



**Transport
for NSW**

Goods and Services Agreement

Dated

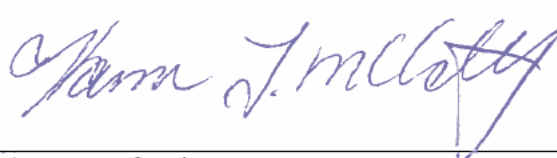
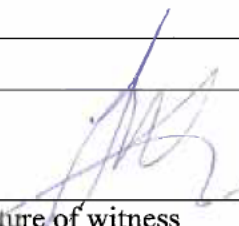
Transport for NSW ("TfNSW")

Healthcare Australia Pty Ltd ("Supplier")

Parties	TfNSW and Supplier	
TfNSW	Name	Transport for NSW
	ABN	18 804 239 602
	Address	231 Elizabeth Street Sydney, New South Wales, 2001
Supplier	Name	Healthcare Australia Pty Ltd
	ABN	95 108 180 589
	ACN	108 180 589
	Address	Level 22, 201 Elizabeth St, Sydney, New South Wales, 2000
Date of Agreement		

EXECUTED as an agreement.

<p>EXECUTED by Healthcare Australia Pty Ltd in accordance with section 126(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:</p> <p>.....</p> <p>Signature of authorised representative</p> <p>.....</p> <p>Name of authorised representative (block letters)</p>	<p>.....</p> <p>Signature of authorised representative</p> <p>.....</p> <p>Name of authorised representative</p> <p>.....</p> <p>Date</p>
---	---

<p>Signed for and on behalf of Transport for NSW (ABN 18 804 239 602) by its authorised delegate in the presence of:</p>	
	Signature of Delegate
	<p>Karen McCarthy exec Director, security, crisis, emergency management</p>
Signature of witness	Name & Title of Delegate
Full name of witness FABIAN FOO	Date 27/8/2021

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Contract Details

Commencement

Date (Clause 2) 30 August 2021

Initial Term

(Clause 2) 8 weeks

Further Term

(Clause 2) As agreed in writing by the parties pursuant to clause 2.2

Delivery Address

(Clause Error!

Reference source
not found.)

Warranty Period

**(Clauses 3.8 and
4.3)**

6 months

Repair Location

(Clause Error!

Reference source
not found.)

Invoice Timing

(Clause 7.2)

See Schedule 3 (Charges)

**Security (Clause
9.4)**

Criminal record search and investigation required?

☐ Yes, for all Supplier Personnel involved in:

☒ No

- ☐ Manufacturing of the Goods
- ☐ Packaging of the Goods
- ☐ Delivery of the Goods
- ☐ Planning of the Services
- ☐ Performance of the Services
- ☐ Other: _____ of the Goods
- ☐ Other: _____ of the Services

Deed of Confidentiality required?

☐ Yes, for all Supplier Personnel involved in:

☒ No

- ☐ Manufacturing of the Goods
- ☐ Packaging of the Goods
- ☐ Delivery of the Goods
- ☐ Planning of the Services
- ☐ Performance of the Services
- ☐ Other: _____ of the Goods
- ☐ Other: _____ of the Services

IP Ownership (clause 13.4)	Option A - TfNSW Owns New IP	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	Option B – Supplier Owns New IP but TfNSW has Exclusive Use Licence	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
	Option C – Supplier Owns New IP but TfNSW has Non-Exclusive Use Licence	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

NOTE: Chose one option here and mark "no" for others. If no option is selected or if it is unclear which option is selected then Option A will apply

TfNSW Representative (Clause 15) and notices (Clause 24)	Name:	<u>Fabian Foo</u>
	Position:	<u>Director - Enhanced Cleaning Program - Operations, Safety Environment & Regulation</u>
	Address:	<u>7 Harvest St, Macquarie Park NSW 2113</u>
	Facsimile:	<u>Not applicable</u>
	Email:	<u>Fabian.Foo2@transport.nsw.gov.au</u>
Supplier Representative (Clause 15) notices (Clause 24)	Name:	<u>Stacy McKenzie</u>
	Position:	<u>National Manager – Corporate Health</u>
	Address:	<u>35 King William Road, Unley SA 5061</u>
	Facsimile:	<u></u>
	Email:	<u>stacy.mckenzie@healthcareaustralia.com.au</u>
Reports (Clause 15.3)	As specified in paragraph 7 of Schedule 2 and any other reports as may be reasonably required by TfNSW from time to time	
Review meetings (Clause 15.4)	Weekly and any additional meetings as reasonably required by TfNSW	
Supplier Liability Cap (Schedule 1 & Clause 17.2)	\$3 million	
Transition Plan Submission Date (Clause 26.1)	Not used	

**Insurance Policies
(Clause 18.1)**

TYPES OF INSURANCES	MINIMUM SUM INSURED	TICK IF REQUIRED
Broadform Public and Products Liability	\$20 million for any single occurrence and unlimited in the aggregate as to the number of occurrences The total aggregate liability during any one period of insurance for all claims arising out of the Supplier's Products shall not exceed \$20 million	<input checked="" type="checkbox"/>
Third Party Property Damage	\$20 million for any single occurrence and unlimited in the aggregate as to the number of occurrences	<input checked="" type="checkbox"/>
Workers Compensation	As required by the laws of each relevant State and Territory	<input checked="" type="checkbox"/>
Not used	Not used	Not used
Professional Indemnity	\$1 million per occurrence	<input checked="" type="checkbox"/>
Not used	Not used	Not used

For details of requirements for each policy see Attachment B.

**Important contractual notices
(Clause 24.2)**

Important contractual notices under clause 24.2 must be copied to:

1 If to TfNSW:

Copy to:

Karen McCarthy – Executive
Director - Security, Crisis &
Emergency Mgmt, Safety
Environment & Regulation

(for notices under
clause 24.2 only)

7 Harvest St, Macquarie Park
New South Wales 2113

2 If to the Supplier:

Copy to:

Catherine O'Connor –
National Manager Legal &
Commercial Operations

(for notices under
clause 24.2 only)

Level 3, 312 St Kilda Rd,
Melbourne, VIC 3004

Note: Under clause 24.2 important contractual notices are not permitted to be sent by facsimile or email.

General Terms

1 Contract structure

1.1 Overview

This agreement consists of the following parts:

- (a) these General Terms - the clauses of these General Terms set out the contractual framework under which the Supplier will supply Goods and perform Services;
- (b) the Contract Details - the details set out the key commercial variables applicable to this agreement;
- (c) the Schedules - set out the detailed provisions relating to the Goods, Services and Service Levels; and
- (d) the other Attachments - sets out forms and other material relevant to this agreement.

1.2 No exclusivity

The Supplier acknowledges that:

- (a) it is not the exclusive supplier of the Goods or Services, or goods or services similar to the Goods or Services and TfNSW may at any time during the Term acquire such Goods or Services or any part of them from a third party; and
- (b) TfNSW is under no obligation to acquire any minimum quantity of Goods or Services under this agreement.

1.3 Priority

If there is any inconsistency between any of the parts of this agreement, then the part listed higher in clause 1.1 (Overview) takes priority and applies over any part listed lower in that clause, but only to the extent of the inconsistency.

1.4 Definitions and interpretation

The definitions used in this agreement and the rules of interpretation are set out in the Dictionary in Schedule 1.

2 Term

2.1 Term of Agreement

This agreement commences on the Commencement Date and continues until expiry of the Initial Term unless extended under clause 2.2 (Extension) or terminated in accordance with this agreement.

2.2 Extension

This agreement may be extended by the parties, by mutual agreement in writing, on the same terms and conditions for the Further Term.

2.3 Holding over

Following expiry of the Initial Term (including any extension of it under clause 2.2 (Extension)) if TfNSW Requires then this agreement will continue on a periodic basis on the same terms (including Charges) until the earlier of:

- (a) termination by either party giving the other at least 3 month's notice;
- (b) expiration of 12 months; or
- (c) termination in accordance with this agreement.

2.4 No entitlement to new agreement or extension of agreement

Nothing in this agreement shall be construed as affording the Supplier a right or expectation of any renewal or extension of this agreement after the Initial Term or to provide, or be invited to provide the Goods or Services after the Initial Term.

3 Goods

3.1 General

The Supplier must supply the Goods to TfNSW in accordance with the terms and conditions of this agreement.

3.2 Specifications

The Supplier must ensure that the Goods:

- (a) comply with the Specifications; and
- (b) are identical to any Tested Goods.

3.3 Not used

3.4 Not used

3.5 Not used

3.6 Not used

3.7 Not used

3.8 Warranty repairs

If the Goods are or become defective in any way during the Warranty Period, then, at TfNSW's absolute discretion:

- (a) the Supplier must immediately replace or repair the Goods at the Supplier's cost; or
- (b) TfNSW may return the Goods to the Supplier. The Supplier must fully refund any amounts paid for the Goods that TfNSW does not retain.

3.9 Not used

3.10 Stock Levels

The Supplier must ensure that throughout the Term it maintains sufficient stock levels of Goods to meet obligations under this agreement and to be able to provide the Services.

3.11 Not used

4 Services

4.1 General

The Supplier must provide the Services to TfNSW to a standard that meets or exceeds any applicable Services Levels acting reasonably in accordance with the terms and conditions of this agreement.

4.2 Capability Levels

The Supplier must ensure that throughout the Term it maintains sufficient capability and resources in relation to Services to meet its obligations under this agreement.

4.3 Warranty rectification

If the result achieved by the Services is or becomes defective in any way during the Warranty Period then the Supplier must immediately re-perform the Service or remedy the defect at the Supplier's cost.

5 Service Levels and Service Credits

Where the Supplier fails to meet any Service Level, without limiting other rights and remedies available to TfNSW, the Supplier must at no additional cost to TfNSW promptly:

- (a) at TfNSW's option, pay to or credit TfNSW, the Service Credits;
- (b) if requested by TfNSW, in the case of Services re-perform those Services which gave rise to the failure to meet the Service Level;
- (c) use all reasonable endeavours to correct the issue which caused the failure to meet the Service Level;
- (d) arrange all additional resources reasonably necessary to deliver the Goods or perform the Services in accordance with the Service Level as soon as practicable; and
- (e) if requested by TfNSW, provide at no charge to TfNSW a detailed report on the steps taken by the Supplier to prevent similar future non-compliance with the Service Levels.

6 Other Supplier Obligations

6.1 Standard of performance

Without limiting the Supplier's obligations under this agreement, the Supplier must perform its obligations under this agreement:

- (a) in accordance with best industry practice;
- (b) with all due care, skill and diligence expected of a professional service supplier and in a proper and workmanlike manner; and
- (c) in a cost effective manner consistent with the required level of quality and performance.

6.2 Comply with requirements

Without limiting the Supplier's obligations under this agreement, the Supplier must comply, and must ensure that the Supplier Personnel comply, with:

- (a) all TfNSW standards, policies and procedures notified from time to time (other than any which are expressly inconsistent with this agreement);
- (b) all other reasonable requirements and directions of TfNSW in relation to the Goods and Services, including:
 - (i) the requirements set out in Schedule 2 in respect of Supplier Personnel; and
 - (ii) that the Supplier must reasonably co-operate with other TfNSW suppliers; and
- (c) the Supplier's own internal standards and policies (other than any which are inconsistent with this agreement).

Where there is any inconsistency between any of the requirements set out above, the requirement listed earlier prevails to the extent of the inconsistency.

6.3 Not used

6.4 Not used

6.5 Not used

7 Charges, invoices and payments

7.1 TfNSW will pay Charges

Subject to this clause 7 (Charges, invoices and payments), in consideration of the Supplier supplying the Goods and performing the Services, TfNSW will pay to the Supplier the Charges. The Supplier is not entitled to recover any charge or expenses additional, to the Charges for the supply of Goods, the performance of the Services, the provision of any benefit or the performance of any acts, even if required to do so under this agreement, unless the agreement provides otherwise.

7.2 Invoice Timing

The Supplier will issue and invoice for the Charges in accordance with the Invoice Timing or if there is no Invoice Timing established for the relevant Goods or Services, then:

- (a) in respect of Goods, on delivery of all Goods; and
 - (b) in respect of Services, on completion of all Services,
- unless otherwise agreed in writing by TfNSW.

7.3 Payment of amounts due to or in respect of employees

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

- (a) the time for payment has passed;
- (b) the Supplier has not given TfNSW a completed Contractor Statement in the form set out in Attachment A in respect of the period for which the amounts are owed; and
- (c) TfNSW first gives the Supplier not less than 5 Business Days' notice that it intends to make the payment.

Without limiting any rights TfNSW may have under section 127 of the *Industrial Relations Act 1996* (NSW), the Supplier must credit or pay the amount to TfNSW as required by clause 7.7 (Amounts due to) at TfNSW's option.

7.4 Payment of invoices

TfNSW is not required to pay any amount to the Supplier unless it has received a correctly rendered invoice for that amount. TfNSW must pay each correctly rendered invoice within 30 days after receipt of that invoice.

7.5 Correctly rendered invoice

For the purposes of this agreement, an invoice is not correctly rendered unless:

- (a) the invoice is a Tax Invoice;
- (b) the amount claimed in the invoice is due for payment in accordance with clause 7.2 (Invoice Timing);
- (c) the amount claimed in the invoice is correctly calculated under this agreement;
- (d) the invoice includes the relevant TfNSW purchase order number, cost centre number and general ledger code and is set out in a manner that identifies the Goods and/or Services which the invoice covers and itemises each amount claimed, to a level of detail satisfactory to TfNSW acting reasonably;
- (e) the invoice is accompanied by documents that adequately demonstrate to TfNSW the Goods supplied, the Services that were performed and the basis on which the amounts are claimed;

- (f) the invoice is addressed to "Transport for NSW" with attention to the TfNSW Representative and identifies this agreement; and
- (g) the invoice is accompanied by a completed Contractor Statement in the form set out in Attachment A in respect of the period to which the invoice relates.

7.6 Disputed invoices

Where TfNSW considers that an invoice is not correctly rendered TfNSW will issue to the Supplier within 10 Business Days after receipt of the invoice a notice setting out the reasons and identifying any amounts which are in dispute.

7.7 Amounts due to TfNSW

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

7.8 Set off rights

Without prejudicing any other rights available to TfNSW, TfNSW is entitled to set off against any amount due for payment by it to the Supplier any amount payable by the Supplier to TfNSW (including Service Credits).

7.9 Payment does not affect other rights or obligations

Payment of money under clause 7.1 (TfNSW will pay Charges) is not evidence:

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

8 Taxes and GST

8.1 Taxes

The Supplier is responsible for all Taxes arising from or relating to this agreement and must pay Taxes which are imposed on the Supplier arising from or relating to this agreement, directly to the relevant Government Agency, except for any income tax or capital gains tax payable by TfNSW.

8.2 Evidence of payment

Where the Supplier pays Taxes imposed on TfNSW under clause 8.1 (Taxes), the Supplier must provide to TfNSW within 3 Business Days of payment a written notification evidencing, to the satisfaction of TfNSW, the full and timely payment of the relevant Taxes.

8.3 Indemnity

The Supplier indemnifies TfNSW against any costs or expenses that TfNSW suffers or incurs as a result of the Supplier failing to meet its obligations under clause 8.1 (Taxes).

8.4 GST

The parties agree that:

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

8.5 Withholding tax

If a law requires TfNSW to deduct an amount in respect of Taxes from a payment under this agreement, then:

- (a) TfNSW agrees to deduct the amount for the Taxes; and
- (b) TfNSW agrees to pay an amount equal to the amount deducted to the relevant Government Agency as required by applicable law and give the original receipts to the Supplier.

9 Supplier Personnel & Safety

9.1 Supplier Personnel

The Supplier must ensure that the Supplier Personnel are suitably qualified, experienced and competent for their role in providing the Goods and Services.

9.2 Removal of Supplier Personnel

Where required by TfNSW acting reasonably or as required by law, the Supplier must remove and replace any particular Supplier Personnel as reasonably request by TfNSW.

9.3 Information about Supplier Personnel

If requested to do so by TfNSW and within reason, the Supplier must provide to TfNSW:

- (a) a list of any of the Supplier Personnel; and
- (b) accurate information about the identity and qualifications of each of the Supplier Personnel.

9.4 Security

If specified in the Contract Details, the Supplier must, and must ensure that the relevant Supplier Personnel:

- (a) submit to security checks; and
- (b) execute a deed of confidentiality in the form reasonably required by TfNSW.

9.5 Criminal record search and investigation

If required by clause 9.4 (Security), in relation to all relevant Supplier Personnel (as specified in the Contract Details):

- (a) prior to, but no earlier than 3 weeks before the Supplier engages that person to perform work in connection with this agreement, the Supplier must:
 - (i) for Supplier Personnel who are resident in Australia, perform or procure a national criminal record search of that person from the Criminal Records Section of the NSW Police Force (or such other branch or office of the NSW Police Force or law enforcement agency performing the functions of the Criminal Records Section from time to time) and must provide the results to TfNSW;
 - (ii) for Supplier Personnel who are resident outside Australia, use reasonable endeavours to perform or procure a criminal record search of that person from the relevant police force of the jurisdiction where the Supplier Personnel resides and must provide the results to TfNSW;
- (b) TfNSW may, but is not required to, carry out the search referred to in clause 9.5(a) itself;
- (c) the Supplier must conduct such other investigations at the Supplier's expense as TfNSW may reasonably request and must provide the results of those investigations to TfNSW; and

- (d) TfNSW may conduct such other investigations at TfNSW's expense as TfNSW considers appropriate and the Supplier must provide all such assistance as TfNSW may reasonably request.

The Supplier acknowledges that any search or investigation by TfNSW in accordance with this clause 9.5 (Criminal record search and investigation) will not affect the Supplier's obligations under this agreement.

9.6 Consent from Supplier Personnel

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

- (a) the Supplier and TfNSW to conduct the searches or investigations under and within the timeframes specified in clause 9.5 (Criminal record search and investigation); and
- (b) the Supplier to provide the results of its searches or investigations to TfNSW in accordance with clause 9.5 (Criminal record search and investigation).

9.7 Inability to obtain consent

If the Supplier is unable to obtain a consent required under clause 9.6 (Consent from Supplier Personnel) from a person, then, unless TfNSW agrees otherwise in writing, the Supplier must not allow that person to perform work in connection with this agreement and the Supplier must provide a replacement for that person who is acceptable to TfNSW within a reasonable time of TfNSW's request to do so and without inconvenience or cost to TfNSW.

9.8 No access where there has been a Relevant Offence

The Supplier must not allow a member of the Supplier Personnel to perform work in connection with this agreement without the written consent of TfNSW if:

- (a) a search conducted under clause 9.5 (Criminal record search and investigation) shows that the person has been convicted of an offence which is or could be a Relevant Offence;
- (b) the Supplier has reliable evidence that the person has a criminal conviction or has served a custodial sentence and that conviction occurred, or any part of that sentence was served, in the previous 10 years anywhere in the world; or
- (c) the Supplier has reliable information indicating that a trial is currently underway against the person which could result in a conviction of that person for an offence which is or could be a Relevant Offence.

9.9 Supplier becomes aware of information

If, after the Supplier has allowed a person to perform work in connection with the agreement, the Supplier becomes aware of information of the type referred to in clause 9.8 (No access where there has been a Relevant Offence), then the Supplier must immediately notify TfNSW and the Supplier must take such reasonable action as TfNSW requests in relation to the person including,

without limitation, replacing that person with a person who is acceptable to TfNSW within a reasonable time of TfNSW's request to do so and without inconvenience or cost to TfNSW.

9.10 Removal of unsuitable Supplier Personnel

If, as a result of any investigation under clause 9.5 (Criminal record search and investigation) or any breach of the security or privacy obligations contained in this agreement, TfNSW is of the reasonable opinion that any of the Supplier Personnel is unsuitable to undertake work in respect of this agreement, then TfNSW may request the Supplier to remove that person from the performance of this agreement. If TfNSW makes such a request, then the Supplier will provide replacement personnel reasonably acceptable to TfNSW within a reasonable time of TfNSW's request and without inconvenience or cost to TfNSW.

9.11 Certification

Within 5 Business Days of each anniversary of the Commencement Date or otherwise on request by TfNSW, the Supplier must certify that, as at the relevant date, the Supplier has and is complying with clauses 9.5 (Criminal record search and investigation) to 9.10 (Removal of unsuitable Supplier Personnel).

9.12 Obligations subject to law

Neither party is required to comply with clauses 9.5 (Criminal record search and investigation) to 9.10 (Removal of unsuitable Supplier Personnel) to the extent that compliance would result in a contravention of any legal requirement with which the party is required to comply.

9.13 No poaching

From the Commencement Date until 12 months after expiry of the Term, neither party may solicit for employment, or independent contract for the provision of services, any employee of the other party who is involved in the performance of that party's obligations under this agreement. Nothing in this clause prevents TfNSW from employing or contracting any person through a publicly advertised recruitment or procurement process.

9.14 Safety

- (a) For the purposes of all applicable laws relating to work health and safety, it is acknowledged and agreed that all persons employed or engaged by the Supplier and all subcontractors engaged by the Supplier to carry out its obligations under this agreement will in all respects be under the control and direction of the Supplier and not TfNSW.
- (b) The Supplier must perform its obligations under this agreement in a safe manner and employing systems of work that are safe and for which there is adequate instruction, training and supervision for Supplier Personnel;
- (c) If any obligations under this agreement are to be carried out on any TfNSW Premises then the Supplier must first:

- (i) identify and adequately address any workplace health and safety risks associated with performance of its obligations, including the preparation of an appropriate Safety Management Plan (SMP) and Safe Work Method Statements (SWMS);
 - (ii) continuously review the SPM and SWMS and amend them as required to ensure they continue to be appropriate;
 - (iii) provide copies of its SMP and SWMS to TfNSW before supplying the goods and services and again each time they are updated; and
 - (iv) perform its obligations under this agreement in compliance with the SMP and SWMS.
- (d) TfNSW may in its discretion and acting reasonably request the Supplier to consider making changes to the SMP and SWMS.
- (e) Without prejudice to (a) above, the Supplier must consult, co-operate and co-ordinate with TfNSW regarding work health and safety matters relevant to its performance of its obligations under this agreement.
- (f) The Supplier must maintain and provide to TfNSW records or information regarding health and safety matters arising in connection with this agreement as required by TfNSW from time to time (subject to the redaction of any Personal Information as may be required under the Privacy Laws).
- (g) Following any health and safety incident in connection with this agreement that is notifiable to the regulator under the *Work Health and Safety Act 2011* (“**Incident**”) the Supplier must:
- (i) comply with any notification obligations required under the *Work Health and Safety Act 2011* (NSW);
 - (ii) immediately upon becoming aware of the Incident, notify TfNSW of that incident; and
 - (iii) promptly undertake a risk assessment in relation to the Incident and ensure all reasonably practicable control measures identified during that risk assessment are implemented to eliminate, so far as is reasonably practicable, any risk of a similar incident occurring again.

