of any conditions, events or happenings which make or threaten to make the working environment hazardous, dangerous or unsafe.

8.4 OHS&W Performance Reporting

Upon request, the Service Provider shall provide evidence of ongoing performance of the Service Provider's OHS&W management system, including the following information:

- (a) Number of lost time injuries.
- (b) Working days lost due to injury.
- (c) Current status of any injured personnel, damaged property.
- (d) Status of the implementation and outcomes of corrective actions undertaken as a result of OHS&W inspections and hazard identification.
- (e) Evidence of OHS&W management system audits undertaken.

When requested, the Service Provider shall provide reports on OHS&W inspections, audits or assessments undertaken during the course of the Contract.

8.5 Incident Notification

In the event of a dangerous occurrence requiring notification to the Workplace Services Inspectorate, the Service Provider shall at the same time inform ONRSR's Representative.

The Service Provider shall immediately notify ONRSR's Representative of any accident or injury which occurs during the Contract. The Service Provider shall, within 3 days of any such incident, provide a written report giving complete details of the incident, including results of investigations into its cause, and any recommendations or strategies for prevention in the future.

Appendix 1

Rail Safety Legislation

Jurisdiction	Act	Regulations
South Australia	<i>Rail Safety National Law (South Australia) Act 2012</i>	<ul style="list-style-type: none"> • <i>Rail Safety National Law National Regulations 2012</i> • <i>Rail Safety National Law (South Australia) (Drug and Alcohol Testing) Regulations 2012</i> • <i>Rail Safety National Law (South Australia) Transitional Arrangements) Regulations 2012</i>
New South Wales	<ul style="list-style-type: none"> • <i>Rail Safety National Law (NSW) No 82a</i> • <i>Rail Safety (Adoption of National Law) Act 2012 No 82</i> 	<ul style="list-style-type: none"> • <i>Rail Safety National Law National Regulations 2012</i> • <i>Rail Safety (Adoption of National Law) Regulation 2018</i> (further detail on drug and alcohol testing)
Northern Territory	<i>Rail Safety (National Uniform Legislation) Act 2012 No 27</i>	<ul style="list-style-type: none"> • <i>Rail Safety National Law National Regulations 2012</i> • <i>Rail Safety (National Uniform Legislation) Regulations 2015</i>
Tasmania	<i>Rail Safety National Law (Tasmania) Act 2012 No 38</i>	<i>Rail Safety National Law National Regulations 2012</i>
Victoria	<ul style="list-style-type: none"> • <i>Rail Safety National Law Application Act 2013 No 22</i> • <i>Rail Safety (Local Operations) Act 2006 (Vic)</i> 	<ul style="list-style-type: none"> • <i>Rail Safety National Law National Regulations 2012</i> • <i>Rail Safety National Law (Limited Accreditation Exemptions) Regulations 2014 SR No 31</i>
Australian Capital Territory	<ul style="list-style-type: none"> • <i>Rail Safety National Law (ACT) Act 2014</i> 	<ul style="list-style-type: none"> • <i>Rail Safety National Law National Regulations 2012</i> • <i>Rail Safety National Law (ACT) Regulation 2014</i>
Western Australia	<ul style="list-style-type: none"> • <i>Rail Safety National Law (WA) Act 2015</i> 	<ul style="list-style-type: none"> • <i>Rail Safety National Law (WA) Regulations 2015</i> • <i>Rail Safety National Law (WA) (Alcohol and Drug Testing) Regulations 2015</i>
Queensland	<ul style="list-style-type: none"> • <i>Rail Safety National Law (Queensland) Act 2017</i> 	<ul style="list-style-type: none"> • <i>Rail Safety National Law National Regulations 2012</i> • <i>Rail Safety National Law (Queensland) Regulation 2017</i> • <i>Rail Safety National Law (Queensland) (Transitional) Regulation 2017</i>

Appendix 2

Jurisdictional Requirements

D & A JURISDICTIONAL MATRIX - as at May 2018

	SA	NT	TAS	NSW	ACT	VIC	QLD	WA
LEGISLATION								
	Rail Safety National Law (SA) Act 2012. Rail Safety National Law (SA) (Drug & Alcohol Testing) Regulations 2012. Rail Safety National Law 2012 amended on 22.2.2018 - new s.11 allows approval of instruments in Regs rather than Gazette - commenced on 24.4.2018. Minor changes to evidence provisions.	Rail Safety (National Uniform Legislation) Act 2012 Rail Safety (National Uniform Legislation) Regulations Rail Safety National Law (NT) No amendments since commencement.	Rail Safety National Law (Tasmania) Act 2012 Rail Safety National Law (Tasmania) Road Safety (Alcohol & Drugs) Act 1970 and Regulations. (The drug and alcohol testing provisions in the Road Safety Act 1970 and Regulations are included in the Rail Safety National Law Act by operation of section 10 of that Act). No amendments since commencement.	Rail Safety (Adoption of National Law) Act 2012 Rail Safety (Adoption of National Law) Regulation 2012. Rail Safety National Law (NSW). No amendments since commencement.	Rail Safety National Law (ACT) Act 2014. RSNL (ACT) Regulations 2014. Regulations amended in February 2017 - to include 'prescribed particulars' for breath analysis certificate. JDB Note - see email advice of 8.8.17 highlighting minor differences between these prescribed particulars and the 'prescribed particulars' under the Road Transport (A&D) Regs.	Rail Safety National Law Application Act 2013. Rail Safety National Law (Vic). Rail Safety (Local Operations) Act 2006. (The D&A testing provisions in the Rail Safety (Local Operations) Act 2006 are included in the Victorian application Act as per section 43 of the Vic application Act.). Rail Safety (Local Operations) Act was amended in April 2016 and April 2017. Rail Safety (Local Operations) Regulations 2006	Rail Safety National Law (QLD) Act 2015. Rail Safety National Law (QLD). Rail Safety National Law (QLD) Regulation 2017. Note (1): A police officer not eligible to be appointed as AP. Note (2): Train drivers can also be D&A tested under the Transport Operations (Road Use Management) Act 1995.	Rail Safety National Law (WA) Act 2015. Rail Safety National Law (WA). Rail Safety National Law (WA) Alcohol and Drug Testing Regulations 2015.
DRUGS								
<i>Screening</i>	Drug screening test or oral fluid analysis - (section 13 of Act). Alternatively, blood test if not oral fluid analysis due to physical or medical condition - (section 13(7) of Act).	Drug screening test or oral fluid analysis - (sections 21 & 22 of Act).	Oral fluid test - (section 7B of Road Safety Act).	Drug screening tests - (section 7 of Regs).	Drug screening test - section 17 of Act. The RSW must stay at the place where the drug screening test is being carried out for the time (not exceeding 30 minutes from the time the worker starts the test) reasonably necessary for the test to be completed.	Section 86A omitted. Section 127 of RSNL provides authority to carry out drug screening test. S.70 - drug screening test means a test by a prescribed device in the Regs. S.86CA powers of AP and obligations of RSW relating to screening test. Clause 16 of Regs - procedure for carrying out drug screening tests.	S.15 - preliminary saliva test definition includes test using a device prescribed by local Regs. S. 21 - AP may require RSW to submit to prelim saliva test. S. 22 and 23 - AP may direct RSW to provide 1 or more specimens. S. 25 - limitation on direction (if RSW gives AP a prescribed medical certificate).	S.9 - drug screen test definition includes test using a device prescribed by local Regs. S. 20 - a RSW can only be required to submit to urine analysis after prescribed occurrence involving that worker. S. 21 - RSW not obliged to comply in certain circumstances (e.g. 12 hours passed). S. 26 and 27 - AP may require a RSW to submit to blood test in circumstances including if worker refuses or fails to submit to drug screen test - or if another test fails to explain condition of the RSW.

D & A JURISDICTIONAL MATRIX - as at May 2018

	SA	NT	TAS	NSW	ACT	VIC	QLD	WA
<i>Confirmatory</i>	<p>Oral fluid analysis or blood test - (section 13 of Act). Under section 20(17) of the Act, if a sample of oral fluid or blood reveals the presence of a drug, it will be presumed, in the absence of proof to the contrary, that the drug stated in the certificate of the analyst was present in the sample when the sample was taken.</p>	<p>A confirmatory test is to be a blood test only and not oral fluid analysis. Preliminary drug testing can include oral fluid analysis (sections 21 and 22 of Act). Section 27(b) of Act - an authorised person may require a RSW to provide a sample of blood if, as a result of a drug screening test or oral fluid analysis, the authorised person suspects on reasonable grounds that the worker might have a prohibited drug in his body. Section 30(4)(b) states 'if a person's blood was taken under this part, any prohibited drug detected by an analysis of the sample is taken to have been present in the person's body at the relevant time'. No related provision about any presumption relating to the detection of a prohibited drug in an oral fluid analysis.</p>	<p>Blood test only - no provisions for oral fluid analysis. Section 7B provides authority to require oral fluid test. Section 7C deals with liability to provide blood sample following oral fluid test. It states where, after requiring a person to undergo an oral fluid test, a police officer reasonably believes that a drug may be present in that person's blood, the officer may require that person to submit to the taking, by a medical practitioner or qualified nurse, of a sample of blood for analysis. Section 23A sets out statutory presumptions with respect to prescribed drugs. It states 'where it is shown that a prescribed drug was present in the blood of a personthe drug is taken to have been present in the person's blood at the relevant time.' No equivalent provision with respect to oral fluid analysis.</p>	<p>Oral fluid sample - (Reg 12(1)(a) of Regs). Blood sample - (Reg 12(2) of Regs). Reg 26 sets out 'evidentiary presumption' with respect to presence of prescribed drug in blood or oral fluid of the person charged - re. offence against section 128(1)(b) of RSNL (NSW). Urine sample - prescribes urine testing in limited circumstances, as follows: Reg 13(1) - when RSW attending hospital. Reg 14(1) - including breath analysing instrument not being readily available. Reg 14(2) - including when an AP has a reasonable belief that the worker might be under the influence of alcohol or a drug. No general 'evidentiary presumption' with respect to the results of urine test. 'Evidentiary presumption' in Reg 27 of the Regs re. offence against section 128(1)(c) of the RSNL (NSW). (i.e. carrying out rail safety work while so much under the influence of alcohol or a drug as to be incapable of doing so.)</p>	<p>Oral fluid analysis - section 19 or blood test - section 25. Oral fluid instrument includes instrument prescribed under the Road Transport (A&D) Act. If RSW submits to drug screen test which shows prescribed drug is present or RSW fails to submit, then police officer may take RSW into custody for oral fluid analysis. Section 20 deals with AP (other than a police officer) taking sample of oral fluid. Section 21 deals with taking of a sample of oral fluid from RSW by police officer. Section 23 states oral fluid analysis must be undertaken by an approved laboratory. 'Approved laboratory' includes a laboratory approved under the Road Transport (A&D) Act. Under section 50(b) evidence may be given that RSW has a prescribed drug in his or her oral fluid or blood based on an analysis of a sample of the worker's oral fluid or an analysis of sample.</p>	<p>Oral fluid - sections 71(2) - presumption re: presence of drug. Section 71(5) - presumption that drug found in oral fluid was not due solely to use of that drug after carrying out work. Section 86CB(3) - AP may require RSW to provide oral fluid sample for analysis by an analyst. S.86CB(6) - can require 1 or more samples. Section 86J(4) - presumption re: results of oral fluid analysis. Blood - section 71(2) - presumption re presence of drug. Section 71(5) - presumption that drug found in blood not taken after completion of rail safety work. Section 86D- process for carrying out blood test and involvement of medical practitioner. Section 86I(4) - presumption re: results of blood analysis. Clause 17 of Regs - Procedure after taking oral fluid sample.</p>	<p>S. 15 - saliva analysis means an analysis of a specimen of saliva by a laboratory test approved by regulation. S. 26 and S. 27 set out when AP can require oral fluid for analysis (e.g. following indicative preliminary test). AP may direct RSW to provide sample of saliva (and comply with reasonable requirement). S. 29 AP can direct RSW to provide additional specimens in certain circumstances. S. 32 - Limitation on giving of direction (RSW gives AP prescribed medical certificate). S. 33 - RSW may request duplicate specimen. S. 38 - delivery of specimen by AP to laboratory (in a way prescribed by local Regs). S.41 - Certificate about requirement to submit to saliva analysis. S. 46 - analyst's certificate. S. 48(3) - evidence presumption of a drug found in oral fluid.</p>	<p>Section 9 - definition of oral fluid analysis includes device prescribed by the local Regs. Section 19 - oral fluid analysis may be required on a random basis. Section 21 - RSW not obliged to comply if more than 12 hours have passed. Section 22 - AP must not require RSW to submit to oral fluid analysis if detrimental to health. Section 26 - AP may require RSW has a blood test if refuses oral fluid analysis etc. Reg 16 - sets out prescribed devices for oral fluid analysis. Section 31(5) - evidentiary presumption for presence of a drug found in oral fluid or urine.</p>
ALCOHOL								
<i>Screening</i>	<p>Preliminary breath test (alcotest) - (section 12 of Act). Alternatively, blood test if not breath due to physical or medical condition (s12(6) of Act). Blood test must be in presence of AP.</p>	<p>Preliminary breath test - (sections 11 & 12 of Act).</p>	<p>Screening - Breath test (Alcotest) - (section 7A(1) and (2) of Road Safety Act).</p>	<p>Preliminary breath test - (section 8 of the Act and Regulation 7 of the Regs).</p>	<p>Preliminary Breath test - Alcotest - section 13 of Act</p>	<p>Prelim breath test - (section 83(1) of Rail Safety (Local Operations) Act 2006) - refers to AP powers under section 126 of RSNL (Vic). S.84 - obligations of RSW re. breath tests. S. 84(6) - states result of preliminary breath test not admissible as evidence in a prosecution against a RSW.</p>	<p>Section 15 - Prelim breath test - using a device approved by Regs. S. 21 - AP may require RSW to submit to prelim breath test. S. 22 and 23 - AP may direct RSW to provide 1 or more specimens. S. 25 - limitation on direction (if RSW gives AP a prescribed medical certificate).</p>	<p>Prelim breath test - section 9 - includes a test using a device prescribed by local regs. Section 12 - when breath test may be required. Section 13 - when RSW is not obliged to comply. Section 25(3) - circumstances where breath test can lead straight to blood test. Reg 5 - AlcoQuant 6020 prescribed for breath test.</p>

