



# Goods and Services Agreement

Dated

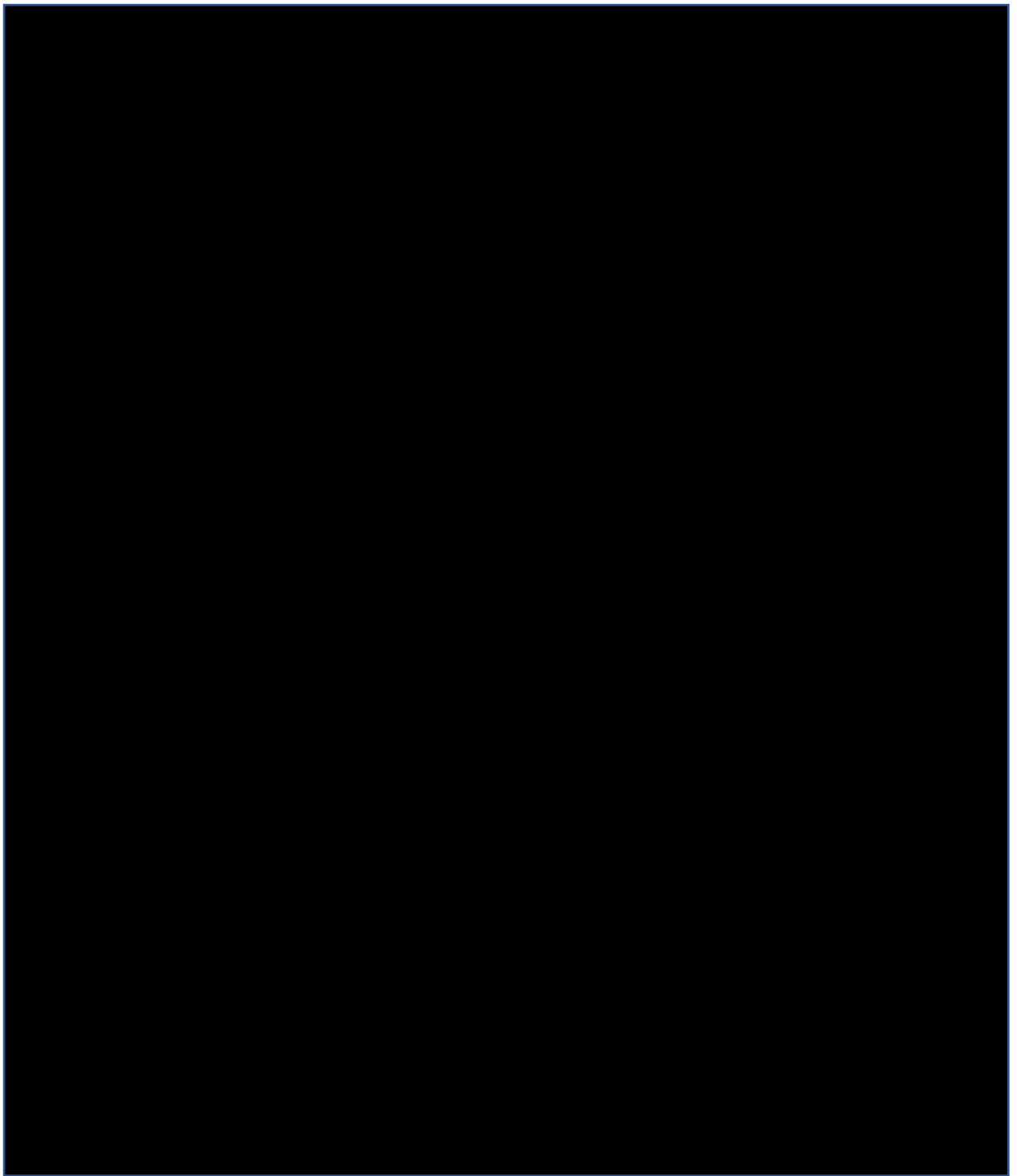
**Transport for NSW** ("TfNSW")