10 Business continuity and disaster recovery

10.1 Develop plan

Within 2 weeks from the Commencement Date, the Supplier must develop a draft Business Continuity Plan and provide it to TfNSW for review. The draft Business Continuity Plan must detail how the Supplier would continue to supply the Goods and Services to TfNSW if a Disaster Recovery Event occurs. The Supplier must ensure that the draft Business Continuity Plan:

- (a) enables the Goods and Services to be provided in accordance with this agreement except as specifically agreed by TfNSW;
- (b) reflects best industry practice in relation to the planned continued provision of the Goods and Services to TfNSW where there is a Disaster Recovery Event; and
- (c) defines relevant Disaster Recovery Events.

The Supplier must make all changes reasonably required by TfNSW to the draft Business Continuity Plan to create the Business Continuity Plan.

10.2 Update plan

The Supplier must ensure at all times that the Business Continuity Plan is up-to-date and reflects the current Goods and Services.

10.3 Test plan

The Supplier must test the Business Continuity Plan at least annually from the Commencement Date, and must liaise and co-operate with TfNSW over the extent and timing of those tests.

10.4 Disaster Recovery Event

On the occurrence of a Disaster Recovery Event, the Supplier must immediately implement the Business Continuity Plan. The Supplier must continue to provide the Goods and Services to the relevant Service Levels unless otherwise specified or allowed for in the Business Continuity Plan.

11 Sub-contracting

11.1 Subcontracting

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

11.2 Responsibility for Subcontractors

The Supplier is responsible for all acts and omissions of Subcontractors as if they were those of the Supplier and the Supplier indemnifies TfNSW against all costs, expenses liabilities incurred by TfNSW in connection with the acts or omissions of any Subcontractors.

12 Change control

12.1 Change request

Either party may request a change to:

- (a) the scope or description of any Goods or Services; or
 - (b) the requirements of Schedule 2 (Goods and Services);
- (each a “Change”) by issuing a notice in writing to the other party.

12.2 Change request by TfNSW

- (a) If a Change is requested by TfNSW, and the Change relates to:
 - (i) the addition or removal of a new Testing Site (as defined in Schedule 2); or
 - (ii) a change to existing Testing Site requirements, including:
 - (A) a change to the number of Supplier Personnel at a Testing Site; or
 - (B) a change to the days and hours that a Testing Site must be operational,

(“Urgent Change”)

the Supplier must use its best endeavours to implement these Urgent Changes within:

- (iii) in the event of an Urgent Change described in clause 12.2(a)(i), 5 Business Days; and
 - (iv) in the event of an Urgent Change described in clause 12.2(a)(ii), 3 Business Days.
- (b) In the event the Supplier implements an Urgent Change in accordance with clause 12.2(a), the Charges will be adjusted on a pro rata basis, or as otherwise agreed by the parties (acting reasonably).
 - (c) For the avoidance of doubt, sub-clause (d) of this clause and clauses 12.3 - 12.6 (inclusive) do not apply to Urgent Changes.
 - (d) If a Change is requested by TfNSW (excluding Urgent Changes), the Supplier must provide to TfNSW within 10 Business Days of receiving the notice of request, or such other period as the parties may agree, a Change Proposal which complies with clause 12.5 (Requirements for Change Proposal).

12.3 Change request by Supplier

If the Change is requested by the Supplier, the Supplier must include a Change Proposal with the request for Change or provide the Change Proposal at such later date as the parties may otherwise agree.

12.4 Assistance from TfNSW

Where the Supplier requires information from TfNSW in order to properly prepare a Change Proposal, TfNSW will provide all such information reasonably requested within a reasonable period from the date of the request.

12.5 Requirements for Change Proposal

Each Change Proposal must:

- (a) set out a full description of the Change; and

- (b) specify all changes to the relevant Charges, the relevant timeframes and any other conditions which the Supplier reasonably requires in order to perform the Change and must detail reasons for those changes.

Any adjustment to the Charges must be based on the Supplier's actual direct costs as a result of the Change, including a reasonable profit allowance.

12.6 Acceptance or rejection of a Change Proposal

TfNSW may accept or reject a Change Proposal at any time within 20 Business Days of receiving the Change Proposal. Where TfNSW accepts a Change Proposal, the parties will execute a Change Notice on those terms and this agreement will be varied accordingly, with effect from the date of execution of the Change Notice.

13 Intellectual Property Rights

13.1 Existing Intellectual Property Rights

All Intellectual Property Rights of the parties existing before the date of this agreement will be retained by the relevant party.

13.2 Licence for TfNSW to Use Existing Supplier IP

The Supplier grants to TfNSW a royalty-free, non-exclusive, irrevocable licence:

- (a) to Use the Supplier IP to the extent necessary to receive the full use and benefit of the Goods and Services; and
- (b) sub-licence any of the rights granted under (a) to any person, but only in relation to the use or benefits of the Goods or Services.

13.3 Licence for Supplier to Use Existing TfNSW IP

TfNSW grants to the Supplier, and to the extent necessary any relevant Subcontractor, for the Term, a royalty-free, non-exclusive, non-transferable licence to Use TfNSW IP only to the extent necessary to provide the Goods and Services.

13.4 New Intellectual Property Rights

The Contract Details determine whether Option 1, 2 or 3 applies.

(a) Option 1 – TfNSW Owns New IP

The Supplier assigns or will procure the assignment to TfNSW, on creation:

- (i) Intellectual Property Rights in all modifications made to TfNSW IP by the Supplier or its Subcontractors; and
- (ii) all other Intellectual Property Rights created by the Supplier or its Subcontractors in the supply of the Goods or performance of the Services.

(b) Option 2 – Exclusive Licence to TfNSW to Use New IP

In respect of:

- (i) Intellectual Property Rights in all modifications made to TfNSW IP by the Supplier or its Subcontractors; and
- (ii) all other Intellectual Property Rights created by the Supplier or its Subcontractors in the supply of the Goods or performance of the Services

the Supplier grants TfNSW an exclusive perpetual irrevocable and royalty-free licence to:

- (iii) use, reproduce, modify and communicate to the public anywhere in the world and for any purpose connected with the business of TfNSW;
- (iv) permit any person to assist the TfNSW to do any of the things referred to in paragraph (iii) above; and
- (v) sublicense any of the rights described in paragraph (iii) or (iv) to any person.

(c) Option 2 – Non-exclusive Licence to TfNSW to Use New IP

In respect of:

- (i) Intellectual Property Rights in all modifications made to TfNSW IP by the Supplier or its Subcontractors; and
- (ii) all other Intellectual Property Rights created by the Supplier or its Subcontractors in the supply of the Goods or performance of the Services

the Supplier grants TfNSW a non-exclusive perpetual irrevocable and royalty-free licence to:

- (iii) use, reproduce, modify and communicate to the public anywhere in the world and for any purpose connected with the business of TfNSW;
- (iv) permit any person to assist the TfNSW to do any of the things referred to in paragraph (iii) above; and
- (v) sublicense any of the rights described in paragraph (iii) or (iv) above to any person.

13.5 Confidentiality

Nothing in clause 13.2 (Licence for TfNSW to Use Existing Supplier IP) and 13.3 (Licence for Supplier to Use Existing TfNSW IP) removes or limits the obligations of confidentiality under clause 14 (Confidentiality, Privacy).

13.6 Know-how use

Subject to clause 14 (Confidentiality, Privacy) and clause 13.1 (Existing Intellectual Property Rights), each of TfNSW, the Supplier and any Subcontractor will be free to use its general knowledge, skills and experience and any ideas, concepts, know-how, methodologies and techniques related to the scope of the Goods, Services or this agreement.

13.7 Indemnity

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

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

13.8 Not used

14 Confidentiality, Privacy and Data Management

14.1 Disclosure of Confidential Information

A party who receives Confidential Information ("**Recipient**") must not disclose the Confidential Information supplied by the other party ("**Discloser**") to any person except:

- (a) its Representatives who require the Confidential Information for the purposes of this agreement; or
- (b) to enable the Recipient to obtain professional advice in relation to this agreement; or
- (c) with the consent of the Discloser; or
- (d) if the Recipient is required to do so by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the Recipient or by a stock exchange; or
- (e) if the Recipient is required to do so in connection with legal proceedings relating to this agreement or other agreement between the parties.

14.2 Permitted disclosures

If the Recipient discloses the Discloser's Confidential Information under clause 14.1(a) or 14.1(c) then:

- (a) it must use its best endeavours to ensure that persons receiving the Confidential Information from it do not disclose the information except in the circumstances permitted in clause 14.1 (Disclosure of Confidential Information);
- (b) the Discloser may at any time require the persons receiving the Confidential Information to give written undertakings relating to the non-disclosure of the Confidential Information and the Recipient must arrange for all such undertakings to be given promptly; and
- (c) the Recipient must reserve the right to demand immediate delivery of all documents or other materials in its possession, power or control or in the possession, power or control of the third party who has received Confidential Information from it containing or referring to that Confidential Information.

14.3 Use of Confidential Information

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

14.4 Return of Confidential Information

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

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

14.5 No disclosure of the terms of this agreement

Except as otherwise agreed or required by law, any regulatory authority or stock exchange, neither party may disclose the terms of this agreement to any person other than its Representatives on a confidential basis.

14.6 Access to Information

- (a) This 14.6 only applies to the extent that the Supplier is required to provide goods or services to the public on behalf of TfNSW.
- (b) Within 3 days of receiving a written request by TfNSW the Supplier must provide TfNSW with immediate access to information referred to in s. 121(1) of *Government Information (Public Access) Act 2009 (NSW)* (but excluding information referred to in s.121(2) of

Government Information (Public Access) Act 2009 (NSW)) contained in records held by the Supplier at the Supplier's expense and in such medium as TfNSW may reasonably require. This is an essential term of this agreement.

- (c) TfNSW will consult with the Supplier before releasing any information obtained from the Supplier where required under s.54 of *Government Information (Public Access) Act 2009 (NSW)*.

14.7 Disclosure of details of TfNSW contracts with the private sector

- (a) The Supplier acknowledges that TfNSW may be required to publish certain information concerning this agreement in accordance with ss 27 – 35 of *Government Information (Public Access) Act 2009 (NSW)*.
- (b) If the Supplier reasonably believes that any part of this agreement contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, then the Supplier should immediately advise TfNSW in writing, identifying the provisions and providing reasons so that TfNSW may consider seeking to exempt those provisions from publication.

14.8 Publicity

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

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

14.9 Compliance with privacy requirements

The Supplier must:

- (a) comply with TfNSW's privacy policy (and each specific privacy policy of TfNSW in relation to the collection and/or handling of personal or private information relating to third parties including the obtaining of any necessary consents to its use by TfNSW or by third parties) as notified in writing to the Supplier from time to time as if it were bound by that policy;
- (b) comply with the Privacy Laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information, as if it were regulated by those laws;
- (c) comply with all directions by TfNSW:
 - (i) relating to the means by which TfNSW complies with the Privacy Laws, TfNSW's privacy policy, and all other applicable laws, codes and privacy policies; and

- (ii) co-operate with TfNSW in the resolution of any complaint alleging a breach of such laws, codes or privacy policy.

14.10 Provide information

At TfNSW's request, the Supplier will promptly provide all reasonable assistance to enable TfNSW to comply with its obligations under this agreement and at law, including providing details of any person (for example, a Related Body Corporate or any other private sector entity in which the Supplier has an interest) that:

- (a) will be involved in performing any of the Supplier's obligations under this agreement; or
- (b) will receive a benefit under this agreement.

This clause survives the termination of this agreement for any reason whatsoever.

14.11 TfNSW Data

The Supplier must comply with the obligations set out in **Schedule 5** in relation to TfNSW Data.

15 Representatives, reporting and audits

15.1 Responsibilities

The TfNSW Representative and the Supplier Representative will be responsible for the co-ordination and management between the parties of this agreement, including ensuring the performance by the parties of their respective roles and responsibilities.

15.2 Delegation by Representatives

The TfNSW Representative and the Supplier Representative may delegate part of their operational responsibilities to other Representatives in order to operate more efficiently and effectively.

15.3 Reports

The Supplier must provide to TfNSW the reports with the content and in the frequency and form (electronic or physical) set out in the Contract Details.

15.4 Review meetings

The Supplier Representative must attend meetings with the TfNSW Representative at a place and time to be notified to the Supplier by TfNSW on the frequency set out in the Contract Details to:

- (a) review the performance of the Supplier in relation to this agreement and the Charges incurred by TfNSW up to that date, including any faults in the provision of any of the Services over the previous review period and any actions undertaken by the Supplier to resolve the relevant faults;
- (b) discuss any other issues in relation to the Goods, the Services or this agreement.

15.5 Records and inspection

The Supplier must, and must ensure all Subcontractors:

- (a) keep and maintain all necessary Records during the Term and 7 years thereafter;
- (b) make those Records available for inspection and/or audit as reasonably required by TfNSW, a regulator, any external auditor or advisor or any of their authorised representatives, during normal business hours. Copies and extracts of any Records may be taken for these purposes;
- (c) permit TfNSW to inspect or appoint a third party to inspect the Supplier's premises to confirm compliance with this agreement; and
- (d) provide all appropriate resources and all reasonable assistance required by any person conducting any inspection and/or audit, and fully co-operate with that person in good faith and at the Supplier's sole cost.

15.6 Annual audit

Each year, on dates nominated by TfNSW, TfNSW may conduct itself, or appoint a third party to conduct, an audit of the Supplier's performance and compliance with this agreement.

15.7 Costs of audit

The auditors' costs incurred by TfNSW in the audit under clause 15.6 (Annual audit) will be paid by TfNSW. However, where the auditor objectively determines that the performance by the Supplier falls below the Service Levels or identifies breaches of this agreement by the Supplier, all the costs of TfNSW (including third party auditor fees) in respect of that audit will be paid by the Supplier.

15.8 Costs

Unless expressly provided otherwise in this clause 15 (Representatives, reporting and audits), TfNSW and the Supplier will each pay their own costs and expenses in connection with this clause 15 (Representatives, reporting and audits).

16 Warranties and representations

16.1 Supplier's general representations and warranties

The Supplier represents and warrants on the date of this agreement and at all time during the Term, that:

- (a) it has full capacity and authority to enter into and to perform this agreement;
- (b) this agreement is duly authorised representative of that party;
- (c) there are no actions, suits or proceedings pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitral tribunal that might affect the ability

of that party to meet and carry out its obligation under this agreement;
and

- (d) once duly signed this agreement will constitute a legal, valid and binding obligation on that party.

16.2 Representations and warranties in respect of Goods and Services

The Supplier represents and warrants that:

- (a) the Goods:
 - (i) will meet the Specifications and all other applicable requirements under this agreement;
 - (ii) be of good quality, fit for purpose and free from defects and omissions in material, design or workmanship;
 - (iii) upon title passing to TfNSW (if applicable), will be unused and free from any charge or encumbrance; and
 - (iv) will comply with all laws that are related in any way to the Goods;
- (b) the Services:
 - (i) will be performed with due care and skill and in accordance with industry best practice;
 - (ii) will meet or exceed the Service Levels;
 - (iii) will be used with materials that are:
 - (A) fit for the purpose for which they are supplied and used; and
 - (B) will comply with any applicable specifications or requirements;
- (c) the Supplier and the Supplier Personnel will not infringe the Intellectual Property rights or Moral Rights of any person in providing the Services or otherwise performing this agreement;
- (d) the Supplier and Supplier Personnel will comply with all laws applicable to the Services (including, for the avoidance of doubt, Public Health Orders);
- (e) the Goods or Services and their use will not:
 - (i) result in a breach of any law or mandatory code of conduct;
 - (ii) infringe any person's rights (including Intellectual Property Rights and Moral Rights);
 - (iii) constitute a misuse of any person's confidential information;
or

- (iv) result in the Supplier or any Related Bodies Corporate of the Supplier breaching any obligation that it owes to any person.

16.3 Notification of non-compliance

As soon as practicable after becoming aware of any matter which is likely to impact upon its ability to comply with a warranty or representation in this clause 16 (Warranties and representations), the Supplier must give written notice to TfNSW detailing that matter and its likely impact on the Supplier's ability to comply with this clause 16 (Warranties and representations).

17 Liability & Indemnity

17.1 TfNSW's liability

Subject to clause 17.3 (No limitation):

- (a) the aggregate liability of TfNSW to the Supplier under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action, is limited to an amount equal to the aggregate of the Charges paid or payable under this agreement; and
- (b) TfNSW will not be liable to the Supplier under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action for Consequential Loss.

17.2 Supplier's liability

Subject to clause 17.3 (No limitation):

- (a) the aggregate liability of the Supplier to TfNSW or a Transport Operator under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action is limited to an amount equal to the aggregate of the Supplier Liability Cap; and
- (b) the Supplier will not be liable to TfNSW or a Transport Operator under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action for Consequential Loss.

17.3 No limitation

Nothing in this agreement operates to limit or exclude:

- (a) liability that cannot by law be limited or excluded;
- (b) the liability of either party in respect of personal injury (including sickness and death) or real or tangible property loss or damage;
- (c) liability of a party in respect of a breach of clause 14 (Confidentiality, Privacy);
- (d) liability of either party for unlawful or illegal acts or conduct; or

17.4 Consequential Loss Definition

- (a) Subject to clause 17.4(b) Consequential Loss:
 - (i) means any loss, not arising naturally, that is according to the usual course of things, from the relevant breach act or omission, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties, at the time they entered the agreement, as the probable result of the relevant breach; and
 - (ii) includes loss of profit or loss of anticipated savings.
- (b) Consequential Loss does not include:
 - (i) additional internal administrative and management costs and expenses;
 - (ii) expenditure or fees rendered unnecessary;
 - (iii) costs of procuring replacement Goods or Services;
 - (iv) cost of repairing Goods;
 - (v) legal fees on a full indemnity basis.

17.5 Civil Liability Act

The parties agree that:

- (a) all rights, obligations and liabilities under or in connection with this agreement are to apply unlimited and otherwise unaffected by anything that, but for this clause, may by virtue of the provisions of the *Civil Liability Act 2002* (NSW) have limited or otherwise affected those rights, obligations and liabilities; and
- (b) this clause applies even where the relevant circumstances involve a failure to take reasonable care and the existence of concurrent wrongdoers (as that term is defined in section 34(2) of the *Civil Liability Act 2002* (NSW)).

17.6 Indemnity

- (a) The Supplier is liable for, and indemnifies TfNSW and the Transport Operators against, all liability or loss arising out of the breach of this agreement by the Supplier or its personnel or the negligence or default of the Supplier or its personnel except to the extent the liability or loss is contributed to by TfNSW's or a Transport Operator's negligence or breach.

18 Insurance

18.1 Insurance

Before the Commencement Date, the Supplier must maintain the policies of insurance listed in the Contract Details on the terms, for the risks identified, and for the periods of time set out in Attachment B.

18.2 Evidence of insurance

On request by TfNSW, the Supplier must provide certificates of currency proving that the policies of insurance required under this agreement have been effected and are current. A certificate of currency provided under this clause must be issued by the insurance company providing insurance and must contain all details reasonably requested by TfNSW, including a summary of all risks covered and any exclusions.

18.3 Supplier notification

The Supplier must notify TfNSW within two Business Days of any event which affects or may affect the Supplier's compliance with this clause 18 (Insurance), including any cancellation of a policy or reduction of limit of coverage below that required by this agreement.

18.4 Notification of relevant insurance claims

Within 5 Business Days of the Supplier becoming aware of any claims against any of its insurances in connection with the Goods or Services or which may impact upon the provision of the Goods or Services, it must:

- (a) notify TfNSW in writing of the claim; and
- (b) give TfNSW any further information regarding the claim as TfNSW may require.

19 Disputes

19.1 Reasonable endeavours to settle

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

19.2 Dispute notice

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

19.3 Negotiation

If a Dispute is notified under clause 19.2 (Dispute notice) each party must nominate a senior representative with appropriate authority to negotiate on behalf of the party to settle the Dispute. The representatives must endeavour to resolve the Dispute within 10 Business Days of the notice under clause 19.2 (Dispute notice).

19.4 Alternative dispute resolution

If the Dispute is not resolved within the period referred to in clause 19.3 (Negotiation), the parties' representatives will within a further 5 Business Days seek to agree on:

- (a) a process to resolve the Dispute, for example through mediation, conciliation or other such similar forms of alternative dispute resolution;
- (b) the procedure and timetable for any exchange of documents and other information in relation to the Dispute;

- (c) procedural rules and timetable for the conduct of the selected mode of proceedings;
- (d) a procedure for selection and compensation of any neutral person (who may or may not be employed by a party); and
- (e) whether the parties should seek the assistance of a dispute resolution organisation such as the Australian Commercial Dispute Centre.

19.5 Further resolution process

If the representatives are unable to agree on a process for resolving the Dispute in the period referred to in clause 19.4 (Alternative dispute resolution) or the Dispute has not been resolved within 10 Business Days (or such other period as the parties may agree) of the parties agreeing on a particular process, then:

- (a) if the amount of the Dispute is less than \$100,000, either party may refer the Dispute to expert determination in accordance with clause 19.6 (Expert determination) unless TfNSW has notified the Supplier that in its reasonable opinion, the Dispute is not appropriate for resolution by expert determination; or
- (b) if the amount of the Dispute is \$100,000 or more or TfNSW has notified the Supplier that in its reasonable opinion, the Dispute is not suitable for expert determination, then either party will be free to commence court proceedings relating to the Dispute.