D & A JURISDICTIONAL MATRIX - as at May 2018

	SA	NT	TAS	NSW	ACT	VIC	QLD	WA
<i>Confirmatory</i>	<p>Breath analysis - section 12 of Act. Alternatively, blood test if not breath due to physical or medical condition - (section 12(6) of Act). Note: blood test must be in presence of authorised person (section 12(9) of Act). RSW has option of voluntary blood test following positive breath analysis (s.20(5) of the Act).</p>	<p>Breath analysis - (sections 11 & 12 of Act). Alternatively, RSW may request blood sample be taken after breath analysis - (section 19 of Act). Further, if not breath due to physical or medical condition, can be blood sample - (section 20(1)). Further, if RSW refuses or fails to provide a sufficient sample of breath, the authorised person may require the RSW to provide a sample of the Worker's blood - (section 26(1) of the Act).</p>	<p>Breath analysis - (section 7A(4) of the Road Safety Act). Or Blood - (section 10(4)A of Road Safety Act - person may elect to submit to the taking of a sample of his blood for analysis instead of submitting to a breath analysis, but only if the taking of that sample can be commenced within 3 hours after the relevant time.)</p>	<p>Breath - (Regulation 11(1)(a) of the Regs). Blood - (Regulation 11(6) of the Regs) - a RSW who is required to submit to a breath analysis may request to arrange for the taking by a medical practitioner (in presence of authorised person) of a sample of blood for analysis. Regulation 25 of the Regs (which relates to an offence against section 128(1)(a) of the RSNL (NSW) includes evidentiary presumption in support of result of breath analysis.</p>	<p>Breath analysis - (section 15 of Act) or blood test - (section 25 of Act). 'Breath analysis instrument' includes instrument prescribed under the Road Transport (A&D) Act. If RSW undertakes preliminary alcotest which shows the prescribed concentration of alcohol or fails to submit to an alcotest then a police officer may take RSW into custody to undertake breath analysis (section 14). Blood test - dealt with in sections 25 to 30. Blood test must be conducted by a 'sample taker' - which means a doctor or nurse. Under section 50(a) evidence may be given of the concentration of alcohol in RSW's blood or breath based on the analysis recorded by a breath analysis instrument or an analysis of a sample by an approved laboratory.</p>	<p>Breath analysis - (section 71(1) and section 71(4) and section 86K of Rail Safety (Local Operations) Act 2006) which set out evidentiary presumptions with respect to breath analysis results and section 85(1) which sets out additional procedural matters for breath analysis. Blood - section 85(10) of Rail Safety (Local Operations) Act 2006 which prescribes blood test on medical or physical grounds and section 86E which prescribes a voluntary blood test for defence purposes and section 86H (Hospital) which prescribes compulsory blood test if RSW is having examination or treatment in consequence of a notifiable occurrence.</p>	<p>S.15 - breath analysing instrument - as defined in S. 80(1) TO(RUM) Act or as approved by Regs. Instrument Operator - AP or police officer who operates breath analysing instrument. Note: Police officer is instrument operator only - does not have powers of AP. S. 26 and S. 27 set out when AP can require breath for analysis (e.g. following indicative preliminary test). AP may direct RSW to provide sample of breath (and comply with reasonable requirement). S. 29 AP can direct RSW to provide additional specimens in certain circumstances. S. 32 - Limitation on giving of direction (RSW gives AP prescribed medical certificate). S.40 - evidence from breath analysis instrument is conclusive evidence.</p>	<p>Section 9 - breath analysis instrument - definition includes instrument prescribed by local regs. Section 12 - when breath analysis may be required. Section 13 - when RSW is not obliged to submit. Section 15 - conduct of breath analysis (eg. person authorised by Comm of Police). Section 25(1) - blood test if RSW fails to provide sufficient sample of breath. Section 27 - blood test if other test "fail to explain" condition of worker. Section 31(2) - breath analysis evidentiary presumption. Reg 8 - Drager Alcotest 7110 prescribed as breath analysis instrument.</p>

D & A JURISDICTIONAL MATRIX - as at May 2018

	SA	NT	TAS	NSW	ACT	VIC	QLD	WA
TIMING OF TESTING	<p>Not more than 8 hrs after RSW has ceased to carry out work, or more than 8 hours following a prescribed notifiable occurrence - (section 12(2) for alcohol and section 13(3) for drugs). Both screening and confirmatory tests must be commenced within 8 hours.</p> <p>Hospital - under section 16(1) if a RSW suffers an injury as a result of a prescribed notifiable occurrence and, within 8 hours after the prescribed notifiable occurrence, attends at hospital for purpose of receiving treatment, it is the duty of the medical practitioner to take, as soon as practicable, a sample of RSW's blood. Section requires that the RSW attends at a hospital within 8 hours - does not state that the blood sample is taken within 8 hours.</p>	<p>A RSW who is still on railway premises after carrying out work not obliged to comply with requirement for testing (in the absence of a prescribed notifiable occurrence) if more than 30 mins have passed since the Worker carried out the work - (section 13(1) of the Act).</p> <p>RSW who is involved in a prescribed notifiable occurrence not obliged to comply if more than 4 hours have passed since the Worker was involved in the occurrence or has completed work for the work shift and departed from work location and was unaware of the occurrence when the Worker completed the work shift - (section 13 for alcohol and section 23 for drugs - same provisions apply).</p>	<p>Section 10(3)(c) of Rail Safety National Law (Tas) Act states a reference to <i>'the relevant time'</i> in relation to a test, or requirement or direction to submit to the taking of a sample, is to be taken, despite section 2(3A) of the Road Safety Act, to be a reference to the time when the person was required or directed to undertake the test.</p> <p>Section 10(7) of the Road Safety Act - no breath analysis or taking of blood after the expiration of 3 hours after the relevant time.</p>	<p>Reg 6 - the results of any test conducted on a RSW who was about to carry out work are not admissible in any proceedings for an offence under section 128 of the RSNL (NSW).</p> <p>Reg 8 - an AP must not require a RSW to undergo a test at any time after the expiration of 3 hours from the time the Worker carried out the work (or was due to commence the work) to which the requisition relates or; in the case of a person other than a Worker who has been involved in an accident, after the person has ceased to be on duty on a particular day, or at the Worker's home.</p> <p>Hospital - Regulation 13 - if RSW attends at hospital for examination because of involvement in an accident, an AP may require RSW to provide, as soon as practicable, a sample of blood or urine in accordance with the directions of a medical practitioner. Reg13 requires that a RSW provide a sample 'as soon as practicable' - no reference to 3 hour time limit.</p>	<p>Alcohol screen test - if RSW involved in notifiable occurrence and taken to hospital - not more than 8 hours since arrival at hospital or if RSW not taken to hospital, not more than 8 hours since the notifiable occurrence. If RSW not involved in notifiable occurrence - not more than 8 hours since work.</p> <p>Breath analysis - if RSW was required to submit to an alcohol screening test - not more than 2 hours since that test was carried out. If RSW involved in occurrence - time limits are same as noted above.</p> <p>Drug screening test - time limits same as noted above for an alcohol screen test.</p> <p>Oral fluid analysis - time periods same as noted above for breath analysis.</p> <p>Blood test - If RSW submits to alcohol or drug screening test - no more than 4 hours since test. If RSW involved in occurrence and taken to hospital - no more than 2 hours since arrival at hospital, or, if RSW not taken to hospital - no more than 8 hours since occurrence.</p>	<p>Section 84(3) - the RSW is not obliged to submit to a preliminary breath test if more than 3 hours have passed since the RSW last carried out rail safety work.</p> <p>Section 85(3)(b) - breath analysis must be within 3 hours of the RSW last carrying out rail safety work.</p> <p>Section 85(4)(b) - drug assessment must be within 3 hours after carrying out rail safety work - also see section 85(6).</p> <p>Section 85(10) - sample of blood within 3 hours after carrying out rail safety work. S.86CA(6) - drug screening test within 3 hours. S.86CC(3) - not obliged to provide oral fluid if more than 3 hours have passed.</p>	<p>S.24 - preliminary test must be commenced within 3 hours after the 'relevant time'. S.31 - breath or saliva analysis or blood test must be commenced within 3 hours after the 'relevant time'.</p>	<p>A RSW who is still on railway premises after carrying out work (who is not involved in a notifiable occurrence) is not obliged to comply if more than 12 hours have passed.</p> <p>A RSW who is involved in a notifiable occurrence is not obliged to comply if more than 12 hours have passed since the occurrence - or the worker has departed from work and was unaware of the occurrence when they completed the work shift (s13 for alcohol and s21 for drugs).</p> <p>Hospital - if a RSW suffers an injury as a result of a notifiable occurrence and within 12 hours attends at hospital for treatment - an AP may request a sample taker at the hospital to take blood.</p>