**Ark Trade Services Pty Limited** ("Supplier")

<b>TfNSW</b>	Name	<b>Transport for NSW</b>
	ABN	18 804 239 602
	Address	231 Elizabeth Street Sydney, New South Wales, 2001
<b>Supplier</b>	Name	<b>Ark Trade Services Pty Limited trading as Planned Group</b>
	ABN	29 124 995 062
	ACN	124 995 062
	Address	28 Commercial Road, Kingsgrove, NSW 2208

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# Contract Details

<b>Commencement Date (Clause 2)</b>	The date of this Agreement or, if undated, the date upon which TfNSW executes this Agreement
<b>Authority specific Site obligations (clause 2.3(b)(i))</b>	<div>When accessing the Site, the Supplier must:</div> <div><div>1. ensure 24/7 clear access to the rail substation adjacent to the Site;</div><div>2. ensure access clearance for semi-trailer and 100 tonne crane by third parties;</div><div>3. not use the Sydney Trains demountable adjacent to the Site; and</div><div>4. ensure that any updates to the Site Management Plan are provided to TfNSW's Representative for review and otherwise in accordance with clause 15.6.</div></div>
<b>Delivery Address (Clause 3.4)</b>	The Site

**Separable Portions**  
(clause 2.7)

[REDACTED]	[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	
[REDACTED]	[REDACTED] [REDACTED]
[REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	
[REDACTED]	[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	
[REDACTED]	[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	
[REDACTED]	[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	

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**Approvals to be** Heritage Approval **obtained by**  
**TfNSW**  
**(clause 4.1(f))**

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**Warranty Period** A period equivalent to the Defects Liability Period for Goods  
**(Clauses 3.8 and**  
**4.4)** A period equivalent to the Defects Liability Period for Services

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**Repair Location** 3 Cumberland St, The Rocks NSW 2000  
**(Clause 3.9)**

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**Working Hours** Unless otherwise approved by TfNSW, 7:00 am - 6.00pm  
**(Clause 5.4)** Monday – Friday, 8.00am – 1.00pm Saturday – but  
excluding public holidays in New South Wales and subject  
to the following qualifications:

- the Supplier will not be entitled to access the Site from  
25 December 2022 until 8 January 2023 (inclusive)  
and 25 December 2023 until 7 January 2024  
(inclusive) to perform the Services unless TfNSW's  
Representative provides its prior written consent  
(which consent will not be granted unless the Supplier  
can demonstrate to the satisfaction of TfNSW's  
Representative that the Supplier by accessing the  
Site will not impact any occupants of the Site or the  
occupant's customers).

---

**Security (Clause** Criminal record search and investigation required?  
**9.4)** Services ☒ Yes, for all Supplier Personnel . No accessing the  
Site to perform the ☐

Deed of Confidentiality required?  
Yes, for all Supplier ☐ ☒ No

Personnel involved in:

- ☐ 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
- ☐

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Pre-agreed  
Subcontractors  
(clause 11.1)

IP Ownership  
(clause 13.4)

T  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
15) and notices  
(Clause 24)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



<b>Warranties (Clause 16.4)</b>	Workmanship and weather tightness	10 years from Completion of each Separable Portion
	Silicon and Sealants	10 years from Completion of each Separable Portion
	Laminated Glass PVB Interlayer	5 years from Completion of each Separable Portion
	<b>Like for Like Blinds:</b>	
	Material	10 years from Completion of each Separable Portion
	Motor	5 years from Completion of each Separable Portion
	<b>Painting:</b>	
	Workmanship & manufacturers material	5 years from Completion of each Separable Portion

**Supplier Liability Cap (Schedule 1 & Clause 17.2)** Not applicable as there is no Supplier Liability Cap for this Agreement.

Refer to each Separable Portion.

**Target Date  
(clause 1.1 –  
Schedule 1)**

**Site  
(clause 1.1 –  
Schedule 1)**

As more particularly described in the site drawings in Schedule 2 (including those parts of the Licensed Area (as defined in Schedule 6)).