19.6 Expert determination

If either party refers the dispute to expert determination pursuant to clause 19.5(a), the expert determination is to be carried out as follows:

- (a) Within 5 Business Days after the date of the notice under clause 19.5(a), the parties must exchange written lists of proposed experts from whom the expert is to be chosen in order of preference.
- (b) A person that appears on both lists under clause 19.6(a) will be appointed as the expert to determine the dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 19.5(a) will be appointed.
- (c) If no person appears on both lists, the parties must request the President of the NSW Chapter of the Institute of Arbitrators and Mediators of Australia to nominate a person to act as the expert.
- (d) TfNSW and the Supplier must enter into an agreement with the expert on such reasonable terms as the expert may require provided that the expert must be instructed that the expert:
 - (i) is to act as an expert and not as an arbitrator;
 - (ii) is to proceed in the way, and determine the rules for the conduct of the expert determination, as the expert thinks fit

without being bound to observe the rules of natural justice or the rules of evidence;

- (iii) is to take into consideration those documents and that information and other material which the parties give to the expert and which in the expert's opinion are relevant to the determination of the dispute;
 - (iv) need not, but may obtain or refer to any other documents, information or material;
 - (v) must determine the dispute and give written reasons for the decision within one month after being appointed; and
 - (vi) must determine what proportion of the costs of the expert determination is to be paid by each party.
- (e) The determination of the expert must be given to the parties in writing and will be final and binding upon the parties.
- (f) The parties must bear their own costs in connection with the expert determination proceedings and must pay an equal portion of the cost of the expert unless the expert determines otherwise.

19.7 Right to terminate

This clause 19 (Disputes) does not affect either party's rights to terminate this agreement under clause 22 (Termination) or pursuant to any other rights of termination contained in this agreement.

19.8 Interlocutory relief

This clause 19 (Disputes) does not affect either party's right to commence court proceedings seeking interlocutory relief.

19.9 Parties to continue to perform

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

20 Conflict of Interest & Probity

20.1 Definition

"Probity Event" is an event, matter, situation or thing that in TfNSW's reasonable opinion:

- (a) has a material adverse effect upon the character, honesty or integrity of the Supplier, a Related Body Corporate, or any of their personnel; or
- (b) relates to the Supplier, a Related Body Corporate or their personnel and has a material adverse effect upon the public interest (having regard to the policy objectives of TfNSW) or the reputation of or public confidence in TfNSW or the New South Wales Government; or

- (c) that involves a material failure by the Supplier to achieve or maintain:
 - (i) reasonable standards of ethical behaviour; or
 - (ii) the avoidance of conflicts of interest that may have (or may give the public the appearance of having) a material adverse effect on the ability of the Supplier to impartially perform and observe its obligations in respect of this Agreement; or
 - (iii) standards of behaviour expected of a person engaged on a Government project.

20.2 Probity Events

- (a) **(Probity Event Notice by Service Provider)** The Supplier must give notice to TfNSW as soon as it becomes aware that a Probity Event has occurred or is likely to occur (Probity Event Notice).
- (b) **(Probity Event Notice by TfNSW)** TfNSW may give notice to the Supplier if TfNSW becomes aware that a Probity Event has occurred or is likely to occur (Probity Event Notice).
- (c) **(Content of Notice)** The Probity Event Notice must describe the nature of the Probity Event and the circumstances giving rise to it or likely to give rise to it.
- (d) **(Probity Investigations)** Following the issue of a Probity Event Notice, the Supplier must promptly comply with any reasonable request from TfNSW for access to its personnel for the purpose of undertaking any investigations that TfNSW may wish to carry out in relation to the actual or likely occurrence of the Probity Event. The Supplier must use reasonable endeavours to ensure that its personnel (and where relevant any Related Body Corporate and its personnel) co-operate with TfNSW and comply with any reasonable requests for information that TfNSW may make in the course of its investigations.
- (e) **(Remedial Action)** Upon the issue of a Probity Event Notice the parties must meet at a time nominated or agreed by TfNSW to discuss the occurrence of the Probity Event. During any such meeting, the parties must use reasonable endeavours to agree on the actions to be taken by the Supplier to reverse the effect of the Probity Event.
- (f) **(TfNSW May Direct Remedial Action)** If the parties are unable to agree within 5 Business Days of such meeting (or any longer period TfNSW may agree) TfNSW may give notice to the Supplier setting out the action it must take to address the adverse effect of the Probity Event, and the Supplier must comply with any such notice as soon as possible and in any event within 5 Business Days of receiving the notice.

21 Force Majeure

21.1 Notice of a Force Majeure Event

A party does not breach this agreement and is not liable to the other party for a delay or failure to perform an obligation to the extent it results from a Force

Force Majeure Event provided that the party affected by the Force Majeure Event gives the other party a written notice which:

- (a) sets out details of the Force Majeure Event;
- (b) identifies the nature and extent of the obligations affected by the Force Majeure Event;
- (c) advises the period of time during which the affected party estimates that it will not be able to perform or will be delayed in performing its obligations; and
- (d) provides details of the action that it has taken or proposes to take to remedy the situation.

21.2 Obligations of affected party

A party affected by a Force Majeure Event must:

- (a) take all reasonable steps to avoid, remove or limit the effects of the Force Majeure Event on its performance of the suspended obligations as quickly as possible; and
- (b) promptly re-commence performing the suspended obligations as soon as reasonably possible and notify the other party when this occurs.

22 Termination

22.1 Termination by TfNSW for cause

TfNSW may terminate this agreement in full or in part immediately by notice to the Supplier if:

- (a) **Breach of agreement** - the Supplier breaches this agreement and:
 - (i) the breach is not capable of remedy; or
 - (ii) the breach is capable of remedy and the Supplier fails to remedy the breach within 10 Business Days, or such longer time as TfNSW states, of receiving notice from TfNSW requiring the breach to be remedied;
- (b) **Recurring Breach** - the Supplier:
 - (i) breaches this agreement on three (3) separate occasions within a one (1) month period; and
 - (ii) has been issued with a notice from TfNSW stating that any further breach of this agreement will give TfNSW the right under this clause 22.1(b) to terminate this agreement; and
 - (iii) commits a further breach of any provision of this agreement.
- (c) **Insolvency** - the Supplier becomes Insolvent;

- (d) **Wrongful assignment** - the Supplier assigns or purports to assign its rights otherwise than as permitted by this agreement;
- (e) **Change of Control** - the Supplier undergoes a Change of Control
- (f) **Probity Event** – a Probity Event has not been remedied to TfNSW's satisfaction.

22.2 Termination by Supplier for cause

The Supplier may only terminate this agreement if TfNSW has failed to pay an amount due to the Supplier under this agreement which is not the subject of a bona fide dispute within 40 Business Days of receiving a correct notice claiming that the amount is overdue and stating that the Supplier proposes to exercise its rights under this clause 22.2 (Termination by Supplier for cause) if payment is not made.

22.3 Termination by TfNSW for convenience

TfNSW may terminate this agreement in full or in part by giving not less than 5 business days' written notice to the Supplier provided that TfNSW must pay the amounts required under clause 23.2 (Early termination charges).

22.4 Force Majeure

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

22.5 Continuation

Where TfNSW exercises its rights under this clause 22 (Termination) only in relation to one or more, Goods or Services, the Supplier must continue to perform this agreement in respect of any other, Goods or Services which have not been terminated.

23 Events following termination or expiry

23.1 Obligations on expiry or termination

On expiry or termination of this agreement for any reason, without limiting any other rights TfNSW may have, the Supplier must pay TfNSW:

- (a) any fees paid by TfNSW to the Supplier in advance for Goods and Services not yet supplied under this agreement; and
- (b) any Service Credits accrued up to the date of termination.

23.2 Early termination charges

If TfNSW terminate this agreement for convenience pursuant to clause 22.3 (Termination by TfNSW for convenience), then if the Supplier is able to demonstrate to TfNSW's reasonable satisfaction that prior to receiving notice of termination:

- (a) the Supplier has irrevocably acquired or committed with a third party to acquire Goods for the purposes of fulfilling this agreement, then TfNSW must either (at TfNSW's election):
 - (i) acquire those Goods from the Supplier for the applicable Charges; or
 - (ii) reimburse the Supplier for the Supplier's out of pocket costs for those Goods less the proceeds which the Supplier receives on sale of those Goods (having taken all reasonable steps to sell the goods and to maximise the price received); and
- (b) the Supplier has incurred or irrevocably committed with a third party to incur costs for the purposes of providing Services under this agreement and the Supplier has not at the time of termination become entitled to charge for those Services, then TfNSW must reimburse the Supplier for those costs which the Supplier incurs.

The Supplier must take all reasonable steps to mitigate the costs referred to in this clause 23.2 and TfNSW will not be required to pay costs to the extent that they could have been avoided or reduced by taking such steps. The Supplier must provide TfNSW with evidence reasonably satisfactory to TfNSW to substantiate any claim under this clause 23.2.

23.3 Survival

Clauses 7 (Charges, invoices and payments), 8 (Taxes and GST), 9.13 (No poaching), 13 (Intellectual Property Rights), 14 (Confidentiality, Privacy), 17 (Liability), 18 (Insurance), 19 (Disputes), and 27 (General) survive the termination or expiry of this agreement, as do any rights and remedies accrued before termination or expiry.

24 Notices

24.1 Form

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

24.2 Important contractual notices

A notice under clause 12 (Change control), clause 19 (Disputes), clause 22.1 (Termination by TfNSW for cause), clause 22.4 (Force Majeure) or clause 25.1 (Assignment or novation by) or any other notice claiming or relating to a breach, repudiation, purported termination or variation of this agreement must be:

- (a) signed on behalf of the party giving notice; and
- (b) delivered to or sent by prepaid registered post (airmail if posted to or from a place outside Australia) to the Representative of the recipient specified in the Contract Details and the person required to be copied as specified in the Contract Details or other address requested by the recipient.

24.3 Other notices and communications

A notice, consent, request or any other communication under this agreement other than one referred to in clause 24.2 (Important contractual notices) must be:

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

24.4 Time of receipt

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

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

25 Assignment, Novation & Piggybacking

25.1 Assignment or novation by TfNSW

TfNSW may assign any of its rights under this agreement, or may novate its rights and obligations under this agreement:

- (a) without the consent of the Supplier to any department, to any other body created by or under a statute or ministerial direction of the State of New South Wales for the purpose of administering the functions or discharging the role of TfNSW or to any public sector agency within the meaning given to that term in regulation 18 of the *Public Sector Management (Goods and Services) Regulation 2000*; or
- (b) with the consent of the Supplier, which must not be unreasonably withheld or delayed, to any other person.

The Supplier must execute all documents necessary to give effect to any novation or assignment permitted under this clause 25.1 (Assignment or novation by).

25.2 Assignment or novation by the Supplier

The Supplier must not assign its rights under this agreement or purport to novate its rights and obligations under this agreement without the prior written consent of TfNSW which not be unreasonably withheld.

25.3 Piggybacking by other NSW Agencies

If a public sector service agency (as defined in the *Public Works and Procurement Act 1912*) requests the Supplier to provide services to it similar to the Services then the Supplier agrees that it will enter into a separate agreement with that other agency on terms no less favourable than the terms of this agreement having regard to any necessary changes.

26 Transition Out & Unwind Services

26.1 Transition Plan

- (a) In the event of termination for any reason (inclusion expiration by time) the parties acknowledge that it is critical that there is an orderly and well managed transition out of the arrangements established under this Agreement. To facilitate a successful transition out the parties agree that it is important that the Provider prepare and regularly review and update a Transition Plan. As a minimum the Transition Plan must deal with the relationships, responsibilities and obligations of the parties to facilitate a smooth and orderly transition of the supply of the Goods and Services to a new provider and set out the systems, procedures and processes to allow for the orderly hand-over and transition.
- (b) The Supplier must:
 - (i) provide a draft initial Transition Plan to TfNSW on or before the Transition Plan Submission Date referred to in the Contract Details;
 - (ii) regularly review the Transition Plan and propose a new Transition Plan to TfNSW whenever any change in circumstances make it reasonable or advisable to do so; and
 - (iii) review and prepare a new Transition Plan whenever TfNSW requests (provided TfNSW shall not make such request more than once in any 12 month period).
- (c) The Supplier must consult TfNSW in the preparation of the Transition Plan and must submit the Transition Plan in draft to TfNSW for TfNSW's approval and make such amendments as TfNSW may reasonably require..
- (d) If TfNSW and the Supplier cannot agree on a Transition Plan at any time the TfNSW may prepare a Transition Plan which includes the

obligations set out in this clause and details of any other assistance that it may require on termination or expiry of this Agreement.

26.2 Transition Out Services - Compliance with Transition Plan

The Supplier will provide the assistance as out services as set out in the Transition Plan and any other assistance as is necessary for an effective transition.

26.3 Transition Out Services – No Charges

The Supplier will provide the transition out services at no charge to TfNSW.

26.4 Unwind Services

- (a) At any time TfNSW may issue a Change request under clause 12 requesting the Supplier to provide Unwind Services for a period expiring no later than 6 months after the end of the Term, including any extension or holding-over (“the Unwind Period”).
- (b) Unwind Services are such services as TfNSW requests to achieve an orderly and staged transition of Services without interruption, from the Supplier to TfNSW or one or more parties nominated by TfNSW and include:
 - (i) the provision of all information and assistance as is reasonably necessary to assist TfNSW or another party to provide the Services or services like the Services to TfNSW or at TfNSW’s direction;
 - (ii) the provision of access to the Resources and personnel necessary for an effective transition, including resources required by TfNSW to perform the Services or services like the Services under this Agreement; and
 - (iii) such other assistance as may reasonably be requested by TfNSW.
- (c) If required by TfNSW the Supplier must, by the end of the Unwind Period or such earlier date as TfNSW may specify, cause a novation to TfNSW or one or more parties nominated by TfNSW, of the Supplier’s rights and obligations under any or all of its Third Party Agreements, as are necessary for the provision of the Services, on the terms specified by TfNSW.

26.5 Identification of Resources

If TfNSW so requests at any time, the Supplier must provide TfNSW with a list of Resources and Third Party Agreements necessary for the provision of the Services after the Term and such other information concerning such Resources and Third Party Agreements as TfNSW reasonably requires.

26.6 Non-derogation

- (a) The Supplier must carry on its business, and manage its Resources and Third Party Agreements consistently with and in the expectation that TfNSW will exercise its rights under this clause.
- (b) The Supplier must ensure that all Third Party Agreements are capable of being transferred, assigned or novated to TfNSW without payment of any transfer or termination fees, and that the relevant Third Party will consent to such transfer, assignment or novation.
- (c) The Supplier must not enter into any agreements, arrangements or understandings which contain obligations the purpose, or one of the purposes, of which is to avoid the Supplier's obligations under this clause.

26.7 Definitions

Resources	includes facilities, infrastructure, systems, equipment, software, procedures, processes and other resources, but excludes personnel;
Third Party Agreements	means all agreements that the Supplier enters into with a third party relating to the provision of services or Resources which are used by the Supplier solely to provide the Services under this Agreement.

27 General

27.1 Discretion in exercising rights

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

27.2 Partial exercising of rights

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

27.3 No liability for loss

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

27.4 Remedies cumulative

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

27.5 Variation and waiver

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

27.6 Indemnities

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

27.7 Construction

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

27.8 Costs

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

27.9 Counterparts

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

27.10 Governing law and jurisdiction

This agreement is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of New South Wales.

27.11 Severability

If any part or provision of this agreement is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remainder of this agreement will continue to operate.

27.12 Further assurance

Each party agrees to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the party and any other person intended to be bound under this agreement; and
- (b) to give effect to the intentions of the parties and the transactions contemplated by this agreement, including execution and delivery of documents and other instruments.

27.13 Entire agreement

This agreement constitutes the entire agreement of the parties about its subject matter and supersedes any previous understandings or agreements on that subject matter.

Schedule 1 - Dictionary

1 Definitions

1.1 Definitions

Amount of the Consideration means:

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

Business Days means a day other than a Saturday, Sunday, public holiday in Sydney or 24 or 31 December.

Business Continuity Plan means the plan for the continued supply of the Goods and the Services by the Supplier to TfNSW in the event of a Disaster Recovery Event.

Change is defined in clause 12.1 (Change request).

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

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

Change Notice means a notice executed by the parties setting out an agreed Change and the variations to this agreement relating to that Change.

Change Proposal means a proposal issued by the Supplier detailing the variations which would be applicable to implement a Change.

Charges means the charges set out in Schedule 3 (Charges).

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

Commencement Date means the date identified in the Contract Details as the Commencement Date.

Confidential Information in relation to TfNSW means TfNSW Confidential Information and in relation to the Supplier means the Supplier Confidential Information.

Consequential Loss has the meaning given in clause 17.4 (Consequential Loss Definition).

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

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

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

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

Controller has the meaning it has in the Corporations Act.

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

Delivery Address means the address specified in the Contract Details as the Delivery Address.

Delivery Timeframe means the timeframe for delivery of the Goods set out in Schedule 2 (Goods and Services).

Disaster Recovery Event means an event or disaster (including industrial action) outside the Supplier's control, interrupting the Supplier's supply of the Goods and the Services as defined in the Business Continuity Plan.

Discloser is defined in clause 14.1 (Disclosure of Confidential Information).

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

Documentation means the documentation set out in Schedule 2 (Goods and Services) and all other documentation which, in TfNSW's reasonable opinion, is necessary to enable TfNSW to make full and proper use of the Goods.

Early Termination Fee means the fee calculated in accordance with the Contract Details.

Excluded Information means Information which:

- (a) is in or becomes part of the public domain otherwise than through breach of this agreement or an obligation of confidence owed to the Discloser; or
- (b) Recipient can prove was already known to it at the time of disclosure by the Discloser or its Representatives (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) Recipient acquires from a source other than the Discloser where such source is entitled to disclose the Information.

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

- (a) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought or meteor;
- (b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (c) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (d) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority; or
- (e) a labour dispute other than a labour dispute that only involves the party's personnel.

Further Term means the period identified in the Contract Details as the Further Term.

General Terms means the general terms set out in clauses 1 to 27 of this agreement, including the Schedules.

Goods means all goods set out in Schedule 2 (Goods and Services).

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

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

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

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

Initial Term means the period identified in the Contract Details as the Initial Term.

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

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

Infringement Claim means any Claim which would, if true, involve a breach of a warranty under clause 16.2(c) or 16.2(e).

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it has had a Controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

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

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

Invoice Timing means the timing for issue of invoices set out in the Contract Details.

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

Privacy Laws means the Privacy and Personal Information Protection Act 1998 (NSW), the Health Records and Information Privacy Act 2002 (NSW) and the Privacy Act 1988 (Cth).

Probity Event has the meaning given to it by clause 20 (Conflict of Interest & Probity).

Proof of Delivery has the meaning given to it by clause **Error! Reference source not found.** (Delivery).

Public Health Orders means the public health orders made by the Minister for Health and Medical Research under section 7 of the Public Health Act 2010 (NSW) from time to time, in relation to COVID-19, as applicable to the provision of the Services.

Receiver includes a receiver or receiver and manager.

Recipient is defined in clause 14.1 (Disclosure of Confidential Information).

Records means records and documentation relating to this agreement (including Goods, Services, Service Levels, Service Credits and/or Charges).

Rejection Notice means a notice in accordance with clause **Error! Reference source not found.** (**Error! Reference source not found.**).

Related Body Corporate has the meaning it has in the Corporations Act.

Relevant Offence means any offence which:

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

Repair Location means the location set out in the Contract Details as the Repair Location.

Representative of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer, contractor (including a Transport Operator in respect of TfNSW) or sub-contractor of that party.

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

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

- (c) trade secrets or information which is capable of protection at law or equity as confidential information,

but excludes the Excluded Information.

TfNSW IP means Intellectual Property Rights owned by or licensed to TfNSW and made available to the Supplier or a Subcontractor for the purposes of the performance by the Supplier of its obligations under this agreement.

TfNSW Representative means the person identified the Contract Details as the TfNSW Representative, as varied by notice to the Supplier from time to time.

Transport Operators means any Governmental agency or other operator (including private operator) of public transport services for the Government of New South Wales.

Schedules means the schedules to this agreement.

Service Credits means an amount calculated in accordance with Schedule 4 (Service Levels) in respect of the failure by the Supplier to meet one or more Service Levels in accordance with that Schedule.

Service Levels means the minimum performance levels set out in Schedule 4 (Service Levels).

Services means the services set out in Schedule 2 (Goods and Services) and all other services required to be provided by the Supplier under this agreement.

Small and Medium Enterprises Policy means the NSW Government's procurement policy from time to time concerning Small and Medium Enterprises.

Specifications means the specification for the Goods sets out in or annexed to Schedule 2 (Goods and Services).

Subcontractor means subcontractors of the Supplier

Supplier Confidential Information means all Information, other than TfNSW Confidential Information, disclosed to TfNSW by the Supplier or any Representative of the Supplier for or in connection with this agreement including:

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

but excludes the Excluded Information.

Supplier IP means Intellectual Property Rights owned by or licensed to the Supplier or a Subcontractor for the provision of Goods and Services to TfNSW

Supplier Liability Cap means the Supplier liability cap set out in the Contract Details.

Supplier Personnel means employees, partners, agents and sub-contractors (including employees of sub-contractors) of the Supplier.

Supplier Representative mean the person identified in the Contract Details as the Supplier Representative, as varied by notice to TfNSW from time to time.

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

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

Term means the period commencing from the Commencement Date and ending on the date that this agreement is terminated or expires.

Tested Goods means the model or sample of goods which was provided to TfNSW for testing purpose as a representation of the Goods, if any.

Use means to load, run, execute, display, distribute, copy, perform or access.

Warranty Period means the periods set out in the Contract Details.

1.2 References to certain general terms

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

- (a) **(variation or replacement)** a document (including this agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures, schedules and attachments)** a clause, Schedule, Annexure or Attachment is a reference to a clause in, or a Schedule, Annexure or Attachment to, this agreement;
- (c) **(references to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them), including, for the avoidance of doubt, Public Health Orders;
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;

- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors and substitutes (including, persons taking by novation) and assigns;
- (h) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) **(dollars)** an amount of money is a reference to the lawful currency of Australia;
- (j) **(calculation of time)** a period of time that dates from a given day or the day of an act or event is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to a calendar day and is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(meaning not limited)** the words "include", "including", "for example" or "such as" are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind;
- (m) **(next day)** if an act under this agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day; and
- (n) **(time of day)** time is a reference to Sydney time.

1.3 Headings

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

Schedule 2 - Goods and Services

2.1. Introduction

TfNSW is engaging the Supplier to provide COVID-19 rapid antigen testing services for TfNSW's staff and staff of TfNSW contractors, at a number of key operation-critical sites across New South Wales ("**Services**").

The Services will be delivered under a pilot program to assist TfNSW to determine how rapid antigen testing may become an ongoing tool for maintaining operational resilience, worker safety, if at all.