D & A JURISDICTIONAL MATRIX - as at May 2018

	SA	NT	TAS	NSW	ACT	VIC	QLD	WA
COMPULSORY HOSPITAL TESTING	Under section 16(1) if a RSW suffers an injury as a result of a prescribed notifiable occurrence and, within 8 hours after the prescribed notifiable occurrence, attends at hospital for purpose of receiving treatment, it is the duty of the medical practitioner to take, as soon as practicable, a sample of RSW's blood. Section requires that the RSW attends at a hospital within 8 hours - does not state that the blood sample is taken within 8 hours. Note: - It is the duty of the medical practitioner to take a sample of the workers blood (even if he or she is unconscious).	Under s.29(1) of the RSNL (NT) Act - "If a rail safety worker suffers an injury as a result of a prescribed notifiable occurrence and, within 4 hours after the occurrence, the worker attends at, or is admitted to, a hospital or health centre to receive treatment for the injury, the person in charge of the hospital or health centre must ensure that a sample of the worker's blood is taken as soon as practicable (even though the worker might be unconscious)." Note: It is the duty of the person in charge of the hospital to ensure sample of blood is taken from RSW.	These provisions provide that - where a RSW is receiving medical treatment and/or taken to hospital following a notifiable occurrence, an AP may attend and exercise their powers to give a direction to a RSW to submit to a D&A test in the normal way. See sections 10(5), 10(6) and 12 of the Road Safety (A&D) Act 1970. Note: No automatic duty on medical practitioner to take blood. An AP can attend at hospital to give a direction the RSW or, if the RSW is incapable of giving consent, the medical practitioner.	Regulation 13 - if RSW attends at hospital for examination because of involvement in an accident, an AP may require RSW to provide, as soon as practicable, a sample of blood or urine in accordance with the directions of a medical practitioner. Reg13 requires that a RSW provide a sample 'as soon as practicable' - no reference to 3 hour time limit. Note (1): Refers to 'accident', rather than notifiable occurrence. (2) Refers to the worker having been 'involved' in an accident - rather than suffering an injury. (3) - Medical practitioner does not have an automatic duty to take blood. AP may require worker to give blood.	Under s.27 of the RSNL (ACT) Act - "(1) This section applies if— (a) a rail safety worker is injured as a result of a prescribed notifiable occurrence; and (b) not longer than 8 hours after the occurrence, the worker attends at or is admitted to hospital to receive treatment for the injury. (2) A doctor or nurse (the sample taker) who treats the rail safety worker must within 2 hours after the worker arrives at the hospital take a sample of the worker's blood." Note: - Duty of doctor or nurse to take sample of blood (within 2 hours of arrival at hospital).	Section 86H (Hospital) prescribes compulsory blood test if RSW is having examination or treatment in consequence of a notifiable occurrence (whether within Vic or not). Note: Duty of doctor or approved health professional to take ample of blood.	Under the RSNL (QLD) Act there are no specific provisions which address the blood testing of a RSW who attends at hospital for treatment following a notifiable occurrence. In particular, these provisions do not appear to give AP the power to 'require' a health care professional to take blood from a RSW attending at hospital (and there is no corresponding legal obligation to comply with this requirement).	Under s. 29(1) of the RSNL (WA) Act - "If a rail safety worker suffers an injury as a result of a prescribed notifiable occurrence and, within 12 hours after the occurrence, the worker attends at, or is admitted to, a hospital to receive treatment for the injury, an authorised person may request a sample taker at the hospital to ensure that a sample of the worker's blood is taken as soon as practicable (even though the worker might be unconscious)." Note: Medical practitioner does not have an automatic duty to take blood. AP may require sample taker at the hospital to take blood (i.e. requirement directed to sample taker rather than worker).
"ABOUT TO CARRY OUT RAIL SAFETY WORK"	No additional reference to or explanation of the phrase "about to carry out rail safety work"	No additional reference to or explanation of the phrase "about to carry out rail safety work"	No additional reference to or explanation of the phrase "about to carry out rail safety work"	S.129A of RSNL (NSW) - for the purposes of s.126 and s.127 - a RSW is to be regarded as being about to carry out rail safety work if the worker - (a) has left home or a temporary residence for work (being rail safety work); and (b) has not commenced work after having so left home or the temporary residence. Reg 6 - the results of any tests conducted on RSW who was about to carry out work are not admissible in any proceedings for an offence under s.128 of RSNL (NSW).	No additional reference to or explanation of the phrase 'about to carry out rail safety work'.	Section 73 of Rail Safety (Local Operations) Act 2006 states - a RSW is to be regarded as being about to carry out rail safety work if the worker has arrived at his or her place of work but has not yet begun work.	No additional reference to or explanation of the phrase 'about to carry out rail safety work'	No additional reference to or explanation of the phrase 'about to carry out rail safety work'

D & A JURISDICTIONAL MATRIX - as at May 2018

	SA	NT	TAS	NSW	ACT	VIC	QLD	WA
PENALTY	Penalty for refusal or failure to comply with preliminary breath test or breath analysis or drug screening test or oral fluid analysis or blood test - maximum penalty \$10,000 - (section 12(4) of Act for alcohol and section 13(5) of Act for drugs).	Section 11(2) of the NT application Act a requirement for RSW to submit to alcotest or breath analysis is a direction under section 126(3) of RSNL. Section 126(3) - max penalty for failure to comply with direction is \$10,000. Section 21(2) of NT application Act - a requirement that a RSW submit to drug screening test is a direction under section 127(3) of the RSNL. Failure to comply with a direction - maximum penalty of \$10,000.	Section 14 of the Road Safety Act states any person who, without reasonable excuse, fails or refuses to comply with a requirement or a direction made to him is guilty of an offence. A breach of section 14(1) would in turn constitute a breach of either section 126(3) or section 127(3) which carry a maximum penalty of \$10,000.	Penalty for refusing or failing to comply with test - maximum penalty 10 penalty units (see Reg 21 of Regs). Maximum penalty of \$10,000 provided under sections 126(3) and 127(3) of RSNL (NSW).	Sections 34 to 37 inclusive confirm the application of penalties set out under sections 126, 127 and 128 of the RSNL.	Penalties in sections 126, 127 and 128 apply to a RSW in Victoria. Additional offences set out in S.77 of Rail Safety (Local Operations) Act.	Penalties in sections 126, 127 and 128 apply to a RSW in QLD.	Under section 11 a requirement mentioned in subsection (1) is a 'direction' to the RSW as mentioned in section 126(3) of the RSNL. Adopts the offences and penalties in sections 126, 127 and 128 of the RSNL. No additional offences prescribed.
GAZETTAL OF EQUIPMENT	Under section 11 of the RSNL (SA) Act : - Apparatus for Alcotests - AlcoQuant 6020 - Apparatus for oral fluid analysis - UltraSal - 2TM saliva collection device. - Apparatus for drug screening - Medvet Oral 7 point of collection device. The above apparatus was gazetted in SA on 22.08.2013. Under section 11(3) of the RSNL (SA) Act an approved apparatus under the Road Traffic Act 1961 will be taken to have been approved under Part 3 and Part 4 of the RSNL. Update - as at 24.4.2018 the above instruments were prescribed in the D&A regulations (rather than Gazetted)	Under section 10 of the NT Rail Safety (National Uniform Legislation) Act 2012 'breath analysis instrument' means a device prescribed by local regulations. 'Drug screening test' means a test of a kind approved by the Commissioner of Police. 'Oral fluid analysis' means a method of analysis of a kind approved by the Commissioner of Police. 'Preliminary breath test' means a test of a kind approved by the Commissioner of Police. Under Reg 3 of the Rail Safety (National Uniform Legislation) Regulations the prescribed breath analysis instrument is a Drager Alcotest 7110 .	Under s.10 of the Rail Safety National Law (Tasmania) Act the D&A testing provisions in the Road Safety Act 1970 are adopted in that Act. Under s.2 of the Road Safety Act 'breath analysing instrument', 'breath test', 'oral fluid test' and 'trace particle detection test' mean such a test approved by the Minister by notice in the Gazette. Under the Road Safety Regulations 2009 the prescribed breath analysing instrument is the Alcotest 7110 . Under the Road Safety (Alcohol and Drugs) (Approval of Instruments) Notice 2010 the approved device for preliminary breath test is ' Envitec AlcoQuant '. Under s. 2(1) of the Road Safety Act the approved drug screening test is the Sabre 4000 hand held trace particle detection device.	Under section 3 of the Rail Safety (Adoption of National Law) Regulations 2012 'approved oral fluid analysing instrument', 'approved oral fluid testing device', 'breath analysing instrument' and 'drug screening test' have the same meanings as in the <i>Road Transport Act</i> 2013. Under schedule 3 of the Road Transport Act 2013 each of the testing apparatus are deemed to be approved apparatus once approved by the Governor by order published in the NSW Gazette.	Alcohol screening device - AlcoQuant 6020(Reg 3). Drug screening device - Medvet Oral 7(Reg 4). Oral fluid analysis instruments (Reg 5) prescribes instruments to be used in the laboratory to analyse oral fluid - AB Sciex Qtrap 5500; Thermo LTQ Orbitrap Discovery; Thermo TSQ Quantum Access; Thermo TSQ Quantum Ultra.	Under s.43 of the RSNL Application Act (VIC) the D&A testing provisions in the Rail Safety (Local Operations) Act 2006 are adopted. Under s.70 of the Rail Safety (Local Operations) Act 2006 a breath analysing instrument means an instrument within the meaning of the Road Safety Act 1986. Under s.3 of the Road Safety Act a breath analysing instrument means: 1. The Alcotest 7110; or 2. The Alcotest 9510AUS to which a plate is attached on which there is written the numbers '8320869'; or 3. The apparatus of a type approved by the Minister by notice published in the Government Gazette. Preliminary breath test device - prescribed in Reg 5 of Rail Safety (Local Operations) Regs as 'AlcoQuant 6020'. Drug screen test prescribed in Reg 15 of Rail Safety (Local Operations) Regs as including 'Medvet Oral 7' Oral fluid analysis - devices prescribed under Reg 15 including UltraSal-2 Saliva Collection Device; Thermo TSQ Quantum.	Prescribed laboratory - For blood - FASS and for saliva - RASL (clause 4 of Regs). Prelim breath test - a device that complies with AS 3547-1997 (clause 5 of Regs). Prelim saliva test - Medvet Oral7 (clause 6 of Regs). Lab test - saliva analysis - mass spectrometry (clause 7). Collection unit includes UltraSal-2 (clause 8(3)). S.15 - breath analysing instrument - as defined in S. 80(1) TO(RUM) Act or as approved by Regs.	Prelim breath test - AlcoQuant 6020 (Reg 5). Breath analysis instrument - Drager Alcotest 7110 (Reg8). Drug screening test - Securetec drug wipe and Medvet Oral 7 (Reg 11). Oral fluid analysis devices - Cozart drug detection system, Drager drug test 5000 (which are both devices used by police for 'roadside' analysis). UltraSal-2 saliva collection device (Reg 16). Analyst means an analyst or drugs analyst, as the case requires, as defined in the Road Traffic Act 1974 s65 - Chem Centre WA. Note - no provision for approval of additional analysts under the rail legislation in WA