**Works** The repair, reglaze and repaint of six arched infill elevations of the Sydney Harbour Bridge Cumberland Street Arched Viaduct at **(clause 1.1 – Bays 1, 3 and 5 Cumberland Street Sydney as more particularly described in Schedule 2.**

TYPES OF INSURANCES	MINIMUM SUM INSURED	TICK IF REQUIRED
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Broadform Public, Products and Environmental Liability	<p>\$20 million* for any single occurrence and unlimited in the aggregate as to the number of occurrences</p> <p>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*</p>	<input checked="" type="checkbox"/>
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# General Terms

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## 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 the 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 and the Services; and
- (d) the other Attachments - sets out forms and other material relevant to this Agreement.

### 1.2 Not used 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.

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## 2 The Site

### 2.1 Examination performed by the Supplier

The Supplier acknowledges that:

- (a) TfNSW make no representations, warranties or guarantees as to the sufficiency or accuracy of any information (which does not form part of this Agreement) made available to the Supplier on or before the Commencement Date and the Supplier shall not rely on such information for any purpose; and
- (b) the Supplier acknowledges and agrees that it will have no claim against TfNSW, and TfNSW will not be liable upon any such claim under, out of or in connection with the provision of any such information (even if the information is or proves to be inaccurate, incomplete or inadequate for any reason).

### 2.2 Access

- (a) Provided:

- (i) the Site Management Plan has been finalised in accordance with clause 15.6;
- (ii) the Supplier has completed:
  - (A) the site access induction as instructed by TfNSW;
  - (B) the criminal record searches and provided the results to TfNSW, as required by clauses 9.4 and 9.5; and
- (iii) the Supplier has complied with clause 18.2 and the other requirements of this Agreement in relation to pre-conditions to Site access (including the applicable requirements of Schedule 6),

TfNSW must (subject to clause 2.6) give, or ensure the Supplier has, sufficient access to the Site from the Commencement Date to enable the Supplier to perform its obligations under this Agreement. TfNSW is not required to give the Supplier use of the whole Site at any particular time.

- (b) Access to the Site will confer on the Supplier a right only to such use and control as is necessary to enable the Supplier to execute the Works but does not give the Supplier exclusive possession or use of the Site or any part of it.
- (c) TfNSW may engage other contractors or consultants to perform work on the Site.
- (d) Access to any land not forming part of the Site which is required for the purposes of carrying out the Works is at the sole risk and responsibility of the Supplier.

## **2.3 Protection of people and property and operational site**

- (a) When the Supplier enters the Site, the Supplier must, and must ensure its personnel:
  - (i) protect people and property;
  - (ii) prevent nuisance and unnecessary noise and disturbance to others;
  - (iii) act in a safe and lawful manner;
  - (iv) minimises inconvenience to the occupant and other users of the Site; and
  - (v) do not store any equipment or other items in the occupant's office on the Site.
- (b) Without limiting clause 2.3(a), the Supplier:
  - (i) must, when accessing the Site and its near surrounds, ensure that the Supplier and its Subcontractors comply with the Authority Site specific obligations set out in the Contract Details;

- (ii) acknowledges that the Site will be operational or subject to works and services by other parties and agrees that the continuance of this work or business during the term of this Agreement is of paramount importance

and the Supplier will ensure that such work or business is not impeded, disrupted or delayed by the execution of the Services;

- (iii) must co-ordinate the execution of the Services with any other work or business being carried out on or near the Site so as to allow any work or business carried out on or near the Site to progress in an efficient, productive and orderly manner concurrently with the execution of the Services; and
- (iv) must take all possible precautions to avoid nuisance and trespass to areas within a building (if any) within which the Site is located and to properties near the site and the owners or occupiers of those areas and properties by any cause arising out of or in the course of the execution of the Services.