2.2. Services

The Supplier is to, for the duration of the Term:

- procure enough COVID-19 rapid antigen test kits ("**Goods**") approved by the Therapeutic Goods Administration ("**TGA**") in order to provide the Services.
- Administer the rapid antigen tests for TfNSW staff and staff of Transport Operators at the Testing Sites, commencing on the Testing Site Commencement Date for each Testing Site (see paragraph 2.5 below) and process test results in line with the requirements of the manufacturer of the Goods and the TGA;
- Establish a process to register a person for testing and provide them with the results immediately in an efficient and easy-to-use manner (SMS preferred);
- Record the results of every test electronically and provide the results to TfNSW on a daily basis (see further below under "Reporting");
- Manage the storage and disposal of waste produced in the provision of the Services;
- Provide appropriately qualified Supplier Personnel to undertake the Services.

2.3. Duration

The Services will be provided for the Term.

2.4. Requirements of Supplier's on-site staff

All on-site Supplier Personnel must:

- have received at least 1 dose of an approved vaccine against COVID-19;
- submit themselves for Rapid Antigen Testing upon arrival as directed by client;
- wear appropriate PPE including mask, gown and gloves whilst at the Testing Site;
- be safety inducted at the Testing Site they are working at and follow all instructions of the site manager in the event of emergency, evacuation or other safety incident;
- comply with the relevant Transport Operators (as identified in the table in paragraph 2.5) policies or requirements in regards contractors entering any site owned or occupied by the Transport Operator.

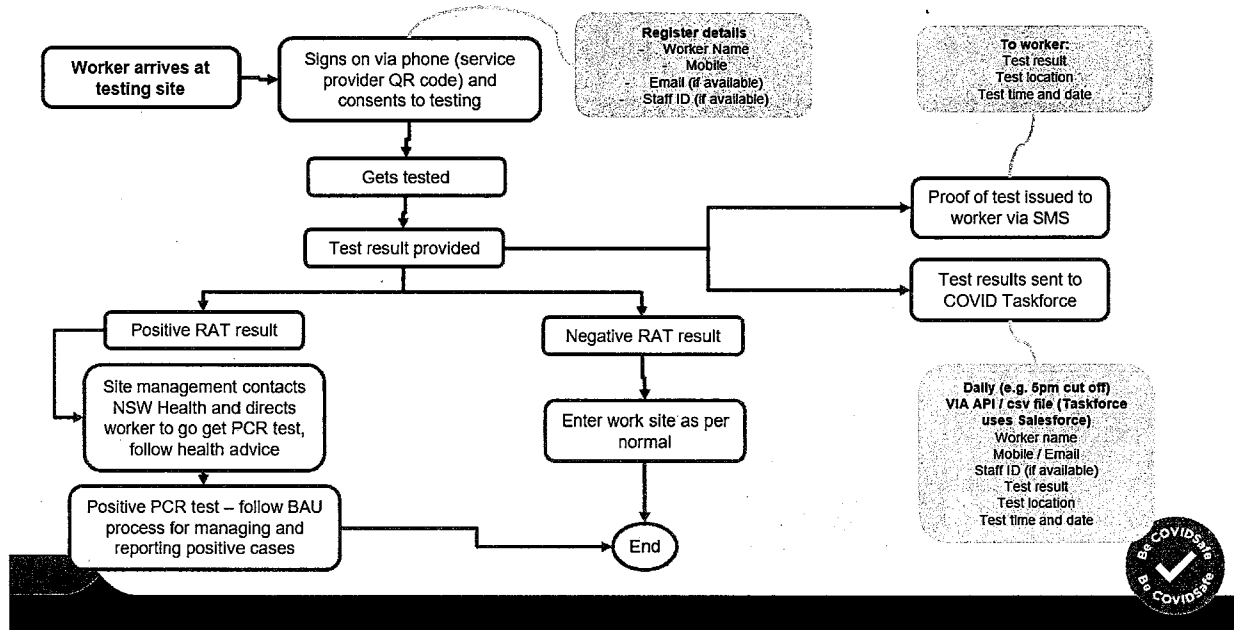
2.5. Testing Sites

- The Supplier must provide the Services at the thirteen testing sites (“**Testing Sites**”) listed in the table below on and from the Testing Site Commencement Date for each Testing Site.
- The Supplier must set up the Testing Sites for use in the provision of the Services with resourcing and hours of availability as set out in Attachment A to this Schedule (“**Roll Out Plan**”).

Transport Operator	Sites	Testing Site Commencement Date	Site addresses / location
NSW TrainLink	Central Platform 1	Central Platform 1: 30 August 2021	Central Station, Eddy Avenue (street address)
	Newcastle interchange	Newcastle interchange: In accordance with the Roll Out Plan	Newcastle Interchange, Wickham
	Wollongong station	Wollongong station: In accordance with the Roll Out Plan	Wollongong Station.
TfNSW - Regional Transport Operations Centre	Tugun	Tugun: In accordance with the Roll Out Plan	Tugun Tunnel Control Room, Pacific Motorway Tugun (northbound lane prior to tunnel).
	St Helena	St Helena: In accordance with the Roll Out Plan	St Helena Tunnel Control Room, St Helena Road, McCleods Shoot (above tunnel).
Sydney Trains	Flemington maintenance centre	Flemington maintenance centre: In accordance with the Roll Out Plan	Flemington, Bachell Avenue, Lidcombe.
	Clyde network base	Clyde network base: In accordance with the Roll Out Plan	Clyde, 144 Manchester Road, Auburn.
	Granville mechanical inspection services	Granville mechanical inspection services: In accordance with the Roll Out Plan	Granville, 3 East Street, Granville.
Transit Systems	Kingsgrove depot	Kingsgrove depot: In accordance with the Roll Out Plan	17-19 Richland St, Kingsgrove
Transit Systems	Burwood depot	Burwood depot: In accordance with the Roll Out Plan	284 Parramatta Rd, Burwood
CDC	Foundry Rd, Seven Hills depot	Foundry Rd, Seven Hills depot: In accordance with the Roll Out Plan	29 Foundry Rd, Seven Hills
State Transit	Ryde bus depot	Ryde bus depot: 30 August 2021	49-75 Buffalo Rd, Ryde
TfNSW - Transport Management Centre	Eveleigh	Eveleigh: In accordance with the Roll Out Plan	25 Garden Street, Eveleigh

2.6. Process and data flow

Intended Process & Data Flow



2.7. Reporting

- Secure daily report (cut off 5pm) uploaded to TfNSW Salesforce (via API) or automated file transfer provided the next day including the following details:
 - Worker name;
 - Mobile number (and email if collected);
 - Staff ID (if collected);
 - Test result;
 - Test location; and
 - Test time and date.
- Reports on overall performance of testing sites, including operational issues, staff feedback, as requested by TfNSW from time to time.

Attachment A – Roll Out Plan

The Roll Out Plan is to be agreed to by TfNSW and the Supplier in writing on or before the Commencement Date (or such later date agreed by the parties), and will form part of this agreement as Attachment A of Schedule 2.

Schedule 3 - Charges

1. Charges

TfNSW will pay the Supplier for the Goods and Services in accordance with the below table.

Item	Amount	Invoice Timing
Rapid antigen test kits (per unit)	██████ for every unit used in the provision of the Services	On a weekly basis, payment requested within 14 days.
Testing Site set up (per site)	This will be part of the Registered Nurse (supervising) hourly rate charged for set up of clinic prior to commencement of swabbing. This will vary depending on site requirements	On a weekly basis, payment requested within 14 days.
Senior Registered Nurse – Clinical oversight and governance	██████	On a weekly basis, payment requested within 14 days.
Healthcare Professional	██████	On a weekly basis, payment requested within 14 days.
Registered Nurse (supervising)	██████	On a weekly basis, payment requested within 14 days.

Notes

1. A minimum engagement time of 3 hours per clinic, in line with Award Requirements.
2. All penalties as follows are inclusive in the rates quoted above and will be paid in line with the award, including evenings, night, and weekends.
3. Certain sites may require scalable staffing requirements
4. Pilot pricing only – modifications to the above Charges may be required following the Initial Term for the duration of any Further Term, in conjunction with TfNSW prior to uplift of remaining sites.
5. Rates quoted exclusive of GST.

2. Unused Goods

For the avoidance of doubt, TfNSW is not liable to pay the Supplier for any unused rapid antigen test kits (unless otherwise agreed in writing by TfNSW in its absolute discretion).

Schedule 4 - Service Levels

Not used

Schedule 5 – TfNSW Data

1 TfNSW Data

- 1.1 **TfNSW Data** means all data, records and information relating to the operations, facilities, customers, clients, personnel, assets, Transport Operators, Transport Operator's personnel and programs of TfNSW in whatever form that information can exist and whether collected, entered into, stored in, generated by or processed as part of the provision of the Goods or Services.
- 1.2 **(Ownership of TfNSW Data)** TfNSW Data is and will remain the property of the TfNSW at all times, including during and after completion of this agreement. The Supplier must not place any lien, charge or other encumbrance over the TfNSW Data.
- 1.3 **(Use of TfNSW Data)** Except as required by statutory requirements, the Supplier must:
- (a) not use TfNSW Data for any purpose other than directly to perform its obligations under this agreement;
 - (b) not, and must ensure that its personnel will not, sell, commercially exploit, hire, assign rights in, dispose of, or otherwise deal with any TfNSW Data in a way that is not in accordance with this agreement;
 - (c) not make any TfNSW Data available to a third party other than a subcontractor approved by the TfNSW and then only to the extent necessary to enable the approved subcontractor to perform its part of the Supplier's obligations under this agreement.
- 1.4 **(TfNSW Data Safeguards)** The Supplier must establish and maintain safeguards against the destruction, loss, unauthorised disclosure or alteration of any TfNSW Data in the possession or control of the Supplier according to the specifications. At a minimum, those safeguards must:
- (a) be consistent with and no less rigorous than those maintained by TfNSW to secure its data; and
 - (b) comply with all policies and procedures concerning TfNSW Data as specified by the TfNSW from time to time.
- 1.5 **(Return of TfNSW Data)**
- (a) Subject to (b) below, the Supplier must return TfNSW Data to TfNSW immediately on termination or expiration of this agreement or on request by TfNSW at any time.
 - (b) The Supplier will comply with any requirements set out in the Specifications in relation to the retention and disposal of TfNSW Data. If there is TfNSW Data that is required by the Supplier to perform its obligations that survive the termination or expiration of

this agreement (e.g. TfNSW Data required to perform warranty services), the Supplier may retain that TfNSW Data according to this agreement until the Supplier is no longer required to perform those obligations or on request by TfNSW at any time.

1.6 **(Other TfNSW Data requirements and obligations)** The Supplier must:

- (a) **(compliance with requirements and service levels)** comply with the information management (including data security) requirements and service levels set out in the specifications, and any other reasonable requirements in relation to TfNSW Data as notified to it by TfNSW in writing from time to time;
- (b) **(compliance with statutory requirements)** comply with statutory requirements, including not do any act or engage in any practice that would breach any statutory requirements in relation to State Records and Personal Information (as defined in the relevant legislation), or which if done or engaged in by TfNSW, would be a breach of those statutory requirements;
- (c) **(preventing unauthorised personnel access)** prohibit and prevent any person who does not have the appropriate level of security clearance within the Supplier's organisation from gaining access to TfNSW Data;
- (d) **(notification of any breach)** notify TfNSW immediately and comply with all directions of TfNSW, if the Supplier becomes aware of the contravention of any of TfNSW Data security requirements;
- (e) **(implement business continuity plan)** implement and comply with the Business Continuity plan, as agreed with TfNSW, that includes TfNSW Data responsibilities;
- (f) **(notification of any non-compliance)** notify TfNSW and provide sufficient details where the Supplier is unable to or anticipates it will be unable to comply with any TfNSW Data responsibilities, requirements and obligations under this agreement;
- (g) **(backup and disaster recovery measures)** make backup copies of TfNSW Data and store and retain backup copies, and have adequate disaster recovery measures in place, in accordance with the Specifications (including Service Levels);
- (h) **(security measures)** provide such security and encryption measures in accordance with best practice industry standards appropriate for TfNSW Data and in accordance with the Specifications;
- (i) **(access)** ensure TfNSW has access to TfNSW Data at the times, and in the manner set out in the Specifications, whilst TfNSW Data is in the possession or under the control of the Supplier. (If the Specifications do not set out the times and manner in which TfNSW

can access TfNSW Data, it will be taken as at reasonable times and in a reasonable manner.)

- (j) **(location of TfNSW Data)** store, hold, process or otherwise deal with any TfNSW Data in the countries and jurisdictions set out in the Specifications;
- (k) **(retention and disposal)** implement and comply with the retention and disposal requirements in relation to TfNSW Data as set out in the Specifications. The Supplier may delete, purge and/or disclose TfNSW Data where it is required to do so under any applicable law. Where there is a legal requirement for the Supplier to delete, purge and/or disclose any part of the TfNSW Data, it must promptly notify TfNSW of the request to enable TfNSW to respond and deal with the request;
- (l) **(deletion of TfNSW Data and certification)** delete TfNSW Data within the period specified in the Specifications, and if requested by TfNSW, provide certification within 5 business days of such request that TfNSW Data has been deleted;
- (m) **(reporting, meetings and audit)**
 - (i) provide reports and attend meetings as set out in the Specifications and agreed contract management plan, including in relation to compliance with the Supplier's TfNSW Data obligations under this agreement; and
 - (ii) on reasonable notice by TfNSW to the Supplier, permit and assist TfNSW and/or its Representative to conduct an audit in relation to the Supplier's compliance with its TfNSW Data obligations under this agreement. Such audit may involve access to TfNSW Data in the control or possession of the Supplier, access to the Supplier's site(s), facilities, operations, systems, personnel and documentation to evidence and to verify the Supplier's processes and controls in relation to the TfNSW Data that is dealt with by the Supplier under this agreement. Unless otherwise agreed, each party will pay its own costs in relation to the audit.

1.7 **(After termination)**



- (a) **(Access)** Within the period after termination of this agreement as set out in the Specifications, the Supplier must, at no additional cost to TfNSW, provide TfNSW with a copy of all TfNSW Data in the format specified, or if no format is specified, in the standard format as usually provided by the Supplier.
- (b) **(Transition Out)** The Supplier must provide the transition out services as set out in the Specifications. The transition out services may include returning or, if requested by TfNSW, destroying

documents or materials containing TfNSW Data together with any backups or other reproduction of those documents or materials.

Attachment A - Contractor Statement Template

NOTE: this form is available online at

<https://www.rms.nsw.gov.au/documents/about/forms/45062893-contractor-statement-payment.pdf>

 Transport for NSW		Contractor Statement Payment of Workers, Payroll Tax & Worker's Compensation Premiums	
<p>All suppliers/contractors must provide this Statement with every Invoice/Payment Claim for all works/services carried out for Transport for NSW (TfNSW). TfNSW is entitled by law to withhold payment until this Statement is provided (see Note 2 overleaf).</p>		<p>Workers Compensation Insurance Certificate of Currency for the work period in question. Unless the contractor is exempt, </p>	
Details			
Contractor's Legal Name:			
Contractor's Trading / Business Name:			
Contractor's ABN:		Contractor's ACN:	
Contractor's Address:			
TfNSW Contract No:		Project/Contract Title:	
Description of Works:			
Period of Work this Statement applies to (see Note 3):		From: To:	
Invoice or Payment Claim Numbers this applies to:			
Invoice or Payment Claim Dates this Statement applies to:			
Declaration Tick one in each row			
I declare that the following is true to the best of my knowledge and belief in respect of the Period of Work above:			
All workers engaged by the Contractor in respect of the works have been paid all remuneration entitlements.			
All workers compensation insurance premiums have been paid and attached is a true copy of a Certificate of Currency for workers compensation insurance valid for the period covered by this Statement; or		or	
the Contractor is an exempt employer for workers compensation purposes (see Note 6);			
The Contractor is registered as an employer under the Payroll Tax Act 2007 and has paid all payroll tax due in respect of employees in relation to the works the subject of this Statement; or		or	
the Contractor is not required to be registered;			
The Contractor has not engaged any subcontractors for the works the subject of this Statement, or		or	
The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors and believes it to be true			
I am authorised to make this declaration and I am in a position to know the truth of its contents			
Signature of Authorised Person:		Name of Signatory (print):	
Date:		Position / Job Title of Signatory (print - see Note 4):	
<small>(Electronic copy is available at: http://www.rms.nsw.gov.au/forms/categories/contractandwork/45062893.pdf)</small>			
<small>(see Notes on page 2) Page 1 of 2</small>			



Workers Compensation Insurance Certificate of Currency for the work period in question. Unless the contractor is exempt

Notes

1. A Contractor is any person or company who carries out work under a contract of any kind for any business of RMS. References to "Subcontractor" and "Principal Contractor" in the legislation mentioned below have been changed in this Statement to "Contractor" and "RMS" respectively to avoid confusion.
2. This form is prepared for the purposes of section 127 of the *Industrial Relations Act 1996* ("IRA"), section 175B of the *Workers Compensation Act 1987* ("WCA") and Schedule 2 Part 5 of the *Payroll Tax Act 2007* ("PTA"). These provisions allow RMS to withhold payment from a Contractor without any penalty unless and until the Contractor provides to RMS a Statement declaring that:
 - a. All workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid; and
 - b. all remuneration payable to relevant employees for work under the contract has been paid; and
 - c. all payroll tax payable relating to the work undertaken has been paid.
3. Section 127 of the IRA says that the Statement must state the period to which it relates. For sequential statements ensure that the dates provide continuous coverage.
4. The person signing this declaration must be a person who is authorised by the Contractor either to sign this Statement (or to sign statements of this kind) and must be a person who is in a position to know the truth of the statements. The Contractor's principal accounting/financial officer may be appropriate. An individual project manager will normally not be appropriate. If the Contractor is a company then the person signing should be a director unless the company has delegated the power to sign such statements to another person (eg the principal accounting officer).
5. A Statement is not required where RMS is making payment to a receiver, liquidator or trustee in bankruptcy (see section 127(10) of the IRA, section 175B(12) of the WCA and Sch 2 Part 5 (20) of the PTA).
6. Section 127(6) of the IRA says that references to payments to workers means all types of remuneration to which they are entitled.
7. As of 30 June 2011, an employer is exempt from taking out workers compensation insurance if the employer pays less than \$7500 annually on wages, does not employ an apprentice or trainee and is not a member of a group for workers compensation purposes.

Generic Version of Statement

This form has been specially adapted for use specifically for Contractors working for RMS.

Generic versions of this Statement for non-RMS use can be obtained at:

http://www.industrialrelations.nsw.gov.au/pdfs/subcontractor_statement_form.pdf; or

<http://www.osr.nsw.gov.au/lib/doc/forms/opt011.pdf>.

Record Retention

RMS will keep a copy of this Statement for 7 years. If the Contractor obtains a similar statement from its subcontractor then the Contractor must keep that statement for 7 years.

Offences for False Statement

Knowingly giving a false statement may be an offence under section 127(8) of the IRA, section 175B of the WCA and Sch 2 Part 5 clause 18(8) of the PTA.

Further Information

These notes are not intended as legal advice and Contractors should obtain their own professional advice if they have any questions about this Statement or these Notes.

For more information, refer to OSR Revenue Ruling PT 59 at <http://www.osr.nsw.gov.au/lib/doc/rulings/rppt59.pdf>, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or the Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Attachment B - Insurance Policy Requirements

See Contract Details section for the required insurance amounts			
TYPES OF INSURANCES	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	STATE IF REQUIRED
Broadform Public Liability and Product Liability	Annually for the duration of the contract plus the duration of any warranty or maintenance periods.	(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below; (b) is governed by the law of New South Wales and subject to Australian jurisdictions as defined in clause 2 of the Definitions and Notes below; (c)	Required if selected in the Contract Details
Third Party Property Damage	Annually for the duration of the contract.	(a) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below;	Required if selected in the Contract Details
Professional Indemnity	From time contract is awarded to completion of the contract plus 6 years following completion of the contract The Insurance can be taken out as annual covers where the cover is to include a retroactive date being the commencement date of the contract	(a) Is an approved insurer as defined in clause 1 of the Definitions and Notes below; (b) a description of the risk covered by the policy; (c) one automatic restatement per period of insurance; and (d) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below.	Required if selected in the Contract Details
Workers Compensation	Annually.	As per relevant Workers Compensation legislation.	Required if selected in the Contract Details
Not used	Not used	Not used	Not used
Not used	Not used	Not used	Not used
Definitions & Notes			
1	<p>Approved Insurer means</p> <p>(a) An Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia;</p> <p>(b) Lloyds Underwriters;</p> <p>(c) A Treasury Managed Fund insurance scheme with the NSW State Government; or</p> <p>(d) The Comcover insurance scheme for the Australian Federal Government.</p>		

See Contract Details section for the required insurance amounts			
TYPES OF INSURANCES	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	STATE IF REQUIRED
	Note that where the insurance risk is insured by a insurer not listed in Note 1(a) or 1(b) then a 'fronting' placement is acceptable from an insurer listed in Note 1(a) or 1(b).		
2	Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.		
3	Not used		
4	References in this Insurance Schedule to the "contractor" and the "contract" are to be interpreted to harmonise with the terminology used in the contract in which this Insurance Schedule is used (eg "Service Provider" and "Agreement" or as the case may be).		



**Transport
for NSW**

Goods and Services Agreement

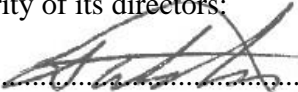
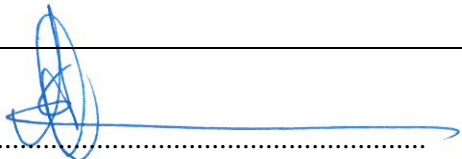
Dated

Transport for NSW ("TfNSW")

Healthcare Australia Pty Ltd ("Supplier")

Parties		
TfNSW and Supplier		
TfNSW	Name	Transport for NSW
	ABN	18 804 239 602
	Address	231 Elizabeth Street Sydney, New South Wales, 2001
Supplier	Name	Healthcare Australia Pty Ltd
	ABN	95 108 180 589
	ACN	108 180 589
	Address	Level 22, 201 Elizabeth St, Sydney, New South Wales, 2000
Date of Agreement		

EXECUTED as an agreement.