D & A JURISDICTIONAL MATRIX - as at May 2018

	SA	NT	TAS	NSW	ACT	VIC	QLD	WA
RANDOM / TARGETTED TESTING	No express provision in RSNL (SA) Act reiterating Regulator's authority to conduct random/targetted testing. Reliance on sections 126(1) and 127(1) of RSNL.	See section 12 of NT application Act - an authorised person may require a RSW to submit to a preliminary breath test or breath analysis on a random basis - without suspecting the worker has the prescribed BAC. See section 22 of NT application Act - an authorised person may require an RSW to submit to a drug screening test or oral fluid analysis (or both) - on a random basis - without suspecting the worker has a prohibited drug in his or her body.	Section 7A(2) of Road Safety Act 1970 - a direction to submit to a breath test may be made by a police officer [read authorised person] whether or not he has grounds for suspecting that a person may have consumed intoxicating liquor. Section 7B(4) of Road Safety Act 1970 - a direction to submit to an oral fluid test may be made by a police officer [read authorised person] whether or not the officer has grounds for suspecting that the person may have a prescribed illicit drug in his or her blood.	See Reg 7 of Regs - the selection of a RSW for testing for the presence of a drug or alcohol under the RSNL (NSW) or this Part may be conducted on a random or targeted basis.	No express provision in RSNL (SA) Act reiterating Regulator's authority to conduct random/targetted testing - reliance on sections 126(1) and 127(1) of RSNL.	No express provision in Vic application Act or Rail Safety (Local Operations) Act reiterating authority of Regulator to conduct random/targetted testing. Reliance on section 126 and 127 of RSNL (Vic).	Reliance on sections 126(1) and 127(1) of RSNL to establish random testing (S. 21 of Act).	AP may require RSW to submit to testing on a random basis or on a non-random basis - example of non-random being if the RSW has been involved in a notifiable occurrence (s12 for alcohol and s19 for drugs).
APPROVAL OF ANALYSTS AND TESTING LABORATORIES	Forensic Science SA (and various analysts employed by that organisation) is an approved analyst (see section 9(1) of RSNL (SA) Act 2012. Pursuant to s.9(1) Minister appointed 3 additional analysts from RASL. See letter of appointment dated 20.7.2014. Note: Letter to be sent to Minister advising B. Alessi ceased employment with RASL and seeking additional appointments of V. McCombe and A. Mudgee.	NT Commissioner of Police has power to approve the drug screen test, oral fluid analysis and preliminary breath test (Alcotest) to be used by the Medvet testers. 'Analyst' - under section 10(1) of the NT application Act, analyst means a person prescribed by local regulations. Reg 8 of NT Regulations defines a 'prescribed analyst' as a person employed or engaged by the State of South Australia to perform or supervise the analysis of blood samples in that State (this refers to Forensic Science SA).	Section 10(3)(f) of Tasmanian application Act - a matter, thing or person that or who is prescribed or approved for the purposes of the Road Safety Act 1970 is to be taken to be prescribed or approved, respectively for the purposes of the applicable provisions as they apply by virtue of section 10 of the Tasmanian application Act.	Under Reg 3 of the Rail Safety (Adoption of National Law) Regs 'analyst' means a person employed by the owner or operator of an approved laboratory as an analyst. 'Approved laboratory' means: (a) in relation to blood and oral fluid samples - the lab at the NSW FASS at Lidcombe, Western Sydney; and (b) in relation to urine samples - a lab that has been accredited by NATA (AS/NZS 4308:2008).	Under section 3 of Act, 'analyst' includes an analyst appointed under the Road Transport (A&D) Act and 'approved laboratory' includes a laboratory approved under the Road Transport (A&D) Act. Pursuant to s.11 Minister appointed 3 analysts from RASL on 2 June 2015. Note: Letter to be sent to Minister advising B. Alessi ceased employment with RASL and seeking additional appointments of V. McCombe and A. Mudgee. Also, seeking approval of RASL as an approved laboratory under s.12.	S.86J - 'Approved analyst' (for oral fluid samples) is an 'approved analyst' within the meaning of section 57B of the Vic Road Safety Act. Note - appointment of 3 analysts from RASL in 2014. S.86J - 'Approved laboratory' is an 'approved laboratory' under S.57B of Road Safety Act. Note - awaiting confirmation of RASL. 'Approved analyst' (for blood sample) for purposes of Vic application Act is an 'approved analyst' within meaning of section 57 of the Vic Road Safety Act.	Prescribed laboratory - For blood - FASS and for saliva - RASL (clause 4 of Regs). Lab test - saliva analysis - mass spectrometry (clause 7).	Analyst means an analyst or drugs analyst as defined in the Road Traffic Act 1974, s65. No provision for additional analysts in the rail legislation in WA.

D & A JURISDICTIONAL MATRIX - as at May 2018

	SA	NT	TAS	NSW	ACT	VIC	QLD	WA
<p>APPROVAL OF COURIERS AND CHAIN OF EVIDENCE</p>	<p>Approved couriers: 1. Toll Priority 2. TNT Express 3. Australia Post approved by Tom Koutsantonis, Minister for Transport & Infrastructure. Notice for approval of couriers as published in SA Govt Gazette on 22.8.13.</p>		<p>Section 10(3)(f) of Tasmanian application Act - a matter, thing or person that or who is prescribed or approved for the purposes of the Road Safety Act 1970 is to be taken to be prescribed or approved, respectively for the purposes of the applicable provisions as they apply by virtue of section 10 of the Tasmanian application Act.</p>	<p>Reg 16 - blood samples Reg 16(2) - the AP to whom a sample of blood is handed must place sample in an approved security box and arrange for sample to be submitted to approved laboratory. Reg 17 - oral fluid samples Reg 17(1) - if AP is a police officer - must place sample in an a security box of a type approved by the Commissioner of Police and arrange for the sample to be submitted to approved lab. Reg 17(2) - if AP (not being a police officer) - must collect and transport sample in accordance with Australian Standard. Reg 18 - urine samples Reg 18(4) - a sample that is submitted for urine testing at an approved laboratory is to be transported in accordance with section 2 of (AS/NZS 4308:2008).</p>	<p>S.20 - oral fluid collected by AP, other than police officer - requires AP to collect sample in single container and take to approved lab. S.21 - oral fluid collected by police officer (after initial drug screen test). S.21 requires 'authorised operator' to conduct oral fluid analysis. After analysis - authorised operator must give RSW statement with particulars. Chief police officer ensures sample taken to approved lab. Blood test - s.25 - blood test may only be conducted by sample taker. S.26 - police officer may take RSW into custody for blood test and must take RSW to hospital or sampling facility. Sample taker must take sample in presence of police officer. S.28(3) - Chief police officer arranges for container to be collected from one way box by Analyst. Under s. 26, only police officer can require RSW to submit to blood test.</p>	<p>S.86CC - Provision of samples for oral fluid analysis - must be carried out in accordance with prescribed procedure. In turn, prescribed procedure set out in Regs 16 and 17.</p>	<p>S.38 - Delivery of samples (saliva and blood) to laboratory - 'in a way prescribed'. In turn, Clause 11 prescribes 'personally' or in a way provided for under the IATA Dangerous Goods Regs. Clause 9 - blood specimens after collection of blood health care professional must sign a 'specimen certificate' - and copy is to be given to analyst with the sample. Section 41 - saliva specimens AP is to give RSW a S.41 certificate recording 'requirement' to submit to saliva analysis. In turn, S.41 certificate accompanies sample to laboratory. In turn, a copy of this certificate, for a specimen of saliva, given to an analyst's sufficient authority to issue an analyst's certificate.</p>	<p>Blood testing - blood must be taken by a 'sample taker' using 'blood sampling equipment' provided by an approved body (Reg 37). Reg 42 - sample taker must make one of the containers available to AP and give other container to RSW or RSW's representative. Oral fluid testing - if AP using a Drager drug test 5000 analyser - and this records a 'presumptive' positive test - then RSW may request sample of the oral fluid from the AP. When AP is using an UltraSal-2 saliva collection device - not necessary to provide RSW with own sample. Urine analysis - a urine sample must be taken by a sample taker using only urine sampling equipment. Sample taker must make one of the containers available to AP and give other container to RSW or the RSW's representative.</p>