## **2.4 Environmental obligations** The Supplier

must:

- (a) not Contaminate or pollute the Site or any adjacent land;
- (b) other than as required for the performance of the Services, not use, keep or handle on the Site dangerous goods or hazardous material without the prior consent of TfNSW; and
- (c) promptly notify TfNSW's Representative if:
  - (i) it becomes aware of a complaint, breach or alleged breach of an environmental law in respect of the Site or any activity carried out by the Supplier on the Site;
  - (ii) the Site becomes Contaminated in any way by the Supplier;
  - (iii) it becomes aware of the Site becoming Contaminated in any way by anyone else; or
  - (iv) the Supplier is in breach of any of its obligations under this clause.

## **2.5 Licensed Area**

The Supplier acknowledges and agrees that:

- (a) it must comply with the requirements in Schedule 6 in relation to the Licensed Area; and
- (b) the requirements in Schedule 6 are additional to the requirements set out elsewhere in this Agreement.

## **2.6 Site Access Sunset Date**

The Supplier acknowledges and agrees that:

- (a) the Supplier's entitlement under this Agreement to access that part of the Site which does not comprise the Licensed Area expires on the Site Access Sunset Date; and

- (b) without limiting the general operation of clause 22.3, if the Supplier has not achieved Completion of any one or more Separable Portions (regardless of whether it has used its best endeavours) by the Site Access Sunset Date TfNSW may issue a notice under clause 22.3.

## **2.7 Separable Portions**

- (a) Separable Portions may be directed by TfNSW's Representative, who shall clearly identify for each, the: (i) portion of the Works; and
- (ii) Target Date.
- (b) The interpretation of:
- (i) Completion;
- (ii) Certificate of Completion;
- (iii) Date of Completion;
- (iv) Defects Liability Period; (v) Target Date,
- and clauses 3.1, 4, 5, 5A, 7, 12, 16.4, 18.1 and any other applicable clause in this Agreement will apply separately to each Separable Portion and references therein to the Works will mean so much of the Works as is comprised in the relevant Separable Portion.

---

## **3 Goods**

### **3.1 General**

The Supplier must supply the Goods so that such Goods can be incorporated into the Works and the Supplier must use its best endeavours to bring the Works to Completion by the Target Date 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 Packaging**

The Supplier must ensure that all Goods:

- (a) are properly and securely packaged so as to reach the Delivery Address in a new and undamaged condition;
- have documentation sent with the package or container (including delivery advice

- (b) notes and packing lists) containing the Delivery Address, contact name and contact number of the relevant TfNSW contact; and
- (c) comply with any specific packaging and identification requirements that TfNSW may reasonably require from time to time.

### **3.4 Delivery**

- (a) The Supplier must deliver the Goods and Documentation to the Delivery Address in accordance with the Program.
- (b) As a precondition to Completion and before handing over the Goods and Documentation to TfNSW, the Supplier must:
  - (i) sight TfNSW staff identification tag;
  - (ii) obtain the signature; and
  - (iii) record the full name and staff number,
 of TfNSW's Representative that takes receipt of the Goods and Documentation and keep such record for the Term ("**Proof of Delivery**"). If requested by TfNSW, the Supplier must provide to TfNSW the relevant Proof of Delivery. A Proof of Delivery will (in the absence of other contrary evidence) be deemed to be sufficient evidence that the Goods and Documentation have been delivered to TfNSW.

### **3.5 Assistance**

- (a) The Supplier must ensure the Goods are fully operational and comply with the Specifications.
- (b) Not used.

### **3.6 Errors and Defects**

If Goods delivered to TfNSW:

- (a) do not conform with this clause 3 (Goods); or
- (b) fail to comply with a representation or warranty specified in clause 16.2 (Representations and warranties in respect of Goods and Services),

then clause 4.5 may apply.

### **3.7 Not used 3.8 Warranty repairs**

Without limiting clause 5A, 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 Facilities to repair**

The Supplier agrees to ensure that facilities for the repair of the Goods are available at the Repair Location for the Warranty Period.