<p>EXECUTED by <i>Healthcare Australia Pty Ltd</i> in accordance with section 126(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:</p> <p>.....  Signature of authorised representative</p> <p>STUART WEBSTER Name of authorised representative (block letters)</p>		<p>.....  Signature of authorised representative</p> <p>representative ANDRE COIA Name of authorised representative 27th August 2021 Date</p>
--	--	---

<p>Signed for and on behalf of Transport for NSW (ABN 18 804 239 602) by its authorised delegate in the presence of:</p>		
		Signature of Delegate
Signature of witness		Name & Title of Delegate
Full name of witness		Date

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Contract Details

Commencement Date (Clause 2)	30 August 2021
Initial Term (Clause 2)	8 weeks
Further Term (Clause 2)	As agreed in writing by the parties pursuant to clause 2.2
Delivery Address (Clause Error! Reference source not found.)	Not used
Warranty Period (Clauses 3.8 and 4.3)	6 months
Repair Location (Clause Error! Reference source not found.)	Not used
Invoice Timing (Clause 7.2)	See Schedule 3 (Charges)
Security (Clause 9.4)	<p>Criminal record search and investigation required? <input type="checkbox"/> Yes, for all Supplier Personnel involved in: <div><input type="checkbox"/> Manufacturing of the Goods <input type="checkbox"/> Packaging of the Goods <input type="checkbox"/> Delivery of the Goods <input type="checkbox"/> Planning of the Services <input type="checkbox"/> Performance of the Services <input type="checkbox"/> Other: _____ of the Goods <input type="checkbox"/> Other: _____ of the Services</div></p> <p>Deed of Confidentiality required? <input type="checkbox"/> Yes, for all Supplier Personnel involved in: <div><input type="checkbox"/> Manufacturing of the Goods <input type="checkbox"/> Packaging of the Goods <input type="checkbox"/> Delivery of the Goods <input type="checkbox"/> Planning of the Services <input type="checkbox"/> Performance of the Services <input type="checkbox"/> Other: _____ of the Goods <input type="checkbox"/> Other: _____ of the Services</div></p>

IP Ownership (clause 13.4)	Option A - TfNSW Owns New IP	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	Option B – Supplier Owns New IP but TfNSW has Exclusive Use Licence	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
	Option C – Supplier Owns New IP but TfNSW has Non-Exclusive Use Licence	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

NOTE: Chose one option here and mark “no” for others. If no option is selected or if it is unclear which option is selected then Option A will apply

TfNSW Representative (Clause 15) and notices (Clause 24)	Name:	<u>Fabian Foo</u>
	Position:	<u>Director - Enhanced Cleaning Program - Operations, Safety Environment & Regulation</u>
	Address:	<u>7 Harvest St, Macquarie Park NSW 2113</u>
	Facsimile:	<u>Not applicable</u>
	Email:	<u>Fabian.Foo2@transport.nsw.gov.au</u>
Supplier Representative (Clause 15) notices (Clause 24)	Name:	<u>Stacy McKenzie</u>
	Position:	<u>National Manager – Corporate Health</u>
	Address:	<u>35 King William Road, Unley SA 5061</u>
	Facsimile:	<u></u>
	Email:	<u>stacy.mckenzie@healthcareaustralia.com.au</u>
Reports (Clause 15.3)	As specified in paragraph 7 of Schedule 2 and any other reports as may be reasonably required by TfNSW from time to time	
Review meetings (Clause 15.4)	Weekly and any additional meetings as reasonably required by TfNSW	
Supplier Liability Cap (Schedule 1 & Clause 17.2)	\$3 million	
Transition Plan Submission Date (Clause 26.1)	Not used	

**Insurance Policies
(Clause 18.1)**

TYPES OF INSURANCES	MINIMUM SUM INSURED	TICK IF REQUIRED
Broadform Public and Products Liability	\$20 million for any single occurrence and unlimited in the aggregate as to the number of occurrences The total aggregate liability during any one period of insurance for all claims arising out of the Supplier's Products shall not exceed \$20 million	<input checked="" type="checkbox"/>
Third Party Property Damage	\$20 million for any single occurrence and unlimited in the aggregate as to the number of occurrences	<input checked="" type="checkbox"/>
Workers Compensation	As required by the laws of each relevant State and Territory	<input checked="" type="checkbox"/>
Not used	Not used	Not used
Professional Indemnity	\$1 million per occurrence	<input checked="" type="checkbox"/>
Not used	Not used	Not used

For details of requirements for each policy see Attachment B.

**Important contractual notices
(Clause 24.2)**

Important contractual notices under clause 24.2 must be copied to:

- 1 If to TfNSW:
Copy to: Karen McCarthy – Executive Director - Security, Crisis & Emergency Mgmt, Safety Environment & Regulation

(for notices under clause 24.2 only) 7 Harvest St, Macquarie Park New South Wales 2113

- 2 If to the Supplier:
Copy to: Catherine O'Connor – National Manager Legal & Commercial Operations

(for notices under clause 24.2 only) Level 3, 312 St Kilda Rd, Melbourne, VIC 3004

Note: Under clause 24.2 important contractual notices are not permitted to be sent by facsimile or email.

General Terms

1 Contract structure

1.1 Overview

This agreement consists of the following parts:

- (a) these General Terms - the clauses of these General Terms set out the contractual framework under which the Supplier will supply Goods and perform Services;
- (b) the Contract Details - the details set out the key commercial variables applicable to this agreement;
- (c) the Schedules - set out the detailed provisions relating to the Goods, Services and Service Levels; and
- (d) the other Attachments - sets out forms and other material relevant to this agreement.

1.2 No exclusivity

The Supplier acknowledges that:

- (a) it is not the exclusive supplier of the Goods or Services, or goods or services similar to the Goods or Services and TfNSW may at any time during the Term acquire such Goods or Services or any part of them from a third party; and
- (b) TfNSW is under no obligation to acquire any minimum quantity of Goods or Services under this agreement.

1.3 Priority

If there is any inconsistency between any of the parts of this agreement, then the part listed higher in clause 1.1 (Overview) takes priority and applies over any part listed lower in that clause, but only to the extent of the inconsistency.

1.4 Definitions and interpretation

The definitions used in this agreement and the rules of interpretation are set out in the Dictionary in Schedule 1.

2 Term

2.1 Term of Agreement

This agreement commences on the Commencement Date and continues until expiry of the Initial Term unless extended under clause 2.2 (Extension) or terminated in accordance with this agreement.

2.2 Extension

This agreement may be extended by the parties, by mutual agreement in writing, on the same terms and conditions for the Further Term.

2.3 Holding over

Following expiry of the Initial Term (including any extension of it under clause 2.2 (Extension)) if TfNSW Requires then this agreement will continue on a periodic basis on the same terms (including Charges) until the earlier of:

- (a) termination by either party giving the other at least 3 month's notice;
- (b) expiration of 12 months; or
- (c) termination in accordance with this agreement.

2.4 No entitlement to new agreement or extension of agreement

Nothing in this agreement shall be construed as affording the Supplier a right or expectation of any renewal or extension of this agreement after the Initial Term or to provide, or be invited to provide the Goods or Services after the Initial Term.

3 Goods

3.1 General

The Supplier must supply the Goods to TfNSW in accordance with the terms and conditions of this agreement.

3.2 Specifications

The Supplier must ensure that the Goods:

- (a) comply with the Specifications; and
- (b) are identical to any Tested Goods.

3.3 Not used

3.4 Not used

3.5 Not used

3.6 Not used

3.7 Not used

3.8 Warranty repairs

If the Goods are or become defective in any way during the Warranty Period, then, at TfNSW's absolute discretion:

- (a) the Supplier must immediately replace or repair the Goods at the Supplier's cost; or
- (b) TfNSW may return the Goods to the Supplier. The Supplier must fully refund any amounts paid for the Goods that TfNSW does not retain.

3.9 Not used

3.10 Stock Levels

The Supplier must ensure that throughout the Term it maintains sufficient stock levels of Goods to meet obligations under this agreement and to be able to provide the Services.

3.11 Not used

4 Services

4.1 General

The Supplier must provide the Services to TfNSW to a standard that meets or exceeds any applicable Services Levels acting reasonably in accordance with the terms and conditions of this agreement.

4.2 Capability Levels

The Supplier must ensure that throughout the Term it maintains sufficient capability and resources in relation to Services to meet its obligations under this agreement.

4.3 Warranty rectification

If the result achieved by the Services is or becomes defective in any way during the Warranty Period then the Supplier must immediately re-perform the Service or remedy the defect at the Supplier's cost.

5 Service Levels and Service Credits

Where the Supplier fails to meet any Service Level, without limiting other rights and remedies available to TfNSW, the Supplier must at no additional cost to TfNSW promptly:

- (a) at TfNSW's option, pay to or credit TfNSW, the Service Credits;
- (b) if requested by TfNSW, in the case of Services re-perform those Services which gave rise to the failure to meet the Service Level;
- (c) use all reasonable endeavours to correct the issue which caused the failure to meet the Service Level;
- (d) arrange all additional resources reasonably necessary to deliver the Goods or perform the Services in accordance with the Service Level as soon as practicable; and
- (e) if requested by TfNSW, provide at no charge to TfNSW a detailed report on the steps taken by the Supplier to prevent similar future non-compliance with the Service Levels.

6 Other Supplier Obligations

6.1 Standard of performance

Without limiting the Supplier's obligations under this agreement, the Supplier must perform its obligations under this agreement:

- (a) in accordance with best industry practice;
- (b) with all due care, skill and diligence expected of a professional service supplier and in a proper and workmanlike manner; and
- (c) in a cost effective manner consistent with the required level of quality and performance.

6.2 Comply with requirements

Without limiting the Supplier's obligations under this agreement, the Supplier must comply, and must ensure that the Supplier Personnel comply, with:

- (a) all TfNSW standards, policies and procedures notified from time to time (other than any which are expressly inconsistent with this agreement);
- (b) all other reasonable requirements and directions of TfNSW in relation to the Goods and Services, including:
 - (i) the requirements set out in Schedule 2 in respect of Supplier Personnel; and
 - (ii) that the Supplier must reasonably co-operate with other TfNSW suppliers; and
- (c) the Supplier's own internal standards and policies (other than any which are inconsistent with this agreement).

Where there is any inconsistency between any of the requirements set out above, the requirement listed earlier prevails to the extent of the inconsistency.

6.3 Not used

6.4 Not used

6.5 Not used

7 Charges, invoices and payments

7.1 TfNSW will pay Charges

Subject to this clause 7 (Charges, invoices and payments), in consideration of the Supplier supplying the Goods and performing the Services, TfNSW will pay to the Supplier the Charges. The Supplier is not entitled to recover any charge or expenses additional, to the Charges for the supply of Goods, the performance of the Services, the provision of any benefit or the performance of any acts, even if required to do so under this agreement, unless the agreement provides otherwise.

7.2 Invoice Timing

The Supplier will issue and invoice for the Charges in accordance with the Invoice Timing or if there is no Invoice Timing established for the relevant Goods or Services, then:

- (a) in respect of Goods, on delivery of all Goods; and
 - (b) in respect of Services, on completion of all Services,
- unless otherwise agreed in writing by TfNSW.

7.3 Payment of amounts due to or in respect of employees

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

- (a) the time for payment has passed;
- (b) the Supplier has not given TfNSW a completed Contractor Statement in the form set out in Attachment A in respect of the period for which the amounts are owed; and
- (c) TfNSW first gives the Supplier not less than 5 Business Days' notice that it intends to make the payment.

Without limiting any rights TfNSW may have under section 127 of the *Industrial Relations Act 1996* (NSW), the Supplier must credit or pay the amount to TfNSW as required by clause 7.7 (Amounts due to) at TfNSW's option.

7.4 Payment of invoices

TfNSW is not required to pay any amount to the Supplier unless it has received a correctly rendered invoice for that amount. TfNSW must pay each correctly rendered invoice within 30 days after receipt of that invoice.

7.5 Correctly rendered invoice

For the purposes of this agreement, an invoice is not correctly rendered unless:

- (a) the invoice is a Tax Invoice;
- (b) the amount claimed in the invoice is due for payment in accordance with clause 7.2 (Invoice Timing);
- (c) the amount claimed in the invoice is correctly calculated under this agreement;
- (d) the invoice includes the relevant TfNSW purchase order number, cost centre number and general ledger code and is set out in a manner that identifies the Goods and/or Services which the invoice covers and itemises each amount claimed, to a level of detail satisfactory to TfNSW acting reasonably;
- (e) the invoice is accompanied by documents that adequately demonstrate to TfNSW the Goods supplied, the Services that were performed and the basis on which the amounts are claimed;

- (f) the invoice is addressed to “Transport for NSW” with attention to the TfNSW Representative and identifies this agreement; and
- (g) the invoice is accompanied by a completed Contractor Statement in the form set out in Attachment A in respect of the period to which the invoice relates.

7.6 Disputed invoices

Where TfNSW considers that an invoice is not correctly rendered TfNSW will issue to the Supplier within 10 Business Days after receipt of the invoice a notice setting out the reasons and identifying any amounts which are in dispute.

7.7 Amounts due to TfNSW

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

7.8 Set off rights

Without prejudicing any other rights available to TfNSW, TfNSW is entitled to set off against any amount due for payment by it to the Supplier any amount payable by the Supplier to TfNSW (including Service Credits).

7.9 Payment does not affect other rights or obligations

Payment of money under clause 7.1 (TfNSW will pay Charges) is not evidence:

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

8 Taxes and GST

8.1 Taxes

The Supplier is responsible for all Taxes arising from or relating to this agreement and must pay Taxes which are imposed on the Supplier arising from or relating to this agreement, directly to the relevant Government Agency, except for any income tax or capital gains tax payable by TfNSW.

8.2 Evidence of payment

Where the Supplier pays Taxes imposed on TfNSW under clause 8.1 (Taxes), the Supplier must provide to TfNSW within 3 Business Days of payment a written notification evidencing, to the satisfaction of TfNSW, the full and timely payment of the relevant Taxes.

8.3 Indemnity

The Supplier indemnifies TfNSW against any costs or expenses that TfNSW suffers or incurs as a result of the Supplier failing to meet its obligations under clause 8.1 (Taxes).

8.4 GST

The parties agree that:

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

8.5 Withholding tax

If a law requires TfNSW to deduct an amount in respect of Taxes from a payment under this agreement, then:

- (a) TfNSW agrees to deduct the amount for the Taxes; and
- (b) TfNSW agrees to pay an amount equal to the amount deducted to the relevant Government Agency as required by applicable law and give the original receipts to the Supplier.

9 Supplier Personnel & Safety

9.1 Supplier Personnel

The Supplier must ensure that the Supplier Personnel are suitably qualified, experienced and competent for their role in providing the Goods and Services.

9.2 Removal of Supplier Personnel

Where required by TfNSW acting reasonably or as required by law, the Supplier must remove and replace any particular Supplier Personnel as reasonably request by TfNSW.

9.3 Information about Supplier Personnel

If requested to do so by TfNSW and within reason, the Supplier must provide to TfNSW:

- (a) a list of any of the Supplier Personnel; and
- (b) accurate information about the identity and qualifications of each of the Supplier Personnel.

9.4 Security

If specified in the Contract Details, the Supplier must, and must ensure that the relevant Supplier Personnel:

- (a) submit to security checks; and
- (b) execute a deed of confidentiality in the form reasonably required by TfNSW.

9.5 Criminal record search and investigation

If required by clause 9.4 (Security), in relation to all relevant Supplier Personnel (as specified in the Contract Details):

- (a) prior to, but no earlier than 3 weeks before the Supplier engages that person to perform work in connection with this agreement, the Supplier must:
 - (i) for Supplier Personnel who are resident in Australia, perform or procure a national criminal record search of that person from the Criminal Records Section of the NSW Police Force (or such other branch or office of the NSW Police Force or law enforcement agency performing the functions of the Criminal Records Section from time to time) and must provide the results to TfNSW;
 - (ii) for Supplier Personnel who are resident outside Australia, use reasonable endeavours to perform or procure a criminal record search of that person from the relevant police force of the jurisdiction where the Supplier Personnel resides and must provide the results to TfNSW;
- (b) TfNSW may, but is not required to, carry out the search referred to in clause 9.5(a) itself;
- (c) the Supplier must conduct such other investigations at the Supplier's expense as TfNSW may reasonably request and must provide the results of those investigations to TfNSW; and

- (d) TfNSW may conduct such other investigations at TfNSW's expense as TfNSW considers appropriate and the Supplier must provide all such assistance as TfNSW may reasonably request.

The Supplier acknowledges that any search or investigation by TfNSW in accordance with this clause 9.5 (Criminal record search and investigation) will not affect the Supplier's obligations under this agreement.

9.6 Consent from Supplier Personnel

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

- (a) the Supplier and TfNSW to conduct the searches or investigations under and within the timeframes specified in clause 9.5 (Criminal record search and investigation); and
- (b) the Supplier to provide the results of its searches or investigations to TfNSW in accordance with clause 9.5 (Criminal record search and investigation).

9.7 Inability to obtain consent

If the Supplier is unable to obtain a consent required under clause 9.6 (Consent from Supplier Personnel) from a person, then, unless TfNSW agrees otherwise in writing, the Supplier must not allow that person to perform work in connection with this agreement and the Supplier must provide a replacement for that person who is acceptable to TfNSW within a reasonable time of TfNSW's request to do so and without inconvenience or cost to TfNSW.

9.8 No access where there has been a Relevant Offence

The Supplier must not allow a member of the Supplier Personnel to perform work in connection with this agreement without the written consent of TfNSW if:

- (a) a search conducted under clause 9.5 (Criminal record search and investigation) shows that the person has been convicted of an offence which is or could be a Relevant Offence;
- (b) the Supplier has reliable evidence that the person has a criminal conviction or has served a custodial sentence and that conviction occurred, or any part of that sentence was served, in the previous 10 years anywhere in the world; or
- (c) the Supplier has reliable information indicating that a trial is currently underway against the person which could result in a conviction of that person for an offence which is or could be a Relevant Offence.

9.9 Supplier becomes aware of information

If, after the Supplier has allowed a person to perform work in connection with the agreement, the Supplier becomes aware of information of the type referred to in clause 9.8 (No access where there has been a Relevant Offence), then the Supplier must immediately notify TfNSW and the Supplier must take such reasonable action as TfNSW requests in relation to the person including,

without limitation, replacing that person with a person who is acceptable to TfNSW within a reasonable time of TfNSW's request to do so and without inconvenience or cost to TfNSW.

9.10 Removal of unsuitable Supplier Personnel

If, as a result of any investigation under clause 9.5 (Criminal record search and investigation) or any breach of the security or privacy obligations contained in this agreement, TfNSW is of the reasonable opinion that any of the Supplier Personnel is unsuitable to undertake work in respect of this agreement, then TfNSW may request the Supplier to remove that person from the performance of this agreement. If TfNSW makes such a request, then the Supplier will provide replacement personnel reasonably acceptable to TfNSW within a reasonable time of TfNSW's request and without inconvenience or cost to TfNSW.

9.11 Certification

Within 5 Business Days of each anniversary of the Commencement Date or otherwise on request by TfNSW, the Supplier must certify that, as at the relevant date, the Supplier has and is complying with clauses 9.5 (Criminal record search and investigation) to 9.10 (Removal of unsuitable Supplier Personnel).

9.12 Obligations subject to law

Neither party is required to comply with clauses 9.5 (Criminal record search and investigation) to 9.10 (Removal of unsuitable Supplier Personnel) to the extent that compliance would result in a contravention of any legal requirement with which the party is required to comply.

9.13 No poaching

From the Commencement Date until 12 months after expiry of the Term, neither party may solicit for employment, or independent contract for the provision of services, any employee of the other party who is involved in the performance of that party's obligations under this agreement. Nothing in this clause prevents TfNSW from employing or contracting any person through a publicly advertised recruitment or procurement process.

9.14 Safety

- (a) For the purposes of all applicable laws relating to work health and safety, it is acknowledged and agreed that all persons employed or engaged by the Supplier and all subcontractors engaged by the Supplier to carry out its obligations under this agreement will in all respects be under the control and direction of the Supplier and not TfNSW.
- (b) The Supplier must perform its obligations under this agreement in a safe manner and employing systems of work that are safe and for which there is adequate instruction, training and supervision for Supplier Personnel;
- (c) If any obligations under this agreement are to be carried out on any TfNSW Premises then the Supplier must first:

- (i) identify and adequately address any workplace health and safety risks associated with performance of its obligations, including the preparation of an appropriate Safety Management Plan (SMP) and Safe Work Method Statements (SWMS);
 - (ii) continuously review the SPM and SWMS and amend them as required to ensure they continue to be appropriate;
 - (iii) provide copies of its SMP and SWMS to TfNSW before supplying the goods and services and again each time they are updated; and
 - (iv) perform its obligations under this agreement in compliance with the SMP and SWMS.
- (d) TfNSW may in its discretion and acting reasonably request the Supplier to consider making changes to the SMP and SWMS.
- (e) Without prejudice to (a) above, the Supplier must consult, co-operate and co-ordinate with TfNSW regarding work health and safety matters relevant to its performance of its obligations under this agreement.
- (f) The Supplier must maintain and provide to TfNSW records or information regarding health and safety matters arising in connection with this agreement as required by TfNSW from time to time (subject to the redaction of any Personal Information as may be required under the Privacy Laws).
- (g) Following any health and safety incident in connection with this agreement that is notifiable to the regulator under the *Work Health and Safety Act 2011* (“**Incident**”) the Supplier must:
- (i) comply with any notification obligations required under the *Work Health and Safety Act 2011* (NSW);
 - (ii) immediately upon becoming aware of the Incident, notify TfNSW of that incident; and
 - (iii) promptly undertake a risk assessment in relation to the Incident and ensure all reasonably practicable control measures identified during that risk assessment are implemented to eliminate, so far as is reasonably practicable, any risk of a similar incident occurring again.

10 Business continuity and disaster recovery

10.1 Develop plan

Within 2 weeks from the Commencement Date, the Supplier must develop a draft Business Continuity Plan and provide it to TfNSW for review. The draft Business Continuity Plan must detail how the Supplier would continue to supply the Goods and Services to TfNSW if a Disaster Recovery Event occurs. The Supplier must ensure that the draft Business Continuity Plan:

- (a) enables the Goods and Services to be provided in accordance with this agreement except as specifically agreed by TfNSW;
- (b) reflects best industry practice in relation to the planned continued provision of the Goods and Services to TfNSW where there is a Disaster Recovery Event; and
- (c) defines relevant Disaster Recovery Events.

The Supplier must make all changes reasonably required by TfNSW to the draft Business Continuity Plan to create the Business Continuity Plan.

10.2 Update plan

The Supplier must ensure at all times that the Business Continuity Plan is up-to-date and reflects the current Goods and Services.

10.3 Test plan

The Supplier must test the Business Continuity Plan at least annually from the Commencement Date, and must liaise and co-operate with TfNSW over the extent and timing of those tests.