D & A JURISDICTIONAL MATRIX - as at May 2018

	SA	NT	TAS	NSW	ACT	VIC	QLD	WA
FORMS, NOTICES AND CERTIFICATES	<p>RSNL Regs 2012 set out oral advices and written notices to be provided to RSW in course of testing.</p> <p>SAPOL has produced a 'rail book' for use by police in course of breath analysis of RSW. This 'rail book' includes:</p> <ol style="list-style-type: none"> Breath analysis statement (including warning if RSW refuses or fails to comply. Form of request (Reg 10) (which deals with supply of an approved blood test kit to RSW). Written notice for purposes of s. 20(5)(a) of RSNL (SA) Act (which is provided to a RSW following a positive breath test). <p>Two different blood test forms:</p> <ol style="list-style-type: none"> Form M0094-9 - included in the blood test kit provided to RSW if unable to breath test due to medical reasons. Form M0090 - provided to RSW if elects to have a voluntary blood test following a positive breath test. 	<p>Section 31 of the NT application Act deals with evidence by certificate. Section 31(3) - for subsection (1), the Regulator may approve forms of certificates to be used by different persons on different occasions.</p>	<p>Section 10(3)(f) of Tasmanian application Act - a matter, thing or person that or who is prescribed or approved for the purposes of the Road Safety Act 1970 is to be taken to be prescribed or approved, respectively for the purposes of the applicable provisions as they apply by virtue of section 10 of the Tasmanian application Act.</p>	<p>Breath analysis print out to be given to RSW (s.11(5)). BA operator to prepare and sign certificate under clause 28 of the NSW Adoption Regs.</p> <p>Collection of oral fluid by AP (who is a police officer) - must give RSW certificate identifying sample (Reg 17(1)). Collection of oral fluid by AP (who is not a police officer) - must give RSW certificate identifying sample (Reg 17(2)). Collection of blood sample - authorised sample taker must give RSW certificate identifying sample.</p>	<p>Breath analysis print out to be given to RSW (s.15(6)). Collection of oral fluid by police officer - authorised officer (who is police officer) must, after analysis carried out give RSW a written statement containing prescribed particulars (s.21(4) and Reg 6).</p> <p>Oral fluid analysis statement - s24 - after analysis of oral fluid in a lab, AP must ensure RSW is given a written statement that includes the information set out in s24.</p> <p>Blood analysis statement - after analysis of a sample of blood in a lab, AP must ensure the RSW is given a written statement that includes the information set out in s30.</p> <p>S.39 - evidence certificate re. breath analysis to be completed by police officer (AP) - includes details of instrument used, procedures followed etc.</p>	<p>Section 86(3) - a signed print-out from a breath analysis instrument does not cease to be admissible in evidence or to be proof of the facts and matters contained in it only because of the fact that it refers to the Road Safety Act 1986 and not to the Rail Safety (Local Operations) Act 2006 [or the RSNL (Vic)].</p> <p>Oral fluid certificates - 1. Certificate from AP stating prescribed procedures complied with (see S.86J(5) and Reg 18. 2. Certificate from approved analyst at an approved lab recording outcome of analysis (see s.86J(6) and Reg 19).</p> <p>Blood testing certificates - 1. Certificate from med practitioner or approved health professional stating prescribed procedures were complied with (see s.86I(5) and Reg 11). 2. Certificate from analyst recording outcome of analysis for alcohol. 3. Certificate from analyst recording outcome of analysis for drugs.</p>	<p>S.39 - Breath analysis certificate - signed by instrument operator.</p> <p>S.41 - certificate about requirement to submit to breath analysis, saliva analysis or blood test.</p> <p>S. 42 Certificate about failure to provide specimen of breath or saliva for analysis.</p> <p>S.43 Certificate about failure to allow health care professional to take specimen of blood.</p> <p>S. 46 Analyst's certificate (saliva or blood). Certificate by health care professional about taking of specimen (saliva or blood).</p>	<p>Breath analysis - s17 - the AP must give the RSW a statement printed by the breath analysis instrument.</p> <p>Section 33 - deals with certificate evidence from a AP, hospital staff or analyst - (noting that 'analyst' includes a drugs analyst). Certificate must be in a form 'approved by Minister'.</p> <p>For urine testing - Reg 35 - sample taker must complete a certificate in an approved form.</p> <p>For urine analysis - Reg 36 - an analyst must complete a certificate in an approved form.</p> <p>For blood testing - Reg 43 - a sample taker must complete a certificate in an approved form.</p> <p>For blood analysis - Reg 44 - an analyst must complete a certificate in an approved form.</p>

Appendix 3

Geographic Coverage

Drug and alcohol testing may need to occur along any of the rail lines indicated below. In responding to incidents, drug and alcohol testing must occur within the time periods specified in the jurisdictional legislation.

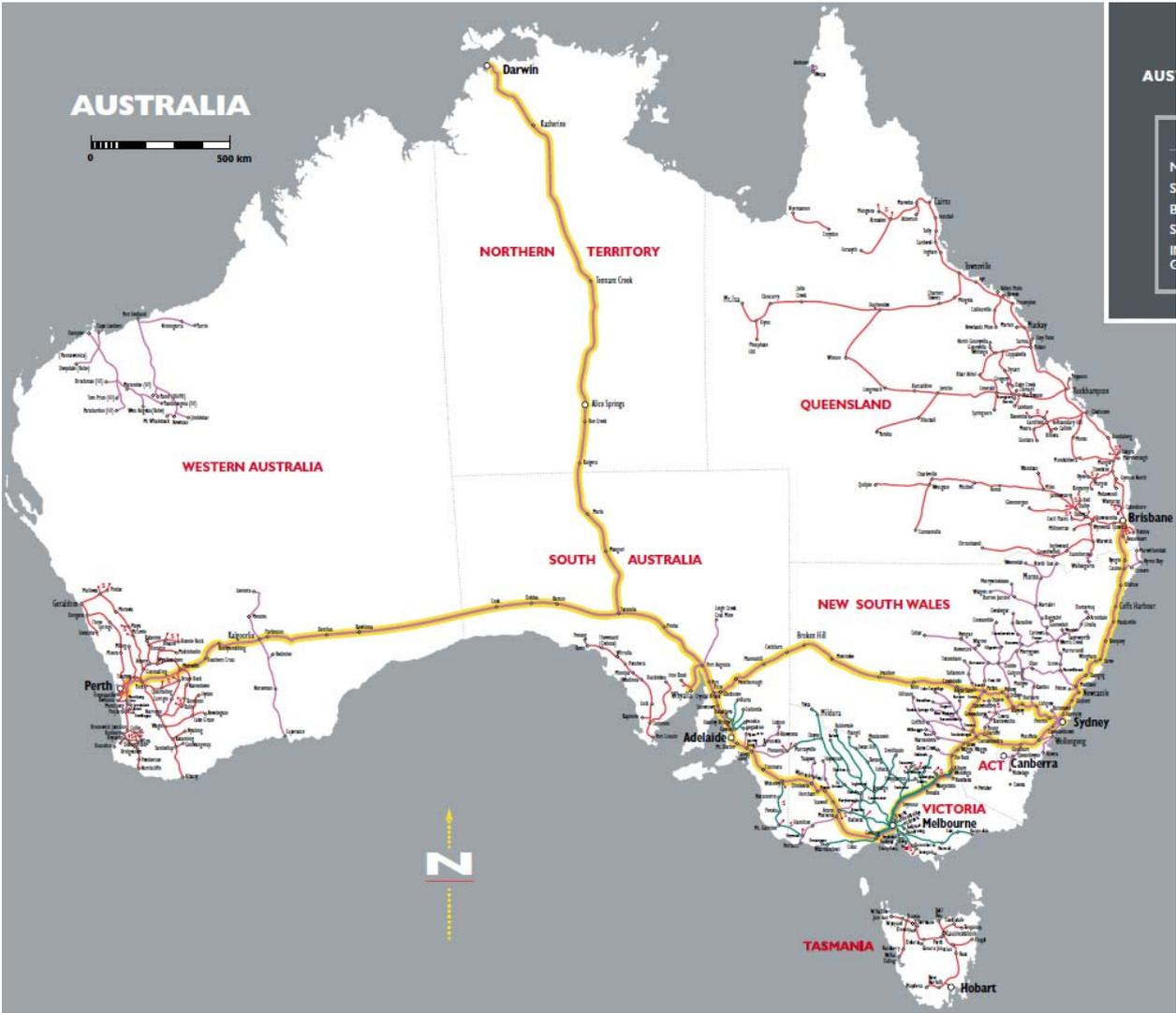


Figure 1: Map of Australia's rail network

Source: Australasian Railways Association, available from <https://ara.net.au/policy-media/network-maps>

Schedule 2

Intention to Respond

Request for Tender: Drug and Alcohol Testing Services

Dated: [insert]

To: The Office of the National Rail Safety Regulator

The Respondent, whose name and address are specified below confirms its intention to provide a Response to the above RFT.

Item	Information	Details
1	Name of each party comprising the Respondent (include ABN or ARBN in the case of a corporation)	
2	Respondent's address for service of notices Telephone no: [insert number] Fax no: [insert number]	
3	Name and position of any person who may be contacted for further information	

Schedule 3 Contract

Testing Services Agreement

made on 2018

Between **Office of the National Rail Safety Regulator**, ABN 44 260 419 904, a body corporate established pursuant to section 12(2) of the *Rail Safety National Law* of Level 1, 75 Hindmarsh Square, Adelaide, South Australia, 5000 ('**Customer**')

and **[insert Service Provider name and ABN]** of **[insert Service Provider address]** ('**Service Provider**')

Background

- A The Service Provider wishes to provide the Services to the Customer.
- B Understanding the need for the Customer to obtain the highest standard of services in the nature of the Services, the Service Provider has held itself out as being able to provide those Services to the Customer.
- C The Customer has agreed to engage the Service Provider on the terms of this Agreement.

Agreed terms

1 Supply of the Services

Supply

- 1.1 The Service Provider must provide the Customer with the Services at each location, in the volumes, at the times and in the timeframes required by the Customer from time to time.
- 1.2 The Service Provider must follow the directions of the Customer in connection with the provision of the Services.
- 1.3 The Service Provider must ensure that all persons involved in the provision of the Services conduct themselves in a professional manner and in accordance with this Agreement.

Damage to property

- 1.4 When on premises owned or occupied by a third party, or the Customer, the Service Provider must:
 - (a) comply with, and ensure that all persons involved in the provision of the Services comply with the:
 - (i) policies, directions and procedures about occupational health and safety;
 - (ii) security and confidentiality requirements; and
 - (iii) work standards, methodologies and procedures, of that third party and the Customer; and
 - (b) not damage any part of those premises or the fixtures or fittings of those premises.

Acknowledgment

- 1.5 The Service Provider acknowledges and agrees that:
 - (a) the Customer does not commit to or guarantee to purchase any volume or value of Services over the Term;
 - (b) the Service Provider may not be the exclusive supplier of services in the nature of the Services to the Customer;
 - (c) the Customer may perform, or obtain from a third party, services in the nature of the Services.

2 Performance of the Services

Manner of performance

- 2.1 The Service Provider represents and warrants, and it is a condition of this Agreement, that:
 - (a) the Service Provider and the Service Provider's agents and subcontractors have the necessary facilities, equipment and qualified personnel available to perform its obligations under this Agreement;
 - (b) all work performed under this Agreement will be carried out and completed efficiently, with due skill and care and to the best industry standards by qualified personnel trained and skilled in the performance of the specific Services involved, in a proper and workmanlike manner, using materials suitable for the purpose;
 - (c) the Service Provider and the Service Provider's agents and subcontractors will hold and maintain any accreditations, licences, permits, registrations and insurances as are required under any State, Territory or Commonwealth legislation or regulation to carry out any work under this Agreement;
 - (d) the Services will be provided in accordance with the Service Levels;
 - (e) the Services will be provided as required by any milestones specified by the Customer;
 - (f) the Services will be fit for the purpose for which they are sought and be provided in accordance with all applicable Laws;
 - (g) any Materials that the Service Provider uses to perform the Services will be free from defects in design, performance and workmanship; and
 - (h) the provision of the Services by the Service Provider to the Customer and any use by the Customer of any of the Materials or output of any of the Services will not infringe, in any way, the Intellectual Property Rights of any person.

Managing Performance

- 2.2 Without limiting the Service Provider's obligations under this Agreement, if there is a Service Problem, the Service Provider must, at no additional cost to the Customer:
 - (a) investigate the underlying causes of the Service Problem;
 - (b) at the Customer's request, prepare and deliver to the Customer a report identifying the Service Problem and causes of the Service Problem;
 - (c) take whatever action is reasonably necessary to minimise the impact of the Service Problem and prevent it from reoccurring;
 - (d) correct the Service Problem; and

- (e) at the Customer's request, advise the Customer of the remedial efforts being undertaken with respect to the underlying causes of the Service Problem.