10.4 Disaster Recovery Event

On the occurrence of a Disaster Recovery Event, the Supplier must immediately implement the Business Continuity Plan. The Supplier must continue to provide the Goods and Services to the relevant Service Levels unless otherwise specified or allowed for in the Business Continuity Plan.

11 Sub-contracting

11.1 Subcontracting

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

11.2 Responsibility for Subcontractors

The Supplier is responsible for all acts and omissions of Subcontractors as if they were those of the Supplier and the Supplier indemnifies TfNSW against all costs, expenses liabilities incurred by TfNSW in connection with the acts or omissions of any Subcontractors.

12 Change control

12.1 Change request

Either party may request a change to:

- (a) the scope or description of any Goods or Services; or
- (b) the requirements of Schedule 2 (Goods and Services);

(each a “**Change**”) by issuing a notice in writing to the other party.

12.2 Change request by TfNSW

- (a) If a Change is requested by TfNSW, and the Change relates to:
 - (i) the addition or removal of a new Testing Site (as defined in Schedule 2); or
 - (ii) a change to existing Testing Site requirements, including:
 - (A) a change to the number of Supplier Personnel at a Testing Site; or
 - (B) a change to the days and hours that a Testing Site must be operational,

(“Urgent Change”)

the Supplier must use its best endeavours to implement these Urgent Changes within:

- (iii) in the event of an Urgent Change described in clause 12.2(a)(i), 5 Business Days; and
 - (iv) in the event of an Urgent Change described in clause 12.2(a)(ii), 3 Business Days.
- (b) In the event the Supplier implements an Urgent Change in accordance with clause 12.2(a), the Charges will be adjusted on a pro rata basis, or as otherwise agreed by the parties (acting reasonably).
 - (c) For the avoidance of doubt, sub-clause (d) of this clause and clauses 12.3 - 12.6 (inclusive) do not apply to Urgent Changes.
 - (d) If a Change is requested by TfNSW (excluding Urgent Changes), the Supplier must provide to TfNSW within 10 Business Days of receiving the notice of request, or such other period as the parties may agree, a Change Proposal which complies with clause 12.5 (Requirements for Change Proposal).

12.3 Change request by Supplier

If the Change is requested by the Supplier, the Supplier must include a Change Proposal with the request for Change or provide the Change Proposal at such later date as the parties may otherwise agree.

12.4 Assistance from TfNSW

Where the Supplier requires information from TfNSW in order to properly prepare a Change Proposal, TfNSW will provide all such information reasonably requested within a reasonable period from the date of the request.

12.5 Requirements for Change Proposal

Each Change Proposal must:

- (a) set out a full description of the Change; and

- (b) specify all changes to the relevant Charges, the relevant timeframes and any other conditions which the Supplier reasonably requires in order to perform the Change and must detail reasons for those changes.

Any adjustment to the Charges must be based on the Supplier's actual direct costs as a result of the Change, including a reasonable profit allowance.

12.6 Acceptance or rejection of a Change Proposal

TfNSW may accept or reject a Change Proposal at any time within 20 Business Days of receiving the Change Proposal. Where TfNSW accepts a Change Proposal, the parties will execute a Change Notice on those terms and this agreement will be varied accordingly, with effect from the date of execution of the Change Notice.

13 Intellectual Property Rights

13.1 Existing Intellectual Property Rights

All Intellectual Property Rights of the parties existing before the date of this agreement will be retained by the relevant party.

13.2 Licence for TfNSW to Use Existing Supplier IP

The Supplier grants to TfNSW a royalty-free, non-exclusive, irrevocable licence:

- (a) to Use the Supplier IP to the extent necessary to receive the full use and benefit of the Goods and Services; and
- (b) sub-licence any of the rights granted under (a) to any person, but only in relation to the use or benefits of the Goods or Services.

13.3 Licence for Supplier to Use Existing TfNSW IP

TfNSW grants to the Supplier, and to the extent necessary any relevant Subcontractor, for the Term, a royalty-free, non-exclusive, non-transferable licence to Use TfNSW IP only to the extent necessary to provide the Goods and Services.

13.4 New Intellectual Property Rights

The Contract Details determine whether Option 1, 2 or 3 applies.

(a) Option 1 – TfNSW Owns New IP

The Supplier assigns or will procure the assignment to TfNSW, on creation:

- (i) Intellectual Property Rights in all modifications made to TfNSW IP by the Supplier or its Subcontractors; and
- (ii) all other Intellectual Property Rights created by the Supplier or its Subcontractors in the supply of the Goods or performance of the Services.

(b) Option 2 – Exclusive Licence to TfNSW to Use New IP

In respect of:

- (i) Intellectual Property Rights in all modifications made to TfNSW IP by the Supplier or its Subcontractors; and
- (ii) all other Intellectual Property Rights created by the Supplier or its Subcontractors in the supply of the Goods or performance of the Services

the Supplier grants TfNSW an exclusive perpetual irrevocable and royalty-free licence to:

- (iii) use, reproduce, modify and communicate to the public anywhere in the world and for any purpose connected with the business of TfNSW;
- (iv) permit any person to assist the TfNSW to do any of the things referred to in paragraph (iii) above; and
- (v) sublicense any of the rights described in paragraph (iii) or (iv) to any person.

(c) Option 2 – Non-exclusive Licence to TfNSW to Use New IP

In respect of:

- (i) Intellectual Property Rights in all modifications made to TfNSW IP by the Supplier or its Subcontractors; and
- (ii) all other Intellectual Property Rights created by the Supplier or its Subcontractors in the supply of the Goods or performance of the Services

the Supplier grants TfNSW a non-exclusive perpetual irrevocable and royalty-free licence to:

- (iii) use, reproduce, modify and communicate to the public anywhere in the world and for any purpose connected with the business of TfNSW;
- (iv) permit any person to assist the TfNSW to do any of the things referred to in paragraph (iii) above; and
- (v) sublicense any of the rights described in paragraph (iii) or (iv) above to any person.

13.5 Confidentiality

Nothing in clause 13.2 (Licence for TfNSW to Use Existing Supplier IP) and 13.3 (Licence for Supplier to Use Existing TfNSW IP) removes or limits the obligations of confidentiality under clause 14 (Confidentiality, Privacy).

13.6 Know-how use

Subject to clause 14 (Confidentiality, Privacy) and clause 13.1 (Existing Intellectual Property Rights), each of TfNSW, the Supplier and any Subcontractor will be free to use its general knowledge, skills and experience and any ideas, concepts, know-how, methodologies and techniques related to the scope of the Goods, Services or this agreement.

13.7 Indemnity

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

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

13.8 Not used

14 Confidentiality, Privacy and Data Management

14.1 Disclosure of Confidential Information

A party who receives Confidential Information (“**Recipient**”) must not disclose the Confidential Information supplied by the other party (“**Discloser**”) to any person except:

- (a) its Representatives who require the Confidential Information for the purposes of this agreement; or
- (b) to enable the Recipient to obtain professional advice in relation to this agreement; or
- (c) with the consent of the Discloser; or
- (d) if the Recipient is required to do so by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the Recipient or by a stock exchange; or
- (e) if the Recipient is required to do so in connection with legal proceedings relating to this agreement or other agreement between the parties.

14.2 Permitted disclosures

If the Recipient discloses the Discloser's Confidential Information under clause 14.1(a) or 14.1(c) then:

- (a) it must use its best endeavours to ensure that persons receiving the Confidential Information from it do not disclose the information except in the circumstances permitted in clause 14.1 (Disclosure of Confidential Information);
- (b) the Discloser may at any time require the persons receiving the Confidential Information to give written undertakings relating to the non-disclosure of the Confidential Information and the Recipient must arrange for all such undertakings to be given promptly; and
- (c) the Recipient must reserve the right to demand immediate delivery of all documents or other materials in its possession, power or control or in the possession, power or control of the third party who has received Confidential Information from it containing or referring to that Confidential Information.

14.3 Use of Confidential Information

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

14.4 Return of Confidential Information

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

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

14.5 No disclosure of the terms of this agreement

Except as otherwise agreed or required by law, any regulatory authority or stock exchange, neither party may disclose the terms of this agreement to any person other than its Representatives on a confidential basis.

14.6 Access to Information

- (a) This 14.6 only applies to the extent that the Supplier is required to provide goods or services to the public on behalf of TfNSW.
- (b) Within 3 days of receiving a written request by TfNSW the Supplier must provide TfNSW with immediate access to information referred to in s. 121(1) of *Government Information (Public Access) Act 2009* (NSW) (but excluding information referred to in s.121(2) of

Government Information (Public Access) Act 2009 (NSW)) contained in records held by the Supplier at the Supplier's expense and in such medium as TfNSW may reasonably require. This is an essential term of this agreement.

- (c) TfNSW will consult with the Supplier before releasing any information obtained from the Supplier where required under s.54 of *Government Information (Public Access) Act 2009 (NSW)*.

14.7 Disclosure of details of TfNSW contracts with the private sector

- (a) The Supplier acknowledges that TfNSW may be required to publish certain information concerning this agreement in accordance with ss 27 – 35 of *Government Information (Public Access) Act 2009 (NSW)*.
- (b) If the Supplier reasonably believes that any part of this agreement contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, then the Supplier should immediately advise TfNSW in writing, identifying the provisions and providing reasons so that TfNSW may consider seeking to exempt those provisions from publication.

14.8 Publicity

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

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

14.9 Compliance with privacy requirements

The Supplier must:

- (a) comply with TfNSW's privacy policy (and each specific privacy policy of TfNSW in relation to the collection and/or handling of personal or private information relating to third parties including the obtaining of any necessary consents to its use by TfNSW or by third parties) as notified in writing to the Supplier from time to time as if it were bound by that policy;
- (b) comply with the Privacy Laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information, as if it were regulated by those laws;
- (c) comply with all directions by TfNSW:
 - (i) relating to the means by which TfNSW complies with the Privacy Laws, TfNSW's privacy policy, and all other applicable laws, codes and privacy policies; and

- (ii) co-operate with TfNSW in the resolution of any complaint alleging a breach of such laws, codes or privacy policy.

14.10 Provide information

At TfNSW's request, the Supplier will promptly provide all reasonable assistance to enable TfNSW to comply with its obligations under this agreement and at law, including providing details of any person (for example, a Related Body Corporate or any other private sector entity in which the Supplier has an interest) that:

- (a) will be involved in performing any of the Supplier's obligations under this agreement; or
- (b) will receive a benefit under this agreement.

This clause survives the termination of this agreement for any reason whatsoever.

14.11 TfNSW Data

The Supplier must comply with the obligations set out in **Schedule 5** in relation to TfNSW Data.

15 Representatives, reporting and audits

15.1 Responsibilities

The TfNSW Representative and the Supplier Representative will be responsible for the co-ordination and management between the parties of this agreement, including ensuring the performance by the parties of their respective roles and responsibilities.

15.2 Delegation by Representatives

The TfNSW Representative and the Supplier Representative may delegate part of their operational responsibilities to other Representatives in order to operate more efficiently and effectively.

15.3 Reports

The Supplier must provide to TfNSW the reports with the content and in the frequency and form (electronic or physical) set out in the Contract Details.

15.4 Review meetings

The Supplier Representative must attend meetings with the TfNSW Representative at a place and time to be notified to the Supplier by TfNSW on the frequency set out in the Contract Details to:

- (a) review the performance of the Supplier in relation to this agreement and the Charges incurred by TfNSW up to that date, including any faults in the provision of any of the Services over the previous review period and any actions undertaken by the Supplier to resolve the relevant faults;
- (b) discuss any other issues in relation to the Goods, the Services or this agreement.

15.5 Records and inspection

The Supplier must, and must ensure all Subcontractors:

- (a) keep and maintain all necessary Records during the Term and 7 years thereafter;
- (b) make those Records available for inspection and/or audit as reasonably required by TfNSW, a regulator, any external auditor or advisor or any of their authorised representatives, during normal business hours. Copies and extracts of any Records may be taken for these purposes;
- (c) permit TfNSW to inspect or appoint a third party to inspect the Supplier's premises to confirm compliance with this agreement; and
- (d) provide all appropriate resources and all reasonable assistance required by any person conducting any inspection and/or audit, and fully co-operate with that person in good faith and at the Supplier's sole cost.

15.6 Annual audit

Each year, on dates nominated by TfNSW, TfNSW may conduct itself, or appoint a third party to conduct, an audit of the Supplier's performance and compliance with this agreement.

15.7 Costs of audit

The auditors' costs incurred by TfNSW in the audit under clause 15.6 (Annual audit) will be paid by TfNSW. However, where the auditor objectively determines that the performance by the Supplier falls below the Service Levels or identifies breaches of this agreement by the Supplier, all the costs of TfNSW (including third party auditor fees) in respect of that audit will be paid by the Supplier.

15.8 Costs

Unless expressly provided otherwise in this clause 15 (Representatives, reporting and audits), TfNSW and the Supplier will each pay their own costs and expenses in connection with this clause 15 (Representatives, reporting and audits).

16 Warranties and representations

16.1 Supplier's general representations and warranties

The Supplier represents and warrants on the date of this agreement and at all time during the Term, that:

- (a) it has full capacity and authority to enter into and to perform this agreement;
- (b) this agreement is duly authorised representative of that party;
- (c) there are no actions, suits or proceedings pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitral tribunal that might affect the ability

of that party to meet and carry out its obligation under this agreement;
and

- (d) once duly signed this agreement will constitute a legal, valid and binding obligation on that party.

16.2 Representations and warranties in respect of Goods and Services

The Supplier represents and warrants that:

- (a) the Goods:
 - (i) will meet the Specifications and all other applicable requirements under this agreement;
 - (ii) be of good quality, fit for purpose and free from defects and omissions in material, design or workmanship;
 - (iii) upon title passing to TfNSW (if applicable), will be unused and free from any charge or encumbrance; and
 - (iv) will comply with all laws that are related in any way to the Goods;
- (b) the Services:
 - (i) will be performed with due care and skill and in accordance with industry best practice;
 - (ii) will meet or exceed the Service Levels;
 - (iii) will be used with materials that are:
 - (A) fit for the purpose for which they are supplied and used; and
 - (B) will comply with any applicable specifications or requirements;
- (c) the Supplier and the Supplier Personnel will not infringe the Intellectual Property rights or Moral Rights of any person in providing the Services or otherwise performing this agreement;
- (d) the Supplier and Supplier Personnel will comply with all laws applicable to the Services (including, for the avoidance of doubt, Public Health Orders);
- (e) the Goods or Services and their use will not:
 - (i) result in a breach of any law or mandatory code of conduct;
 - (ii) infringe any person's rights (including Intellectual Property Rights and Moral Rights);
 - (iii) constitute a misuse of any person's confidential information;
or

- (iv) result in the Supplier or any Related Bodies Corporate of the Supplier breaching any obligation that it owes to any person.

16.3 Notification of non-compliance

As soon as practicable after becoming aware of any matter which is likely to impact upon its ability to comply with a warranty or representation in this clause 16 (Warranties and representations), the Supplier must give written notice to TfNSW detailing that matter and its likely impact on the Supplier's ability to comply with this clause 16 (Warranties and representations).

17 Liability & Indemnity

17.1 TfNSW's liability

Subject to clause 17.3 (No limitation):

- (a) the aggregate liability of TfNSW to the Supplier under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action, is limited to an amount equal to the aggregate of the Charges paid or payable under this agreement; and
- (b) TfNSW will not be liable to the Supplier under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action for Consequential Loss.

17.2 Supplier's liability

Subject to clause 17.3 (No limitation):

- (a) the aggregate liability of the Supplier to TfNSW or a Transport Operator under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action is limited to an amount equal to the aggregate of the Supplier Liability Cap; and
- (b) the Supplier will not be liable to TfNSW or a Transport Operator under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action for Consequential Loss.

17.3 No limitation

Nothing in this agreement operates to limit or exclude:

- (a) liability that cannot by law be limited or excluded;
- (b) the liability of either party in respect of personal injury (including sickness and death) or real or tangible property loss or damage;
- (c) liability of a party in respect of a breach of clause 14 (Confidentiality, Privacy);
- (d) liability of either party for unlawful or illegal acts or conduct; or

17.4 Consequential Loss Definition

- (a) Subject to clause 17.4(b) Consequential Loss:
 - (i) means any loss, not arising naturally, that is according to the usual course of things, from the relevant breach act or omission, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties, at the time they entered the agreement, as the probable result of the relevant breach; and
 - (ii) includes loss of profit or loss of anticipated savings.
- (b) Consequential Loss does not include:
 - (i) additional internal administrative and management costs and expenses;
 - (ii) expenditure or fees rendered unnecessary;
 - (iii) costs of procuring replacement Goods or Services;
 - (iv) cost of repairing Goods;
 - (v) legal fees on a full indemnity basis.

17.5 Civil Liability Act

The parties agree that:

- (a) all rights, obligations and liabilities under or in connection with this agreement are to apply unlimited and otherwise unaffected by anything that, but for this clause, may by virtue of the provisions of the *Civil Liability Act 2002* (NSW) have limited or otherwise affected those rights, obligations and liabilities; and
- (b) this clause applies even where the relevant circumstances involve a failure to take reasonable care and the existence of concurrent wrongdoers (as that term is defined in section 34(2) of the *Civil Liability Act 2002* (NSW)).

17.6 Indemnity

- (a) The Supplier is liable for, and indemnifies TfNSW and the Transport Operators against, all liability or loss arising out of the breach of this agreement by the Supplier or its personnel or the negligence or default of the Supplier or its personnel except to the extent the liability or loss is contributed to by TfNSW's or a Transport Operator's negligence or breach.

18 Insurance

18.1 Insurance

Before the Commencement Date, the Supplier must maintain the policies of insurance listed in the Contract Details on the terms, for the risks identified, and for the periods of time set out in Attachment B.

18.2 Evidence of insurance

On request by TfNSW, the Supplier must provide certificates of currency proving that the policies of insurance required under this agreement have been effected and are current. A certificate of currency provided under this clause must be issued by the insurance company providing insurance and must contain all details reasonably requested by TfNSW, including a summary of all risks covered and any exclusions.

18.3 Supplier notification

The Supplier must notify TfNSW within two Business Days of any event which affects or may affect the Supplier's compliance with this clause 18 (Insurance), including any cancellation of a policy or reduction of limit of coverage below that required by this agreement.

18.4 Notification of relevant insurance claims

Within 5 Business Days of the Supplier becoming aware of any claims against any of its insurances in connection with the Goods or Services or which may impact upon the provision of the Goods or Services, it must:

- (a) notify TfNSW in writing of the claim; and
- (b) give TfNSW any further information regarding the claim as TfNSW may require.

19 Disputes

19.1 Reasonable endeavours to settle

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

19.2 Dispute notice

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

19.3 Negotiation

If a Dispute is notified under clause 19.2 (Dispute notice) each party must nominate a senior representative with appropriate authority to negotiate on behalf of the party to settle the Dispute. The representatives must endeavour to resolve the Dispute within 10 Business Days of the notice under clause 19.2 (Dispute notice).

19.4 Alternative dispute resolution

If the Dispute is not resolved within the period referred to in clause 19.3 (Negotiation), the parties' representatives will within a further 5 Business Days seek to agree on:

- (a) a process to resolve the Dispute, for example through mediation, conciliation or other such similar forms of alternative dispute resolution;
- (b) the procedure and timetable for any exchange of documents and other information in relation to the Dispute;

- (c) procedural rules and timetable for the conduct of the selected mode of proceedings;
- (d) a procedure for selection and compensation of any neutral person (who may or may not be employed by a party); and
- (e) whether the parties should seek the assistance of a dispute resolution organisation such as the Australian Commercial Dispute Centre.

19.5 Further resolution process

If the representatives are unable to agree on a process for resolving the Dispute in the period referred to in clause 19.4 (Alternative dispute resolution) or the Dispute has not been resolved within 10 Business Days (or such other period as the parties may agree) of the parties agreeing on a particular process, then:

- (a) if the amount of the Dispute is less than \$100,000, either party may refer the Dispute to expert determination in accordance with clause 19.6 (Expert determination) unless TfNSW has notified the Supplier that in its reasonable opinion, the Dispute is not appropriate for resolution by expert determination; or
- (b) if the amount of the Dispute is \$100,000 or more or TfNSW has notified the Supplier that in its reasonable opinion, the Dispute is not suitable for expert determination, then either party will be free to commence court proceedings relating to the Dispute.

19.6 Expert determination

If either party refers the dispute to expert determination pursuant to clause 19.5(a), the expert determination is to be carried out as follows:

- (a) Within 5 Business Days after the date of the notice under clause 19.5(a), the parties must exchange written lists of proposed experts from whom the expert is to be chosen in order of preference.
- (b) A person that appears on both lists under clause 19.6(a) will be appointed as the expert to determine the dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 19.5(a) will be appointed.
- (c) If no person appears on both lists, the parties must request the President of the NSW Chapter of the Institute of Arbitrators and Mediators of Australia to nominate a person to act as the expert.
- (d) TfNSW and the Supplier must enter into an agreement with the expert on such reasonable terms as the expert may require provided that the expert must be instructed that the expert:
 - (i) is to act as an expert and not as an arbitrator;
 - (ii) is to proceed in the way, and determine the rules for the conduct of the expert determination, as the expert thinks fit

without being bound to observe the rules of natural justice or the rules of evidence;

- (iii) is to take into consideration those documents and that information and other material which the parties give to the expert and which in the expert's opinion are relevant to the determination of the dispute;
 - (iv) need not, but may obtain or refer to any other documents, information or material;
 - (v) must determine the dispute and give written reasons for the decision within one month after being appointed; and
 - (vi) must determine what proportion of the costs of the expert determination is to be paid by each party.
- (e) The determination of the expert must be given to the parties in writing and will be final and binding upon the parties.
- (f) The parties must bear their own costs in connection with the expert determination proceedings and must pay an equal portion of the cost of the expert unless the expert determines otherwise.

19.7 Right to terminate

This clause 19 (Disputes) does not affect either party's rights to terminate this agreement under clause 22 (Termination) or pursuant to any other rights of termination contained in this agreement.

19.8 Interlocutory relief

This clause 19 (Disputes) does not affect either party's right to commence court proceedings seeking interlocutory relief.