Service Credits

- 2.3 If the Service Provider fails to meet a Service Level, the Service Provider must credit the Customer with a Service Credit that corresponds to the failure to meet that Service Level against the next invoice to the Customer.
- 2.4 The Service Provider acknowledges that its failure to meet a Service Level may have a material adverse affect on the operations of the Customer.
- 2.5 The Service Provider acknowledges that Service Credits:
 - (a) represent a reduction in Fees to reflect the provision by it of a lower level of service than is required under this Agreement; or
 - (b) are a reasonable pre-estimate of the loss likely to be suffered by the Customer as a result of the Service Provider's actions, as the case may be.

Replacement of Personnel

- 2.6 The Service Provider must replace any personnel engaged in the supply of the Services at the direction of the Customer if the Customer has grounds for giving the direction (including on the grounds of incompetence, misconduct or breach of security).
- 2.7 The Customer does not have the right to require the Service Provider to terminate any person's employment or contract with the Service Provider and this clause will only give the Customer the right to require the Service Provider to discontinue using a particular person in the performance of the Services.

Accuracy and reliance warranties

- 2.8 The Service Provider represents and warrants, and it is a condition of this Agreement, that:
 - (a) all information provided by the Service Provider or on the Service Provider's behalf to the Customer is accurate and is not, whether by omission of information or otherwise, misleading;
 - (b) the Service Provider has not withheld from the Customer any Agreement, information or other fact material to the decision of the Customer to enter into this Agreement; and
 - (c) the Service Provider does not rely on any representation made to the Service Provider by the Customer or any Related Body Corporate of the Customer (if any) before entry into this Agreement.

Acknowledgment

- 2.9 The Service Provider acknowledges and agrees that the Customer, in entering into this Agreement, is relying on the warranties and on the representations made in or under this Agreement.

Reputation

- 2.10 The Service Provider must not perform any act or omission which damages or is likely to damage the reputation of the Customer.

3 Representatives

Customer Representative

- 3.1 The Customer Representative will be available to consult with, and give direction to, the Service Provider as necessary for the proper performance of the Services.

Service Provider Representative

- 3.2 The Service Provider Representative must:

- (a) be skilled and experienced in the management of projects such as the performance of the Services;
- (b) have the authority and skills to act on behalf of the Service Provider in relation to the day to day management of this Agreement and the provision of the Services;
- (c) be available at all reasonable times to consult with, and receive directions from, the Customer Representative as necessary for the proper performance of the Services;
- (d) be responsible for the planning, execution and proper performance of the Services in accordance with the Service Levels;
- (e) be responsible for ensuring the Service Provider's compliance with this Agreement; and
- (f) be responsible for making all proposals to the Customer for changes to the Services, Service Levels or Fees and (if appropriate) actioning such proposals.

Quarterly Contract Management Meetings

- 3.3 Without limiting clause 9.1, the Service Provider will meet and report to the Customer Representative (or such other person as nominated by the Customer from time to time) on a quarterly basis (or at the reasonable request of the Customer Representative) in relation to the Service Provider's performance under this Agreement.
- 3.4 The Service Provider's performance will be assessed at the meetings under clause 3.3.

4 Fees

Fees

- 4.1 Subject to the Service Provider complying with this Agreement, the Customer must pay the Fees to the Service Provider.
- 4.2 The Service Provider acknowledges and agrees that, apart from the Fees, the Service Provider is not entitled to any other fees, payments, sick pay or any Entitlements from the Customer.

Invoices

- 4.3 The Service Provider must invoice the Customer for the Fees within 14 days of the end of the month in which the Services were performed.
- 4.4 An invoice for payment must:
 - (a) identify with reasonable particularity the Services to which the invoice relates, including the type and location of tests carried out;
 - (b) include any information reasonably requested by the Customer; and
 - (c) be in a form the Customer reasonably requires from time to time.
- 4.5 Subject to clauses 4.6 and 4.7, the Customer must pay a correctly prepared invoice for particular Services within 30 days of the end of the month in which the Customer receives that invoice.

Disputes and Service Problems

- 4.6 If there is a dispute about whether a Fee, refund or other amount contemplated by this Agreement is payable or there is a Service Problem in respect of such Fee, the Customer may withhold the amount in dispute or the subject of a Service Problem until the resolution of the dispute or Service Problem.

Set off

- 4.7 The Customer may set off against any amount payable by the Customer under this Agreement any amount payable by the Service Provider to the Customer, including any:
 - (a) amount payable under an indemnity; and

- (b) amount attributable to loss or damage suffered or incurred by the Customer in connection with this Agreement.

Resources

4.8 The Service Provider must:

- (a) use any resources used to perform the Services efficiently; and
- (b) perform the Services in the manner that is the most cost-effective for the Customer and which is consistent with the levels of quality and performance required of the Service Provider under this Agreement.

5 Term and termination

Term

- 5.1 This Agreement commences on the Commencement Date and continues for the Initial Period and, if this Agreement is extended under clause 5.2, the relevant Option Period unless terminated earlier under clause 5.
- 5.2 The Customer may extend this Agreement after the Initial Period for two further Option Periods by giving written notice to the Service Provider before the end of the Initial Period or the first Option Period (as relevant).

Termination for breach

- 5.3 A party may terminate this Agreement by written notice to the other party if:
 - (a) the other party commits a Material Breach of this Agreement and fails to remedy that Material Breach within 14 days of receiving notice from the party requiring the other party to do so; or
 - (b) an Insolvency Event occurs in relation to the other party,in which case this Agreement terminates immediately on giving of the notice to terminate.

Waiver and acknowledgment

- 5.4 The Service Provider expressly waives any rights it may have to terminate this Agreement other than as contemplated under clause 5.
- 5.5 The Service Provider acknowledges that the Customer may terminate this Agreement under clause 5 without considering the impact of the termination on the Service Provider.

After termination or expiry

- 5.6 On termination or expiry of this Agreement:
 - (a) accrued rights or remedies of a party are not affected; and
 - (b) if required by the Customer about particular parts of the Services which have not yet been performed to the Customer's satisfaction, this Agreement continues until the Service Provider has performed those Services to the Customer's satisfaction.

6 Intellectual property

Warranties

- 6.1 The Service Provider represents and warrants, and it is a condition of this Agreement, that:
 - (a) the Service Provider has the right and authority to provide the Customer with the rights described in clause 6.2; and
 - (b) the exercise of the rights described in clause 6.2 will not infringe the Intellectual Property Rights or other rights of any third party.

Assignment and licence

- 6.2 Subject to clause 6.3, the Service Provider assigns to the Customer the Intellectual Property Rights (including future Intellectual Property Rights) in any Material created by the Service Provider in the performance of the Services.
- 6.3 Nothing in clause 6.2 assigns to the Customer any Intellectual Property Rights of the Service Provider in any Material for which the Intellectual Property Rights vested in the Service Provider or a third party before the Commencement Date.
- 6.4 The Service Provider must sign all documents and do all things necessary to give effect to clause 6.2.
- 6.5 The Service Provider grants the Customer an irrevocable, royalty free, transferable, worldwide licence (including the right to sublicense) to exercise the Intellectual Property Rights contemplated by clause 6.3 (if any) in connection with the use and exploitation of such Material.

Acknowledgment

- 6.6 The Service Provider acknowledges that:
 - (a) the Customer retains the Intellectual Property Rights in any Material provided by the Customer to the Service Provider for the purposes of this Agreement;
 - (b) nothing in this Agreement is intended to give the Service Provider any Intellectual Property Rights or other rights in any Material provided by the Customer;
 - (c) the Service Provider must only use Material provided by the Customer as specified in any directions given by the Customer and only to the extent necessary to provide the Services to the Customer; and
 - (d) the Service Provider is responsible for the safe keeping and maintenance of any Material provided to the Service Provider by the Customer.

Use of names

- 6.7 The Service Provider must not, and must ensure that its officers, employees and agents do not, use the names, trade marks or logos of the Customer except with the prior written consent of the Customer.

Moral Rights

- 6.8 Prior to supplying any Material to the Customer, the Service Provider must obtain from each of the authors of the Material all consents necessary to enable the Customer to:
 - (a) attribute or not attribute authorship of the Material in its discretion; and
 - (b) perform such acts in relation to the Material as are reasonably contemplated by this Agreement,without infringing any Moral Rights in the Material that the author may have.

7 Audit

Records

- 7.1 The Service Provider must keep sufficient records to demonstrate its compliance with this Agreement.

Access and inspection

- 7.2 At the times required by the Customer from time to time, the Service Provider must allow the Customer or its nominated representatives to:
 - (a) access the Service Provider's premises; and
 - (b) inspect and copy the Service Provider's relevant records, Agreements and equipment,

to verify the Service Provider's compliance with this Agreement.

- 7.3 For the purposes of complying with clause 7.2, the Service Provider must promptly give the Customer, or the Customer's authorised representatives, any assistance they require.

Costs of inspection

- 7.4 If the inspection or verification contemplated by clause 7.2 reveals the Service Provider has failed to comply with this Agreement then the Customer's costs of that inspection or verification must be paid by the Service Provider.

8 Disengagement

Handover assistance

- 8.1 The Service Provider must, for such period before termination or expiration of this Agreement and afterwards as the Customer reasonably considers appropriate:
- (a) do all things necessary to eliminate or minimise any disruption to the provision of the Services as a result of the handover of services to the Customer or an incoming contractor; and
 - (b) give all reasonable assistance to the Customer and any incoming contractor to enable a smooth and efficient handover of the Services.

Continuity of Services

- 8.2 Until termination of this Agreement, the Service Provider must ensure that there is no:
- (a) degradation of quality of the Services; or
 - (b) interruption to the provision of the Services.

9 Reporting

- 9.1 The Service Provider must give the Customer any reports or assessments requested by the Customer from time to time in relation to the Services. The reports or assessments must be in a format approved by the Customer.

10 Confidential Information

Obligations of confidence

- 10.1 Each party agrees to keep confidential, and not to use or disclose, other than as permitted by this Agreement, any Confidential Information of the other party provided to or obtained by that party before or after entry into this Agreement.

Exclusions

- 10.2 The obligations of confidence in clause 10.1 do not apply to Confidential Information:
- (a) that is required to be disclosed by applicable law, or under compulsion of law by a court or government agency or by the rules of any relevant stock exchange or regulator, as long as the disclosing party:
 - (i) discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
 - (ii) before disclosing any information, gives a reasonable amount of notice to the other party in writing and takes reasonable steps (whether required by the other party or not) to maintain that Confidential Information in confidence;
 - (b) that is in the public domain except as a result of a breach of this Agreement or other obligation of confidence; or

- (c) that is already known by, or rightfully received, or independently developed, by the recipient of that Confidential Information free of any obligation of confidence.

Restriction on disclosure

- 10.3 Each party may use and disclose Confidential Information of the other party only:
- (a) with the prior written consent of the other party; or
 - (b) to that party's directors, agents, professional advisors, employees, contractors and permitted sub-contractors solely for the exercise of rights or the performance of obligations under this Agreement.
- 10.4 If either party discloses Confidential Information under clause 10.3, that party must ensure that the information is kept confidential by the person to whom it is disclosed.