19.9 Parties to continue to perform

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

20 Conflict of Interest & Probity

20.1 Definition

"Probity Event" is an event, matter, situation or thing that in TfNSW's reasonable opinion:

- (a) has a material adverse effect upon the character, honesty or integrity of the Supplier, a Related Body Corporate, or any of their personnel; or
- (b) relates to the Supplier, a Related Body Corporate or their personnel and has a material adverse effect upon the public interest (having regard to the policy objectives of TfNSW) or the reputation of or public confidence in TfNSW or the New South Wales Government; or

- (c) that involves a material failure by the Supplier to achieve or maintain:
 - (i) reasonable standards of ethical behaviour; or
 - (ii) the avoidance of conflicts of interest that may have (or may give the public the appearance of having) a material adverse effect on the ability of the Supplier to impartially perform and observe its obligations in respect of this Agreement; or
 - (iii) standards of behaviour expected of a person engaged on a Government project.

20.2 Probity Events

- (a) **(Probity Event Notice by Service Provider)** The Supplier must give notice to TfNSW as soon as it becomes aware that a Probity Event has occurred or is likely to occur (Probity Event Notice).
- (b) **(Probity Event Notice by TfNSW)** TfNSW may give notice to the Supplier if TfNSW becomes aware that a Probity Event has occurred or is likely to occur (Probity Event Notice).
- (c) **(Content of Notice)** The Probity Event Notice must describe the nature of the Probity Event and the circumstances giving rise to it or likely to give rise to it.
- (d) **(Probity Investigations)** Following the issue of a Probity Event Notice, the Supplier must promptly comply with any reasonable request from TfNSW for access to its personnel for the purpose of undertaking any investigations that TfNSW may wish to carry out in relation to the actual or likely occurrence of the Probity Event. The Supplier must use reasonable endeavours to ensure that its personnel (and where relevant any Related Body Corporate and its personnel) co-operate with TfNSW and comply with any reasonable requests for information that TfNSW may make in the course of its investigations.
- (e) **(Remedial Action)** Upon the issue of a Probity Event Notice the parties must meet at a time nominated or agreed by TfNSW to discuss the occurrence of the Probity Event. During any such meeting, the parties must use reasonable endeavours to agree on the actions to be taken by the Supplier to reverse the effect of the Probity Event.
- (f) **(TfNSW May Direct Remedial Action)** If the parties are unable to agree within 5 Business Days of such meeting (or any longer period TfNSW may agree) TfNSW may give notice to the Supplier setting out the action it must take to address the adverse effect of the Probity Event, and the Supplier must comply with any such notice as soon as possible and in any event within 5 Business Days of receiving the notice.

21 Force Majeure

21.1 Notice of a Force Majeure Event

A party does not breach this agreement and is not liable to the other party for a delay or failure to perform an obligation to the extent it results from a Force

Force Majeure Event provided that the party affected by the Force Majeure Event gives the other party a written notice which:

- (a) sets out details of the Force Majeure Event;
- (b) identifies the nature and extent of the obligations affected by the Force Majeure Event;
- (c) advises the period of time during which the affected party estimates that it will not be able to perform or will be delayed in performing its obligations; and
- (d) provides details of the action that it has taken or proposes to take to remedy the situation.

21.2 Obligations of affected party

A party affected by a Force Majeure Event must:

- (a) take all reasonable steps to avoid, remove or limit the effects of the Force Majeure Event on its performance of the suspended obligations as quickly as possible; and
- (b) promptly re-commence performing the suspended obligations as soon as reasonably possible and notify the other party when this occurs.

22 Termination

22.1 Termination by TfNSW for cause

TfNSW may terminate this agreement in full or in part immediately by notice to the Supplier if:

- (a) **Breach of agreement** - the Supplier breaches this agreement and:
 - (i) the breach is not capable of remedy; or
 - (ii) the breach is capable of remedy and the Supplier fails to remedy the breach within 10 Business Days, or such longer time as TfNSW states, of receiving notice from TfNSW requiring the breach to be remedied;
- (b) **Recurring Breach** - the Supplier:
 - (i) breaches this agreement on three (3) separate occasions within a one (1) month period; and
 - (ii) has been issued with a notice from TfNSW stating that any further breach of this agreement will give TfNSW the right under this clause 22.1(b) to terminate this agreement; and
 - (iii) commits a further breach of any provision of this agreement.
- (c) **Insolvency** - the Supplier becomes Insolvent;

- (d) **Wrongful assignment** - the Supplier assigns or purports to assign its rights otherwise than as permitted by this agreement;
- (e) **Change of Control** - the Supplier undergoes a Change of Control
- (f) **Probity Event** – a Probity Event has not been remedied to TfNSW's satisfaction.

22.2 Termination by Supplier for cause

The Supplier may only terminate this agreement if TfNSW has failed to pay an amount due to the Supplier under this agreement which is not the subject of a bona fide dispute within 40 Business Days of receiving a correct notice claiming that the amount is overdue and stating that the Supplier proposes to exercise its rights under this clause 22.2 (Termination by Supplier for cause) if payment is not made.

22.3 Termination by TfNSW for convenience

TfNSW may terminate this agreement in full or in part by giving not less than 5 business days' written notice to the Supplier provided that TfNSW must pay the amounts required under clause 23.2 (Early termination charges).

22.4 Force Majeure

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

22.5 Continuation

Where TfNSW exercises its rights under this clause 22 (Termination) only in relation to one or more, Goods or Services, the Supplier must continue to perform this agreement in respect of any other, Goods or Services which have not been terminated.

23 Events following termination or expiry

23.1 Obligations on expiry or termination

On expiry or termination of this agreement for any reason, without limiting any other rights TfNSW may have, the Supplier must pay TfNSW:

- (a) any fees paid by TfNSW to the Supplier in advance for Goods and Services not yet supplied under this agreement; and
- (b) any Service Credits accrued up to the date of termination.

23.2 Early termination charges

If TfNSW terminate this agreement for convenience pursuant to clause 22.3 (Termination by TfNSW for convenience), then if the Supplier is able to demonstrate to TfNSW's reasonable satisfaction that prior to receiving notice of termination:

- (a) the Supplier has irrevocably acquired or committed with a third party to acquire Goods for the purposes of fulfilling this agreement, then TfNSW must either (at TfNSW's election):
 - (i) acquire those Goods from the Supplier for the applicable Charges; or
 - (ii) reimburse the Supplier for the Supplier's out of pocket costs for those Goods less the proceeds which the Supplier receives on sale of those Goods (having taken all reasonable steps to sell the goods and to maximise the price received); and
- (b) the Supplier has incurred or irrevocably committed with a third party to incur costs for the purposes of providing Services under this agreement and the Supplier has not at the time of termination become entitled to charge for those Services, then TfNSW must reimburse the Supplier for those costs which the Supplier incurs.

The Supplier must take all reasonable steps to mitigate the costs referred to in this clause 23.2 and TfNSW will not be required to pay costs to the extent that they could have been avoided or reduced by taking such steps. The Supplier must provide TfNSW with evidence reasonably satisfactory to TfNSW to substantiate any claim under this clause 23.2.

23.3 Survival

Clauses 7 (Charges, invoices and payments), 8 (Taxes and GST), 9.13 (No poaching), 13 (Intellectual Property Rights), 14 (Confidentiality, Privacy), 17 (Liability), 18 (Insurance), 19 (Disputes), and 27 (General) survive the termination or expiry of this agreement, as do any rights and remedies accrued before termination or expiry.

24 Notices

24.1 Form

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

24.2 Important contractual notices

A notice under clause 12 (Change control), clause 19 (Disputes), clause 22.1 (Termination by TfNSW for cause), clause 22.4 (Force Majeure) or clause 25.1 (Assignment or novation by) or any other notice claiming or relating to a breach, repudiation, purported termination or variation of this agreement must be:

- (a) signed on behalf of the party giving notice; and
- (b) delivered to or sent by prepaid registered post (airmail if posted to or from a place outside Australia) to the Representative of the recipient specified in the Contract Details and the person required to be copied as specified in the Contract Details or other address requested by the recipient.

24.3 Other notices and communications

A notice, consent, request or any other communication under this agreement other than one referred to in clause 24.2 (Important contractual notices) must be:

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

24.4 Time of receipt

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

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

25 Assignment, Novation & Piggybacking

25.1 Assignment or novation by TfNSW

TfNSW may assign any of its rights under this agreement, or may novate its rights and obligations under this agreement:

- (a) without the consent of the Supplier to any department, to any other body created by or under a statute or ministerial direction of the State of New South Wales for the purpose of administering the functions or discharging the role of TfNSW or to any public sector agency within the meaning given to that term in regulation 18 of the *Public Sector Management (Goods and Services) Regulation 2000*; or
- (b) with the consent of the Supplier, which must not be unreasonably withheld or delayed, to any other person.

The Supplier must execute all documents necessary to give effect to any novation or assignment permitted under this clause 25.1 (Assignment or novation by).

25.2 Assignment or novation by the Supplier

The Supplier must not assign its rights under this agreement or purport to novate its rights and obligations under this agreement without the prior written consent of TfNSW which not be unreasonably withheld.

25.3 Piggybacking by other NSW Agencies

If a public sector service agency (as defined in the *Public Works and Procurement Act 1912*) requests the Supplier to provide services to it similar to the Services then the Supplier agrees that it will enter into a separate agreement with that other agency on terms no less favourable than the terms of this agreement having regard to any necessary changes.

26 Transition Out & Unwind Services

26.1 Transition Plan

- (a) In the event of termination for any reason (inclusion expiration by time) the parties acknowledge that it is critical that there is an orderly and well managed transition out of the arrangements established under this Agreement. To facilitate a successful transition out the parties agree that it is important that the Provider prepare and regularly review and update a Transition Plan. As a minimum the Transition Plan must deal with the relationships, responsibilities and obligations of the parties to facilitate a smooth and orderly transition of the supply of the Goods and Services to a new provider and set out the systems, procedures and processes to allow for the orderly hand-over and transition.
- (b) The Supplier must:
 - (i) provide a draft initial Transition Plan to TfNSW on or before the Transition Plan Submission Date referred to in the Contract Details;
 - (ii) regularly review the Transition Plan and propose a new Transition Plan to TfNSW whenever any change in circumstances make it reasonable or advisable to do so; and
 - (iii) review and prepare a new Transition Plan whenever TfNSW requests (provided TfNSW shall not make such request more than once in any 12 month period).
- (c) The Supplier must consult TfNSW in the preparation of the Transition Plan and must submit the Transition Plan in draft to TfNSW for TfNSW's approval and make such amendments as TfNSW may reasonably require..
- (d) If TfNSW and the Supplier cannot agree on a Transition Plan at any time the TfNSW may prepare a Transition Plan which includes the

obligations set out in this clause and details of any other assistance that it may require on termination or expiry of this Agreement.

26.2 Transition Out Services - Compliance with Transition Plan

The Supplier will provide the assistance as out services as set out in the Transition Plan and any other assistance as is necessary for an effective transition.

26.3 Transition Out Services – No Charges

The Supplier will provide the transition out services at no charge to TfNSW.

26.4 Unwind Services

- (a) At any time TfNSW may issue a Change request under clause 12 requesting the Supplier to provide Unwind Services for a period expiring no later than 6 months after the end of the Term, including any extension or holding-over (“the Unwind Period”).
- (b) Unwind Services are such services as TfNSW requests to achieve an orderly and staged transition of Services without interruption, from the Supplier to TfNSW or one or more parties nominated by TfNSW and include:
 - (i) the provision of all information and assistance as is reasonably necessary to assist TfNSW or another party to provide the Services or services like the Services to TfNSW or at TfNSW’s direction;
 - (ii) the provision of access to the Resources and personnel necessary for an effective transition, including resources required by TfNSW to perform the Services or services like the Services under this Agreement; and
 - (iii) such other assistance as may reasonably be requested by TfNSW.
- (c) If required by TfNSW the Supplier must, by the end of the Unwind Period or such earlier date as TfNSW may specify, cause a novation to TfNSW or one or more parties nominated by TfNSW, of the Supplier’s rights and obligations under any or all of its Third Party Agreements, as are necessary for the provision of the Services, on the terms specified by TfNSW.

26.5 Identification of Resources

If TfNSW so requests at any time, the Supplier must provide TfNSW with a list of Resources and Third Party Agreements necessary for the provision of the Services after the Term and such other information concerning such Resources and Third Party Agreements as TfNSW reasonably requires.

26.6 Non-derogation

- (a) The Supplier must carry on its business, and manage its Resources and Third Party Agreements consistently with and in the expectation that TfNSW will exercise its rights under this clause.
- (b) The Supplier must ensure that all Third Party Agreements are capable of being transferred, assigned or novated to TfNSW without payment of any transfer or termination fees, and that the relevant Third Party will consent to such transfer, assignment or novation.
- (c) The Supplier must not enter into any agreements, arrangements or understandings which contain obligations the purpose, or one of the purposes, of which is to avoid the Supplier's obligations under this clause.

26.7 Definitions

Resources	includes facilities, infrastructure, systems, equipment, software, procedures, processes and other resources, but excludes personnel;
Third Party Agreements	means all agreements that the Supplier enters into with a third party relating to the provision of services or Resources which are used by the Supplier solely to provide the Services under this Agreement.

27 General

27.1 Discretion in exercising rights

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

27.2 Partial exercising of rights

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

27.3 No liability for loss

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

27.4 Remedies cumulative

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

27.5 Variation and waiver

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

27.6 Indemnities

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

27.7 Construction

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

27.8 Costs

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

27.9 Counterparts

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

27.10 Governing law and jurisdiction

This agreement is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of New South Wales.

27.11 Severability

If any part or provision of this agreement is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remainder of this agreement will continue to operate.

27.12 Further assurance

Each party agrees to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the party and any other person intended to be bound under this agreement; and
- (b) to give effect to the intentions of the parties and the transactions contemplated by this agreement, including execution and delivery of documents and other instruments.

27.13 Entire agreement

This agreement constitutes the entire agreement of the parties about its subject matter and supersedes any previous understandings or agreements on that subject matter.

Schedule 1 - Dictionary

1 Definitions

1.1 Definitions

Amount of the Consideration means:

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

Business Days means a day other than a Saturday, Sunday, public holiday in Sydney or 24 or 31 December.

Business Continuity Plan means the plan for the continued supply of the Goods and the Services by the Supplier to TfNSW in the event of a Disaster Recovery Event.

Change is defined in clause 12.1 (Change request).

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

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

Change Notice means a notice executed by the parties setting out an agreed Change and the variations to this agreement relating to that Change.

Change Proposal means a proposal issued by the Supplier detailing the variations which would be applicable to implement a Change.

Charges means the charges set out in Schedule 3 (Charges).

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

Commencement Date means the date identified in the Contract Details as the Commencement Date.

Confidential Information in relation to TfNSW means TfNSW Confidential Information and in relation to the Supplier means the Supplier Confidential Information.

Consequential Loss has the meaning given in clause 17.4 (Consequential Loss Definition).

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

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

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

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

Controller has the meaning it has in the Corporations Act.

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

Delivery Address means the address specified in the Contract Details as the Delivery Address.

Delivery Timeframe means the timeframe for delivery of the Goods set out in Schedule 2 (Goods and Services).

Disaster Recovery Event means an event or disaster (including industrial action) outside the Supplier's control, interrupting the Supplier's supply of the Goods and the Services as defined in the Business Continuity Plan.

Discloser is defined in clause 14.1 (Disclosure of Confidential Information).

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

Documentation means the documentation set out in Schedule 2 (Goods and Services) and all other documentation which, in TfNSW's reasonable opinion, is necessary to enable TfNSW to make full and proper use of the Goods.

Early Termination Fee means the fee calculated in accordance with the Contract Details.

Excluded Information means Information which:

- (a) is in or becomes part of the public domain otherwise than through breach of this agreement or an obligation of confidence owed to the Discloser; or
- (b) Recipient can prove was already known to it at the time of disclosure by the Discloser or its Representatives (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) Recipient acquires from a source other than the Discloser where such source is entitled to disclose the Information.

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

- (a) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought or meteor;
- (b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (c) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (d) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority; or
- (e) a labour dispute other than a labour dispute that only involves the party's personnel.

Further Term means the period identified in the Contract Details as the Further Term.

General Terms means the general terms set out in clauses 1 to 27 of this agreement, including the Schedules.

Goods means all goods set out in Schedule 2 (Goods and Services).

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

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

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

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

Initial Term means the period identified in the Contract Details as the Initial Term.

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

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

Infringement Claim means any Claim which would, if true, involve a breach of a warranty under clause 16.2(c) or 16.2(e).

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it has had a Controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

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

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

Invoice Timing means the timing for issue of invoices set out in the Contract Details.

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

Privacy Laws means the Privacy and Personal Information Protection Act 1998 (NSW), the Health Records and Information Privacy Act 2002 (NSW) and the Privacy Act 1988 (Cth).

Probity Event has the meaning given to it by clause 20 (Conflict of Interest & Probity).

Proof of Delivery has the meaning given to it by clause **Error! Reference source not found.** (Delivery).

Public Health Orders means the public health orders made by the Minister for Health and Medical Research under section 7 of the Public Health Act 2010 (NSW) from time to time, in relation to COVID-19, as applicable to the provision of the Services.

Receiver includes a receiver or receiver and manager.

Recipient is defined in clause 14.1 (Disclosure of Confidential Information).

Records means records and documentation relating to this agreement (including Goods, Services, Service Levels, Service Credits and/or Charges).

Rejection Notice means a notice in accordance with clause **Error! Reference source not found.** (**Error! Reference source not found.**).

Related Body Corporate has the meaning it has in the Corporations Act.

Relevant Offence means any offence which:

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

Repair Location means the location set out in the Contract Details as the Repair Location.

Representative of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer, contractor (including a Transport Operator in respect of TfNSW) or sub-contractor of that party.

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

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

- (c) trade secrets or information which is capable of protection at law or equity as confidential information,

but excludes the Excluded Information.

TfNSW IP means Intellectual Property Rights owned by or licensed to TfNSW and made available to the Supplier or a Subcontractor for the purposes of the performance by the Supplier of its obligations under this agreement.

TfNSW Representative means the person identified the Contract Details as the TfNSW Representative, as varied by notice to the Supplier from time to time.

Transport Operators means any Governmental agency or other operator (including private operator) of public transport services for the Government of New South Wales.

Schedules means the schedules to this agreement.

Service Credits means an amount calculated in accordance with Schedule 4 (Service Levels) in respect of the failure by the Supplier to meet one or more Service Levels in accordance with that Schedule.

Service Levels means the minimum performance levels set out in Schedule 4 (Service Levels).

Services means the services set out in Schedule 2 (Goods and Services) and all other services required to be provided by the Supplier under this agreement.

Small and Medium Enterprises Policy means the NSW Government's procurement policy from time to time concerning Small and Medium Enterprises.

Specifications means the specification for the Goods sets out in or annexed to Schedule 2 (Goods and Services).

Subcontractor means subcontractors of the Supplier

Supplier Confidential Information means all Information, other than TfNSW Confidential Information, disclosed to TfNSW by the Supplier or any Representative of the Supplier for or in connection with this agreement including:

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

but excludes the Excluded Information.

Supplier IP means Intellectual Property Rights owned by or licensed to the Supplier or a Subcontractor for the provision of Goods and Services to TfNSW

Supplier Liability Cap means the Supplier liability cap set out in the Contract Details.

Supplier Personnel means employees, partners, agents and sub-contractors (including employees of sub-contractors) of the Supplier.

Supplier Representative mean the person identified in the Contract Details as the Supplier Representative, as varied by notice to TfNSW from time to time.

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

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

Term means the period commencing from the Commencement Date and ending on the date that this agreement is terminated or expires.

Tested Goods means the model or sample of goods which was provided to TfNSW for testing purpose as a representation of the Goods, if any.

Use means to load, run, execute, display, distribute, copy, perform or access.

Warranty Period means the periods set out in the Contract Details.

1.2 References to certain general terms

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

- (a) **(variation or replacement)** a document (including this agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures, schedules and attachments)** a clause, Schedule, Annexure or Attachment is a reference to a clause in, or a Schedule, Annexure or Attachment to, this agreement;
- (c) **(references to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them), including, for the avoidance of doubt, Public Health Orders;
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;

- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors and substitutes (including, persons taking by novation) and assigns;
- (h) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) **(dollars)** an amount of money is a reference to the lawful currency of Australia;
- (j) **(calculation of time)** a period of time that dates from a given day or the day of an act or event is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to a calendar day and is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(meaning not limited)** the words "include", "including", "for example" or "such as" are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind;
- (m) **(next day)** if an act under this agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day; and
- (n) **(time of day)** time is a reference to Sydney time.

1.3 Headings

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

Schedule 2 - Goods and Services

2.1. Introduction

TfNSW is engaging the Supplier to provide COVID-19 rapid antigen testing services for TfNSW's staff and staff of TfNSW contractors, at a number of key operation-critical sites across New South Wales ("**Services**").

The Services will be delivered under a pilot program to assist TfNSW to determine how rapid antigen testing may become an ongoing tool for maintaining operational resilience, worker safety, if at all.

2.2. Services

The Supplier is to, for the duration of the Term:

- procure enough COVID-19 rapid antigen test kits ("**Goods**") approved by the Therapeutic Goods Administration ("**TGA**") in order to provide the Services.
- Administer the rapid antigen tests for TfNSW staff and staff of Transport Operators at the Testing Sites, commencing on the Testing Site Commencement Date for each Testing Site (see paragraph 2.5 below) and process test results in line with the requirements of the manufacturer of the Goods and the TGA;
- Establish a process to register a person for testing and provide them with the results immediately in an efficient and easy-to-use manner (SMS preferred);
- Record the results of every test electronically and provide the results to TfNSW on a daily basis (see further below under "Reporting");
- Manage the storage and disposal of waste produced in the provision of the Services;
- Provide appropriately qualified Supplier Personnel to undertake the Services.

2.3. Duration

The Services will be provided for the Term.

2.4. Requirements of Supplier's on-site staff

All on-site Supplier Personnel must:

- have received at least 1 dose of an approved vaccine against COVID-19;
- submit themselves for Rapid Antigen Testing upon arrival as directed by client;
- wear appropriate PPE including mask, gown and gloves whilst at the Testing Site;
- be safety inducted at the Testing Site they are working at and follow all instructions of the site manager in the event of emergency, evacuation or other safety incident;
- comply with the relevant Transport Operators (as identified in the table in paragraph 2.5) policies or requirements in regards contractors entering any site owned or occupied by the Transport Operator.

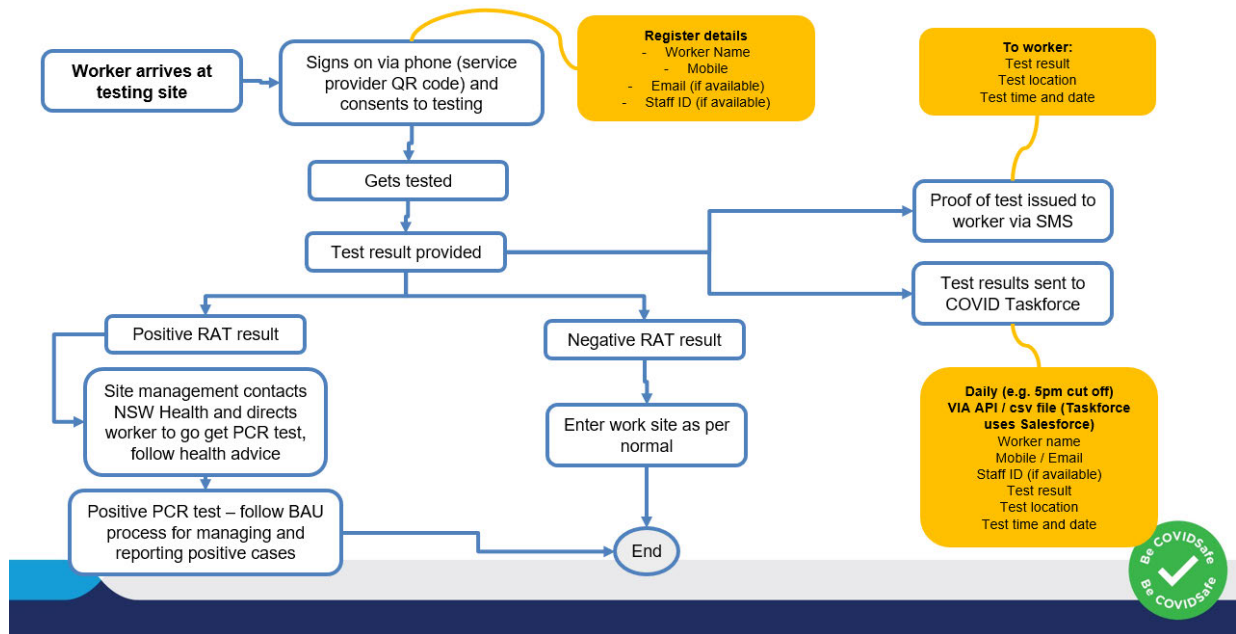
2.5. Testing Sites

- The Supplier must provide the Services at the thirteen testing sites (“**Testing Sites**”) listed in the table below on and from the Testing Site Commencement Date for each Testing Site.
- The Supplier must set up the Testing Sites for use in the provision of the Services with resourcing and hours of availability as set out in Attachment A to this Schedule (“**Roll Out Plan**”).

Transport Operator	Sites	Testing Site Commencement Date	Site addresses / location
NSW TrainLink	Central Platform 1 Newcastle interchange Wollongong station	Central Platform 1: 30 August 2021 Newcastle interchange: In accordance with the Roll Out Plan Wollongong station: In accordance with the Roll Out Plan	Central Station, Eddy Avenue (street address) Newcastle Interchange, Wickham Wollongong Station.
TfNSW - Regional Transport Operations Centre	Tugun St Helena	Tugun: In accordance with the Roll Out Plan St Helena: In accordance with the Roll Out Plan	Tugun Tunnel Control Room, Pacific Motorway Tugun (northbound lane prior to tunnel). St Helena Tunnel Control Room, St Helena Road, McCleods Shoot (above tunnel).
Sydney Trains	Flemington maintenance centre Clyde network base Granville mechanical inspection services	Flemington maintenance centre: In accordance with the Roll Out Plan Clyde network base: In accordance with the Roll Out Plan Granville mechanical inspection services: In accordance with the Roll Out Plan	Flemington, Bachell Avenue, Lidcombe. Clyde, 144 Manchester Road, Auburn. Granville, 3 East Street, Granville.
Transit Systems	Kingsgrove depot	Kingsgrove depot: In accordance with the Roll Out Plan	17-19 Richland St, Kingsgrove
Transit Systems	Burwood depot	Burwood depot: In accordance with the Roll Out Plan	284 Parramatta Rd, Burwood
CDC	Foundry Rd, Seven Hills depot	Foundry Rd, Seven Hills depot: In accordance with the Roll Out Plan	29 Foundry Rd, Seven Hills
State Transit	Ryde bus depot	Ryde bus depot: 30 August 2021	49-75 Buffalo Rd, Ryde
TfNSW - Transport Management Centre	Eveleigh	Eveleigh: In accordance with the Roll Out Plan	25 Garden Street, Eveleigh

2.6. Process and data flow

Intended Process & Data Flow



2.7. Reporting

- Secure daily report (cut off 5pm) uploaded to TfNSW Salesforce (via API) or automated file transfer provided the next day including the following details:
 - Worker name;
 - Mobile number (and email if collected);
 - Staff ID (if collected);
 - Test result;
 - Test location; and
 - Test time and date.
- Reports on overall performance of testing sites, including operational issues, staff feedback, as requested by TfNSW from time to time.

Attachment A – Roll Out Plan

The Roll Out Plan is to be agreed to by TfNSW and the Supplier in writing on or before the Commencement Date (or such later date agreed by the parties), and will form part of this agreement as Attachment A of Schedule 2.

Schedule 3 - Charges

1. Charges

TfNSW will pay the Supplier for the Goods and Services in accordance with the below table.

Item	Amount	Invoice Timing
Rapid antigen test kits (per unit)	██████ for every unit used in the provision of the Services	On a weekly basis, payment requested within 14 days.
Testing Site set up (per site)	This will be part of the Registered Nurse (supervising) hourly rate charged for set up of clinic prior to commencement of swabbing. This will vary depending on site requirements	On a weekly basis, payment requested within 14 days.
Senior Registered Nurse – Clinical oversight and governance	██████	On a weekly basis, payment requested within 14 days.
Healthcare Professional	██████	On a weekly basis, payment requested within 14 days.
Registered Nurse (supervising)	██████	On a weekly basis, payment requested within 14 days.

Notes

1. A minimum engagement time of 3 hours per clinic, in line with Award Requirements.
2. All penalties as follows are inclusive in the rates quoted above and will be paid in line with the award, including evenings, night, and weekends.
3. Certain sites may require scalable staffing requirements
4. Pilot pricing only – modifications to the above Charges may be required following the Initial Term for the duration of any Further Term, in conjunction with TfNSW prior to uplift of remaining sites.
5. Rates quoted exclusive of GST.

2. Unused Goods

For the avoidance of doubt, TfNSW is not liable to pay the Supplier for any unused rapid antigen test kits (unless otherwise agreed in writing by TfNSW in its absolute discretion).

Schedule 4 - Service Levels

Not used

Schedule 5 – TfNSW Data

1 TfNSW Data

- 1.1 **TfNSW Data** means all data, records and information relating to the operations, facilities, customers, clients, personnel, assets, Transport Operators, Transport Operator's personnel and programs of TfNSW in whatever form that information can exist and whether collected, entered into, stored in, generated by or processed as part of the provision of the Goods or Services.
- 1.2 **(Ownership of TfNSW Data)** TfNSW Data is and will remain the property of the TfNSW at all times, including during and after completion of this agreement. The Supplier must not place any lien, charge or other encumbrance over the TfNSW Data.
- 1.3 **(Use of TfNSW Data)** Except as required by statutory requirements, the Supplier must:
- (a) not use TfNSW Data for any purpose other than directly to perform its obligations under this agreement;
 - (b) not, and must ensure that its personnel will not, sell, commercially exploit, hire, assign rights in, dispose of, or otherwise deal with any TfNSW Data in a way that is not in accordance with this agreement;
 - (c) not make any TfNSW Data available to a third party other than a subcontractor approved by the TfNSW and then only to the extent necessary to enable the approved subcontractor to perform its part of the Supplier's obligations under this agreement.
- 1.4 **(TfNSW Data Safeguards)** The Supplier must establish and maintain safeguards against the destruction, loss, unauthorised disclosure or alteration of any TfNSW Data in the possession or control of the Supplier according to the specifications. At a minimum, those safeguards must:
- (a) be consistent with and no less rigorous than those maintained by TfNSW to secure its data; and
 - (b) comply with all policies and procedures concerning TfNSW Data as specified by the TfNSW from time to time.
- 1.5 **(Return of TfNSW Data)**
- (a) Subject to (b) below, the Supplier must return TfNSW Data to TfNSW immediately on termination or expiration of this agreement or on request by TfNSW at any time.
 - (b) The Supplier will comply with any requirements set out in the Specifications in relation to the retention and disposal of TfNSW Data. If there is TfNSW Data that is required by the Supplier to perform its obligations that survive the termination or expiration of

this agreement (e.g. TfNSW Data required to perform warranty services), the Supplier may retain that TfNSW Data according to this agreement until the Supplier is no longer required to perform those obligations or on request by TfNSW at any time.

1.6 **(Other TfNSW Data requirements and obligations)** The Supplier must:

- (a) **(compliance with requirements and service levels)** comply with the information management (including data security) requirements and service levels set out in the specifications, and any other reasonable requirements in relation to TfNSW Data as notified to it by TfNSW in writing from time to time;
- (b) **(compliance with statutory requirements)** comply with statutory requirements, including not do any act or engage in any practice that would breach any statutory requirements in relation to State Records and Personal Information (as defined in the relevant legislation), or which if done or engaged in by TfNSW, would be a breach of those statutory requirements;
- (c) **(preventing unauthorised personnel access)** prohibit and prevent any person who does not have the appropriate level of security clearance within the Supplier's organisation from gaining access to TfNSW Data;
- (d) **(notification of any breach)** notify TfNSW immediately and comply with all directions of TfNSW, if the Supplier becomes aware of the contravention of any of TfNSW Data security requirements;
- (e) **(implement business continuity plan)** implement and comply with the Business Continuity plan, as agreed with TfNSW, that includes TfNSW Data responsibilities;
- (f) **(notification of any non-compliance)** notify TfNSW and provide sufficient details where the Supplier is unable to or anticipates it will be unable to comply with any TfNSW Data responsibilities, requirements and obligations under this agreement;
- (g) **(backup and disaster recovery measures)** make backup copies of TfNSW Data and store and retain backup copies, and have adequate disaster recovery measures in place, in accordance with the Specifications (including Service Levels);
- (h) **(security measures)** provide such security and encryption measures in accordance with best practice industry standards appropriate for TfNSW Data and in accordance with the Specifications;
- (i) **(access)** ensure TfNSW has access to TfNSW Data at the times, and in the manner set out in the Specifications, whilst TfNSW Data is in the possession or under the control of the Supplier. (If the Specifications do not set out the times and manner in which TfNSW

can access TfNSW Data, it will be taken as at reasonable times and in a reasonable manner.)

- (j) **(location of TfNSW Data)** store, hold, process or otherwise deal with any TfNSW Data in the countries and jurisdictions set out in the Specifications;
- (k) **(retention and disposal)** implement and comply with the retention and disposal requirements in relation to TfNSW Data as set out in the Specifications. The Supplier may delete, purge and/or disclose TfNSW Data where it is required to do so under any applicable law. Where there is a legal requirement for the Supplier to delete, purge and/or disclose any part of the TfNSW Data, it must promptly notify TfNSW of the request to enable TfNSW to respond and deal with the request;
- (l) **(deletion of TfNSW Data and certification)** delete TfNSW Data within the period specified in the Specifications, and if requested by TfNSW, provide certification within 5 business days of such request that TfNSW Data has been deleted;
- (m) **(reporting, meetings and audit)**
 - (i) provide reports and attend meetings as set out in the Specifications and agreed contract management plan, including in relation to compliance with the Supplier's TfNSW Data obligations under this agreement; and
 - (ii) on reasonable notice by TfNSW to the Supplier, permit and assist TfNSW and/or its Representative to conduct an audit in relation to the Supplier's compliance with its TfNSW Data obligations under this agreement. Such audit may involve access to TfNSW Data in the control or possession of the Supplier, access to the Supplier's site(s), facilities, operations, systems, personnel and documentation to evidence and to verify the Supplier's processes and controls in relation to the TfNSW Data that is dealt with by the Supplier under this agreement. Unless otherwise agreed, each party will pay its own costs in relation to the audit.

1.7 **(After termination)**

- (a) **(Access)** Within the period after termination of this agreement as set out in the Specifications, the Supplier must, at no additional cost to TfNSW, provide TfNSW with a copy of all TfNSW Data in the format specified, or if no format is specified, in the standard format as usually provided by the Supplier.
- (b) **(Transition Out)** The Supplier must provide the transition out services as set out in the Specifications. The transition out services may include returning or, if requested by TfNSW, destroying

documents or materials containing TfNSW Data together with any backups or other reproduction of those documents or materials.

Attachment A - Contractor Statement Template

NOTE: this form is available online at

<https://www.rms.nsw.gov.au/documents/about/forms/45062893-contractor-statement-payment.pdf>

<div style="display: inline-block; vertical-align: middle; margin-left: 10px;"> Transport for NSW </div>		Contractor Statement Payment of Workers, Payroll Tax & Worker's Compensation Premiums																	
<p>All suppliers/contractors must provide this Statement with every invoice/Payment Claim for all works/services carried out for Transport for NSW (TfNSW). TfNSW is entitled by law to withhold payment until this Statement is provided (see Note 2 overleaf).</p>																			
<div style="text-align: right; font-size: small;"> Workers Compensation Insurance Certificate of Currency for the work period in question. Unless the contractor is exempt </div> <div style="text-align: right; border: 1px solid black; padding: 2px; width: 50px; float: right;"> Attach </div>																			
Details																			
Contractor's Legal Name:																			
Contractor's Trading / Business Name:																			
Contractor's ABN:		Contractor's ACN:																	
Contractor's Address:																			
TfNSW Contract No:		Project/Contract Title:																	
Description of Works:																			
Period of Work this Statement applies to (see Note 3):	From:	To:																	
Invoice or Payment Claim Numbers this applies to:																			
Invoice or Payment Claim Dates this Statement applies to:																			
Declaration																			
<div style="text-align: right; font-size: small;">Tick one in each row</div> I declare that the following is true to the best of my knowledge and belief in respect of the Period of Work above:																			
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="border: 1px solid black; padding: 5px;">All workers engaged by the Contractor in respect of the works have been paid all remuneration entitlements.</td> <td style="width: 5%; border: 1px solid black; text-align: center;"> </td> </tr> <tr> <td style="border: 1px solid black; padding: 5px;">All workers compensation insurance premiums have been paid and attached is a true copy of a Certificate of Currency for workers compensation insurance valid for the period covered by this Statement; or</td> <td style="border: 1px solid black; text-align: center;"> </td> </tr> <tr> <td style="border: 1px solid black; padding: 5px;">the Contractor is an exempt employer for workers compensation purposes (see Note 6);</td> <td style="border: 1px solid black; text-align: center;">or</td> </tr> <tr> <td style="border: 1px solid black; padding: 5px;">The Contractor is registered as an employer under the <i>Payroll Tax Act 2007</i> and has paid all payroll tax due in respect of employees in relation to the works the subject of this Statement; or</td> <td style="border: 1px solid black; text-align: center;"> </td> </tr> <tr> <td style="border: 1px solid black; padding: 5px;">the Contractor is not required to be registered;</td> <td style="border: 1px solid black; text-align: center;">or</td> </tr> <tr> <td style="border: 1px solid black; padding: 5px;">The Contractor has not engaged any subcontractors for the works the subject of this Statement, or</td> <td style="border: 1px solid black; text-align: center;"> </td> </tr> <tr> <td style="border: 1px solid black; padding: 5px;">The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors and believes it to be true</td> <td style="border: 1px solid black; text-align: center;">or</td> </tr> <tr> <td style="border: 1px solid black; padding: 5px;">I am authorised to make this declaration and I am in a position to know the truth of its contents</td> <td style="border: 1px solid black; text-align: center;"> </td> </tr> </table>				All workers engaged by the Contractor in respect of the works have been paid all remuneration entitlements.		All workers compensation insurance premiums have been paid and attached is a true copy of a Certificate of Currency for workers compensation insurance valid for the period covered by this Statement; or		the Contractor is an exempt employer for workers compensation purposes (see Note 6);	or	The Contractor is registered as an employer under the <i>Payroll Tax Act 2007</i> and has paid all payroll tax due in respect of employees in relation to the works the subject of this Statement; or		the Contractor is not required to be registered;	or	The Contractor has not engaged any subcontractors for the works the subject of this Statement, or		The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors and believes it to be true	or	I am authorised to make this declaration and I am in a position to know the truth of its contents	
All workers engaged by the Contractor in respect of the works have been paid all remuneration entitlements.																			
All workers compensation insurance premiums have been paid and attached is a true copy of a Certificate of Currency for workers compensation insurance valid for the period covered by this Statement; or																			
the Contractor is an exempt employer for workers compensation purposes (see Note 6);	or																		
The Contractor is registered as an employer under the <i>Payroll Tax Act 2007</i> and has paid all payroll tax due in respect of employees in relation to the works the subject of this Statement; or																			
the Contractor is not required to be registered;	or																		
The Contractor has not engaged any subcontractors for the works the subject of this Statement, or																			
The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors and believes it to be true	or																		
I am authorised to make this declaration and I am in a position to know the truth of its contents																			
Signature of Authorised Person:	Name of Signatory (<i>print</i>):																		
Date:	Position / Job Title of Signatory (<i>print - see Note 4</i>):																		
<div style="text-align: center; font-size: small;"> (Electronic copy is available at: http://home.rfa.nsw.gov.au/forms/categories/contractandroadworks/45062893.pdf) </div> <div style="text-align: right; font-size: x-small;"> (see Notes on page 2) Page 1 of 2 </div>																			



Workers Compensation Insurance Certificate of Currency for the work period in question. Unless the contractor is exempt

Notes

1. A Contractor is any person or company who carries out work under a contract of any kind for any business of RMS. References to "Subcontractor" and "Principal Contractor" in the legislation mentioned below have been changed in this Statement to "Contractor" and "RMS" respectively to avoid confusion.
2. This form is prepared for the purposes of section 127 of the *Industrial Relations Act 1996* ("IRA"), section 175B of the *Workers Compensation Act 1987* ("WCA") and Schedule 2 Part 5 of the *Payroll Tax Act 2007* ("PTA"). These provisions allow RMS to withhold payment from a Contractor without any penalty unless and until the Contractor provides to RMS a Statement declaring that:
 - a. All workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid; and
 - b. all remuneration payable to relevant employees for work under the contract has been paid; and
 - c. all payroll tax payable relating to the work undertaken has been paid.
3. Section 127 of the IRA says that the Statement must state the period to which it relates. For sequential statements ensure that the dates provide continuous coverage.
4. The person signing this declaration must be a person who is authorised by the Contractor either to sign this Statement (or to sign statements of this kind) and must be a person who is in a position to know the truth of the statements. The Contractor's principal accounting/financial officer may be appropriate. An individual project manager will normally not be appropriate. If the Contractor is a company then the person signing should be a director unless the company has delegated the power to sign such statements to another person (eg the principal accounting officer).
5. A Statement is not required where RMS is making payment to a receiver, liquidator or trustee in bankruptcy (see section 127(10) of the IRA, section 175B(12) of the WCA and Sch 2 Part 5 (20) of the PTA).
6. Section 127(8) of the IRA says that references to payments to workers means all types of remuneration to which they are entitled.
7. As of 30 June 2011, an employer is exempt from taking out workers compensation insurance if the employer pays less than \$7500 annually on wages, does not employ an apprentice or trainee and is not a member of a group for workers compensation purposes.

Generic Version of Statement

This form has been specially adapted for use specifically for Contractors working for RMS.

Generic versions of this Statement for non-RMS use can be obtained at:

http://www.industrialrelations.nsw.gov.au/pdfs/subcontractor_statement_form.pdf; or

<http://www.osr.nsw.gov.au/lib/doc/forms/opt011.pdf>.

Record Retention

RMS will keep a copy of this Statement for 7 years. If the Contractor obtains a similar statement from its subcontractor then the Contractor must keep that statement for 7 years.

Offences for False Statement

Knowingly giving a false statement may be an offence under section 127(8) of the IRA, section 175B of the WCA and Sch 2 Part 5 clause 18(8) of the PTA.

Further Information

These notes are not intended as legal advice and Contractors should obtain their own professional advice if they have any questions about this Statement or these Notes.

For more information, refer to OSR Revenue Ruling PT 59 at <http://www.osr.nsw.gov.au/lib/doc/rulings/rmpt59.pdf>, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or the Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Attachment B - Insurance Policy Requirements

See Contract Details section for the required insurance amounts			
TYPES OF INSURANCES	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	STATE IF REQUIRED
Broadform Public Liability and Product Liability	Annually for the duration of the contract plus the duration of any warranty or maintenance periods.	(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below; (b) is governed by the law of New South Wales and subject to Australian jurisdictions as defined in clause 2 of the Definitions and Notes below; (c)	Required if selected in the Contract Details
Third Party Property Damage	Annually for the duration of the contract.	(a) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below;.	Required if selected in the Contract Details
Professional Indemnity	From time contract is awarded to completion of the contract plus 6 years following completion of the contract The Insurance can be taken out as annual covers where the cover is to include a retroactive date being the commencement date of the contract	(a) Is an approved insurer as defined in clause 1 of the Definitions and Notes below; (b) a description of the risk covered by the policy; (c) one automatic restatement per period of insurance; and (d) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below.	Required if selected in the Contract Details
Workers Compensation	Annually.	As per relevant Workers Compensation legislation.	Required if selected in the Contract Details
Not used	Not used	Not used	Not used
Not used	Not used	Not used	Not used
Definitions & Notes			
1	<p>Approved Insurer means</p> <p>(a) An Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia;</p> <p>(b) Lloyds Underwriters;</p> <p>(c) A Treasury Managed Fund insurance scheme with the NSW State Government; or</p> <p>(d) The Comcover insurance scheme for the Australian Federal Government.</p>		

See Contract Details section for the required insurance amounts			
TYPES OF INSURANCES	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	STATE IF REQUIRED
	Note that where the insurance risk is insured by a insurer not listed in Note 1(a) or 1(b) then a 'fronting' placement is acceptable from an insurer listed in Note 1(a) or 1(b).		
2	Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.		
3	Not used		
4	References in this Insurance Schedule to the "contractor" and the "contract" are to be interpreted to harmonise with the terminology used in the contract in which this Insurance Schedule is used (eg "Service Provider" and "Agreement" or as the case may be).		