Injunctive relief

- 10.5 Each party acknowledges that:
- (a) the other party may suffer financial and other loss and damage if any unauthorised act occurs in relation to Confidential Information of the other party, and that monetary damages would be an insufficient remedy; and
 - (b) in addition to any other remedy available at law or in equity, the other party is entitled to injunctive relief to prevent a breach of, and to compel specific performance of clause 10.

11 Privacy

Use of Personal Information

- 11.1 The Service Provider must process, use and disclose all Personal Information:
- (a) in compliance with the Privacy Laws (regardless of whether or not the Service Provider is otherwise obliged to comply with the Privacy Laws); and
 - (b) only for the purposes of performing its obligations under this Agreement.

Treatment of Personal Information

- 11.2 The Service Provider must obtain any necessary consents from, and make any necessary disclosures to, all relevant individuals for the purpose of disclosing their Personal Information to the Customer under this Agreement, and must otherwise comply in all respects with its obligations under the Privacy Act in respect of any Personal Information disclosed to the Customer.
- 11.3 The Service Provider must give all assistance required by the Customer from time to time in relation to compliance by the Customer with the Privacy Act, or any investigation, request or enquiry (formal or otherwise) from the Privacy Commissioner regarding the Personal Information disclosed to the Customer under this Agreement.
- 11.4 The Service Provider indemnifies the Customer against all costs, expenses, losses, proceedings and claims of any nature suffered, brought or incurred directly or indirectly as a result of a breach by the Service Provider of its obligations under clause 11.
- 11.5 The Service Provider must:
- (a) comply with all reasonable directions of the Customer, in connection with the obligations of the parties under the Privacy Laws or in connection with policies (including privacy policies) developed by the Customer from time to time to comply with the Privacy Laws;
 - (b) comply with any direction of the Customer, or an individual to whom the Personal Information relates, about access to, or correction of, Personal Information;

- (c) comply with any request or direction of the Customer, arising directly from or in connection with the exercise of the functions of the Privacy Commissioner under the Privacy Laws, or otherwise including the issuing of any guideline about the handling of Personal Information; and
- (d) not disclose Personal Information overseas without the prior written consent of the Customer, and if that consent is given, the Service Provider must take reasonable steps to ensure the recipient complies with the Privacy Laws and is required to comply with the directions of the Customer about Personal Information.

11.6 The Service Provider must immediately notify the Customer if it becomes aware that a disclosure of Personal Information may be required by law.

The Service Provider's duty

- 11.7 The Service Provider must take all necessary steps to ensure that:
- (a) it uses and discloses Personal Information only as required by the Customer's privacy policy and the Privacy Laws and solely for the purpose of providing the Services;
 - (b) the Personal Information it uses and discloses is protected against loss and against unauthorised access, use, interference, modification, disclosure or other misuse; and
 - (c) only personnel authorised by the Customer have access to the Personal Information.
- 11.8 The Service Provider must notify the Customer immediately if it becomes aware of any breach of clause 11.

12 Indemnity

Service Provider indemnity

- 12.1 The Service Provider is liable for, and indemnifies the Customer from and against, all loss or damage (including legal costs) incurred or suffered by the Customer, however caused, in connection with:
- (a) any breach of this Agreement by the Service Provider;
 - (b) any claim or allegation by a third party in connection with the Services;
 - (c) any claim or allegation that the provision of the Services infringes the Intellectual Property Rights or other rights of any third party;
 - (d) personal injury or death of any person (including any employee of the Service Provider) at premises owned or occupied by the Customer or a third party or in connection with the provision of the Services.

Continuing obligation

- 12.2 Each indemnity in this Agreement is a continuing obligation notwithstanding:
- (a) any settlement of account; or
 - (b) the occurrence of any other thing,
- and it is not necessary for the Customer to incur expense or make payment before enforcing or making a claim under an indemnity.

13 Insurance

- 13.1 The Service Provider must effect and maintain from a reputable insurance company:
- (a) all insurances required by Law, including workers compensation insurance;
 - (b) public liability insurance for an amount of at least \$20 million per claim;

- (c) professional indemnity insurance for an amount of at least \$20 million per claim; and
- (d) such other insurance as is required by the Customer from time to time in respect of any liability of the Service Provider that may arise from the performance or exercise of its obligations or rights under this Agreement.

13.2 The Service Provider must:

- (a) maintain the insurance policies referred to in clause 13.1 in a form and for a policy period acceptable to the Customer; and
- (b) if requested by the Customer, give the Customer copies of these insurance policies and evidence of currency of the policies.

14 No assumption of duty

- 14.1 The Service Provider is solely responsible for the discharge and satisfaction of the Service Provider's duties in connection with the Services and this Agreement.
- 14.2 Neither the Customer nor any of its officers or agents assumes any duty to:
- (a) advise on, supervise or control the Service Provider's provision of the Services;
 - (b) detect, prevent or remedy any default of the Service Provider;
 - (c) ensure the proper performance of any obligations of the Service Provider; or
 - (d) exercise any discretion for the benefit of the Service Provider.

15 Key Personnel

Full time and effort of Key Personnel

- 15.1 The Service Provider must ensure that each of the Key Personnel is assigned to perform the Services for the Customer on a full time basis.

Proposed replacements

- 15.2 The Service Provider must immediately notify the Customer if any of the Key Personnel resign.
- 15.3 The Service Provider must not replace any of the Key Personnel without the prior written approval of the Customer.
- 15.4 The Service Provider must give the Customer any information the Customer requires about any proposed replacement of Key Personnel.

Retention

- 15.5 The Service Provider must use its best endeavours to keep the Key Personnel within the employ of the Service Provider.

Restructuring

- 15.6 The Service Provider must not undertake any internal or organisational restructuring that involves Key Personnel without the consent of the Customer.

16 Change of Control

- 16.1 If a Change of Control occurs in relation to the Service Provider, the Customer may terminate this Agreement by written notice to the Service Provider, in which case this Agreement is terminated on the date specified in the notice, or, if no date is specified, immediately on giving of the notice.
- 16.2 The Service Provider must notify the Customer immediately if a Change of Control occurs during the Term.

17 Costs and taxes

Costs

- 17.1 Each party bears its own costs in relation to the preparation and signing of this Agreement.

Stamp duty

- 17.2 The Service Provider must pay all stamp duty (including penalties and interest) assessed or payable in connection with this Agreement.

Other taxes

- 17.3 Subject to clause 17, the Service Provider must pay all taxes, duties, government charges and other taxes of a similar nature (including fines, penalties and interest) imposed or levied in Australia or overseas in connection with the performance of this Agreement.

GST

- 17.4 Any words capitalised in clause 17 and not already defined in clause 22 have the meaning given to those words in the GST Act.
- 17.5 Except under clauses 17.6 to 17.10, the consideration for a Supply made under or in connection with this Agreement does not include GST.
- 17.6 If a Supply made under or in connection with this Agreement is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:
- (a) the Recipient must pay the Supplier an amount equal to the total GST for the Supply (in addition to and in the same manner as the consideration otherwise payable under this Agreement for that Supply); and
 - (b) the Supplier must give the Recipient a Tax Invoice for the Supply.
- 17.7 For clarity, the GST payable under clause 17.6 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.
- 17.8 If either party has the right under this Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- 17.9 Where a Tax Invoice is given by the Supplier, the Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.
- 17.10 Where a Supply made under or in connection with this Agreement is a Progressive or Periodic Supply, clause 17.6 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

18 Dispute Resolution

- 18.1 Either party may, in the case of a genuine urgency, seek immediate interlocutory relief or an interim remedy.
- 18.2 Neither party may commence legal proceedings without attempting to resolve the dispute as follows:
- (a) Each party must submit the dispute to one of its senior officers who has not previously been involved in the dispute (**Negotiator**) within 7 days of the dispute arising.
 - (b) The Negotiators must meet as soon as possible to resolve the dispute.

- (c) If the Negotiators cannot resolve the dispute within 14 days of its reference to them, each Negotiator must prepare a written summary of his or her attempt to resolve the dispute and immediately refer that summary to a senior executive of each party (**Executive Negotiators**).

- 18.3 The Executive Negotiators must meet as soon as possible to resolve the dispute, but in any case within 7 days of its reference to them. Each party must authorise and inform its Executive Negotiator sufficiently so that he or she can undertake that meeting without detailed reference to another person,

- 18.4 Notwithstanding the existence of a dispute each party must continue to perform its obligations under this Agreement.

19 Notices

Method

- 19.1 A notice, consent or communication under this Agreement is only effective if it is:
- (a) in writing, signed by or on behalf of the person giving it;
 - (b) addressed to the person to whom it is to be given; and
 - (c) given as follows:
 - (i) delivered by hand to that person's address;
 - (ii) sent to that person's address by prepaid mail or by prepaid airmail, if the address is overseas; or
 - (iii) sent by fax to that person's fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission was made without error and showing the relevant number of pages and the correct destination fax number or name of recipient.
 - (iv) Sent by electronic mail to an email address provided for that purpose (in which case the notice is taken to have been given at the time of transmission)

When is notice given

- 19.2 A notice, consent or communication given under clause 19.1 is given and received on the corresponding day set out in the table below. The time expressed in the table is the local time in the place of receipt.

If a notice is	It is given and received on
Delivered by hand or sent by fax	<ul style="list-style-type: none">(a) that day, if delivered by 5.00pm on a Business Day; or(b) the next Business Day, in any other case.
Sent by post	<ul style="list-style-type: none">(a) three Business Days after posting, if sent within Australia; or(b) seven Business Days after posting, if sent to or from a place outside Australia.

Address for notices

- 19.3 A person's address and fax number are those set out below, or as the person notifies the sender:

Name	
Attention	
Address	
Fax	

20 Change Control Procedures

- 20.1 This Agreement may only be amended by a written agreement executed by the parties.
- 20.2 In the event either party requires changes to the Services or any of the schedules to this Agreement, such party will inform the other of the proposed changes in a form of a change notice (**Change Notice**).
- 20.3 Except to the extent otherwise agreed by the parties, each Change Notice shall include:
- (a) drafts of all necessary consequential changes to the Services;
 - (b) if relevant, an estimate of the cost impact (if any) on the Customer and the change in the Fees and a draft of all necessary consequential changes or a statement that there are no such consequential changes or costs impact; and
 - (c) the time it would take for the Service Provider to implement the changes.
- 20.4 The parties will act reasonably in negotiating whether or not to make any or all of the changes proposed in the Change Notice, but no party is bound to accept a change contained in a Change Notice which is not acceptable to it.

21 General

- 21.1 The laws of South Australia govern this Agreement.
- 21.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of South Australia and courts competent to hear appeals from those courts.
- 21.3 Where the Customer may exercise any right or discretion or make any decision under this Agreement, the Customer may do so in its absolute discretion, conditionally or unconditionally, and without being required to give reasons or act reasonably. This clause applies unless this Agreement expressly requires otherwise.
- 21.4 The Service Provider must not assign, in whole or in part, or novate its rights and obligations under this Agreement without the prior written consent of the Customer.
- 21.5 The Customer may assign its interest under this Agreement.
- 21.6 This Agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- 21.7 A clause or part of a clause of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining clauses or parts of the clause of this Agreement continue in force.
- 21.8 This Agreement supersedes all previous agreements about its subject matter. This Agreement embodies the entire agreement between the parties.
- 21.9 The Service Provider must not subcontract the performance of all or any part of its obligations under this Agreement without the prior written consent of the Customer.
- 21.10 If the Service Provider subcontracts the performance of all or any part of its obligations under this Agreement as specified in clause 21.9, then the Service Provider will be liable for the acts and omissions of the subcontractor as though they were acts and omissions of the Service Provider.
- 21.11 A right under this Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.
- 21.12 This Agreement may be signed in any number of counterparts. All counterparts together make one instrument.
- 21.13 Without limiting the survival of any provisions which would otherwise survive termination of this Agreement, clauses 2.1, 2.8, 6,

8, 10, 11, 12, 13 and this clause 21 are continuing provisions and will survive termination of this Agreement.

22 Definitions and interpretation

Definitions

- 22.1 In this Agreement:

Agreement means this testing services agreement and all schedules and annexures to it.

Bankruptcy Act means the *Bankruptcy Act 1966* (Cth).

Change of Control means:

- (a) the happening of circumstances or events, following which the Service Provider becomes Controlled by another person, alone or together with any Related Body Corporate;
- (b) acquisition by a third party or third parties of all or substantially all of the assets of the Service Provider or of any entity in the Service Provider's ownership chain; or
- (c) a merger of the Service Provider or of any entity in the Service Provider's ownership chain with or into a third party to form a new entity.

Commencement Date means [insert].

Confidential Information of a party means the terms and existence of this Agreement and any information:

- (a) about the business and affairs of that party;
- (b) about the customers, clients, employees, sub contractors or other persons doing business with that party;
- (c) which is by its nature confidential;
- (d) which is designated as confidential by that party; or
- (e) which the other party knows or ought to know, is confidential,

and all trade secrets, knowhow, financial information and other commercially valuable information of that party.

Control of an entity includes the definition of 'Control' in section 50AA Corporations Act and in the case of a corporation includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of the board of directors of that corporation, the voting rights of the majority of the voting shares of the corporation or the management of the affairs of the corporation.

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

Customer Representative means [insert].

Entitlements means any salary, wages, allowances, annual leave or payment in respect of annual leave, long service leave or payment in respect of long service leave, notice of termination or payment instead of notice of termination, severance pay, commissions, bonuses, reimbursement of expenses, superannuation and any entitlement which may be owed or payable under any award, agreement or other industrial instrument, statute or employment contract to which an employee may be entitled in respect of their employment or the termination of that employment.

Fees mean the fees specified in Schedule 1.

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

Initial Period means 48 months.

Insolvency Event means any of the following events:

- (a) a controller (as defined in the Corporations Act) is appointed to the party, or over any of the property of the party;

- (b) the party becomes bankrupt;
- (c) a controlling trustee is appointed to the party, or over any of the property of the party;
- (d) the party or the party's property becomes subject to a personal insolvency arrangement under part X Bankruptcy Act or a debt agreement under part IX Bankruptcy Act;
- (e) the party is unable to pay its debts when they become due and payable;
- (f) the party ceases to carry on business; or
- (g) any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.

Any event that takes place as part of a solvent reconstruction, amalgamation, merger, or consolidation, on terms approved in writing by the other party beforehand and in compliance with those terms is excluded from this definition.

Intellectual Property Rights means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, Moral Right, patent, registered or unregistered trade mark, registered or unregistered design, registered or unregistered plant breeder's right, trade secret, knowhow, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of those rights.

Key Personnel means [insert].

Option Period means 24 months.

Laws means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time in any part of the world, and includes the Rail Safety Legislation, common law and equity as applicable from time to time, and any Australian standards, procedures or industry codes of conduct.

Material means material in any form and includes reports, data, certificates, information, documents and procedures.

Material Breach means any breach (including an anticipatory breach) which is not minimal or trivial in its consequences to the terminating party. In deciding whether any breach is material, no regard shall be had to whether it occurs by accident, mishap, mistake or misunderstanding.

Moral Right means:

- (h) the right of integrity of authorship;
- (i) the right of attribution of authorship; and
- (j) the right not to have authorship falsely attributed,

including those rights as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing before, on or after the commencement of this Agreement.

Personal Information has the meaning given to that term by the Privacy Act.

Privacy Act means the *Privacy Act 1988* (Cth) and any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under it, as amended from time to time.

Privacy Laws means:

- (k) the Privacy Act;
- (l) the Australian Privacy Principles (or APPs) contained in schedule 1 Privacy Act; and
- (m) all other applicable laws, regulations, registered privacy codes, privacy policies and contractual terms in respect of the processing of Personal Information.

Progressive or Periodic Supply means a Taxable Supply that satisfies the requirements of section 156–5 GST Act.

Rail Safety Legislation means the rail safety legislation outlined in Schedule 2 of this Agreement.

Related Body Corporate has the meaning given to that term by section 9 *Corporations Act 2001* (Cth).

Service Credits means the amounts specified in Schedule 1.

Service Problem means any failure by the Service Provider to meet any Service Level or the Customer otherwise notifies the Service Provider of any failure to provide the Services in accordance with this Agreement.

Service Levels means the service levels specified in Schedule 1.

Services means the services specified in Schedule 1.

Service Provider Representative means [insert].

Term means the term contemplated by clause 5.

Interpretation

22.2 In the event of there being any conflict or inconsistency between any of the parts of this Agreement (unless expressly stated otherwise) the terms of the part first appearing below shall prevail to the extent of the inconsistency:

- (a) the main body of this Agreement;
- (b) any schedules to this Agreement.

22.3 In this Agreement:

- (a) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (b) a reference to this Agreement includes the agreement recorded by this Agreement;
- (c) no rule of construction applies in the interpretation of this Agreement to the disadvantage of the party preparing the Agreement on the basis that it put forward this Agreement or any part of it; and
- (d) a reference to a party is a reference to the Service Provider or the Customer, and a reference to the parties is a reference to both the Service Provider and the Customer.

EXECUTED as an agreement

Executed by

The common seal of the **Office of the National Rail Safety Regulator** is affixed in accordance with its constitution on / /20 in the presence of

^

[Name]

National Rail Safety Regulator

^

Witness

^

Title/Position

[#insert company name (in title case)] ACN [#insert ACN] on / /20 by:

^

Director

^

Director/Secretary

^

Full name of Director

^

Full name of Director/Secretary

Schedule 1: Services and Fees

[Details to be included based on, amongst other matters, RFT Responses]

Schedule 2: Rail Safety Legislation

Jurisdiction	Act	Regulations
South Australia	<u>Rail Safety National Law (South Australia) Act 2012</u>	<ul style="list-style-type: none"> • <u>Rail Safety National Law National Regulations 2012</u> • <u>Rail Safety National Law (South Australia) (Drug and Alcohol Testing) Regulations 2012</u> • <u>Rail Safety National Law (South Australia) Transitional Arrangements) Regulations 2012</u>
New South Wales	<ul style="list-style-type: none"> • <u>Rail Safety National Law (NSW) No 82a</u> • <u>Rail Safety (Adoption of National Law) Act 2012 No 82</u> 	<ul style="list-style-type: none"> • <u>Rail Safety National Law National Regulations 2012</u> • <u>Rail Safety (Adoption of National Law) Regulation 2018</u> (further detail on drug and alcohol testing)
Northern Territory	<u>Rail Safety (National Uniform Legislation) Act 2012 No 27</u>	<ul style="list-style-type: none"> • <u>Rail Safety National Law National Regulations 2012</u> • <u>Rail Safety (National Uniform Legislation) Regulations 2015</u>
Tasmania	<u>Rail Safety National Law (Tasmania) Act 2012 No 38</u>	<u>Rail Safety National Law National Regulations 2012</u>
Victoria	<ul style="list-style-type: none"> • <u>Rail Safety National Law Application Act 2013 No 22</u> • <u>Rail Safety (Local Operations) Act 2006 (Vic)</u> (includes further detail on drug and alcohol testing in VIC) 	<ul style="list-style-type: none"> • <u>Rail Safety National Law National Regulations 2012</u> • <u>Rail Safety National Law (Limited Accreditation Exemptions) Regulations 2014 SR No 31</u>
Australian Capital Territory	<ul style="list-style-type: none"> • <u>Rail Safety National Law (ACT) Act 2014</u> 	<ul style="list-style-type: none"> • <u>Rail Safety National Law National Regulations 2012</u> • <u>Rail Safety National Law (ACT) Regulation 2014</u> (further details on drug and alcohol testing in ACT)
Western Australia	<ul style="list-style-type: none"> • <u>Rail Safety National Law (WA) Act 2015</u> 	<ul style="list-style-type: none"> • <u>Rail Safety National Law (WA) Regulations 2015</u> • <u>Rail Safety National Law (WA) (Alcohol and Drug Testing) Regulations 2015</u>
Queensland	<ul style="list-style-type: none"> • <u>Rail Safety National Law (Queensland) Act 2017</u> 	<ul style="list-style-type: none"> • <u>Rail Safety National Law National Regulations 2012</u> • <u>Rail Safety National Law (Queensland) Regulation 2017</u> • <u>Rail Safety National Law (Queensland) (Transitional) Regulation 2017</u>

Schedule 4 Request for Clarification Template

Date of Request: [insert]

Respondent Name [insert]

Request for Clarification

Clarification Request	RFT Reference (e.g. RFT section, Contract clause)	Clarification

Schedule 5 Schedule of Non-Conformance

The Response does not conform with the RFT. The areas in which the Response does not conform and the reasons for the non-conformance are as follows:

Non-conforming provision or items	Reasons for Non-conformance

Schedule 6 Schedule of Rates

ALL RATES SHALL BE EXCLUSIVE OF GST.

The Respondent must propose a Schedule of Rates (and any annual variations to the Schedule of Rates) based on each activity that may be performed during the contract term.

Please complete the indicative schedule below and add any other fees / charges / variations:

ITEM	DESCRIPTION	UNIT	RATE (\$)		INCLUSIONS / VARIATIONS <i>e.g. different rates for public holidays</i>
			7 days/ week		
			Between 7am – 7pm	After hours (between 7pm – 7am)	
1	Alcohol Testing	Per Test			
2	Oral Fluid / Saliva Testing	Per Test			
3	Urine Drug Testing	Per Test			
4	Blood Testing	Per Test			
5	Consumables	Per Test			
6	Laboratory Service – saliva / oral confirmation	Per Test			
7	Laboratory Service – urine confirmation				
8	Incident Callout	Per Callout			
9	Travel to site within metro areas	Per kilometre			
10	Travel to site outside of metro areas	Per kilometre			
11	Hours on-site	Per hour or block rate (e.g. half day or full day)			
12	Any other fees				
13	Any other fees (add)				

Please advise ONRSR of any alternate fee structures (e.g. set monthly rates etc). Respondents may use a variant of the Schedule of Rates should their fee structure differ to Schedule 6. A Schedule of rates must however form part of your submission. ONRSR reserves the right to refuse consideration of submissions without a Schedule of Rates or without a clearly articulated rate structure.