---

## **4 Services**

### **4.1 General**

The Supplier must:

- (a) provide the Services in accordance with the terms and conditions of this Agreement and any directions given by TfNSW's Representative;
- (b) must comply with the reasonable directions of TfNSW insofar as they relate to matters of safety to persons or the protection of property; (c) comply with all Project Plans;
- (d) carry out the Services:
  - (i) in a timely and efficient fashion using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from an experienced provider of works and services that are similar to the Services; and
  - (ii) in accordance with all laws, including WH&S Laws;
- (e) ensure the Supplier and the Supplier's Personnel are aware of and comply with the Code of Conduct;
- (f) apply for and obtain and must maintain, all approvals, consents, certificates, and licenses of Authorities necessary for the execution of the Works, except those specified in the Contract Details which are to be applied for, obtained and maintained by or on behalf of TfNSW;
- (g) ensure that the Works comprise equipment and materials that are new (unless stated otherwise in Schedule 2 or in a written notice provided by TfNSW's Representative) and of merchantable quality; and
- (h) ensure that all Goods and materials delivered to the Site are stored in a secure and watertight place.

### **4.2 Incidental Services**

The Supplier must provide (without additional charge) any incidental or related services not specifically described in Schedule 2 or this Agreement which are required for the proper performance or use of the Services described in this Agreement.

(b)

#### **4.3 Capability**

The Supplier must maintain sufficient capability and resources in relation to Services to meet its obligations under this Agreement.

#### **4.4 TfNSW's Representative's right to inspect**

- (a) TfNSW's Representative may, at any time, inspect the Services or, on reasonable notice, components or Goods stored or held by the Supplier and the Supplier must provide such access.
- (b) The Supplier acknowledges and agrees that:
  - (i) TfNSW's Representative owes no duty to the Supplier to:
    - (A) inspect the Services; or
    - (B) review the Services for errors, omissions or compliance with the requirements of this Agreement if it does so inspect; and
  - (ii) no inspection or review of the Services by TfNSW's Representative will in any way lessen or otherwise affect:
    - (A) the Supplier's obligations under this Agreement or otherwise at law; or
    - (B) TfNSW's rights against the Supplier, whether under this Agreement or otherwise at law.

#### **4.5 Services not provided by the Supplier**

Without prejudice to any other right or remedy of TfNSW, if the Supplier fails to carry out the Services in accordance with this Agreement, TfNSW may direct the Supplier to carry out the Services so that the Services conform to the requirements of this Agreement.

#### **4.6 Warranty rectification**

Without limiting clause 5A, 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.

#### **4.7 Supplier's Proposal** The

Supplier:

- (a) without limiting its other obligations under this Agreement and to the extent not inconsistent with this Agreement, must at all times in the performance of the Services comply with the Supplier's Proposal; and
- (b) acknowledges that the Supplier's Proposal does not limit the Supplier's obligations under this Agreement or otherwise at law or in equity.

#### **4.8 Discrepancies**

- (a) The several documents forming this Agreement are taken to be mutually explanatory of one another.
- (b) If either party discovers any inconsistency, ambiguity or discrepancy in any document forming this Agreement, that party must promptly give TfNSW's

Representative written notice of it. TfNSW's Representative, thereupon, and upon otherwise becoming aware, shall direct the Supplier as to the interpretation and construction to be followed.

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## **5 Time and Completion**

### **5.1 Time for carrying out the Services** The Supplier

must:

- (a) commence the Services on the date on which it is first entitled to access the Site in accordance with clause 2.2 and continue to carry out the Services progressively in a diligent and orderly manner and in accordance with the Program;
- (b) use its best endeavours to bring the Works to Completion by the relevant Target Date; and
- (c) if it becomes aware of anything which may cause delay to the Services, promptly give TfNSW's Representative written notice of that cause and the estimated delay.

### **5.2 Suspension of the Services**

- (a) TfNSW's Representative may for any reason direct the Supplier to suspend carrying out the Services (or any part of it) and the Supplier must comply with the terms of any such direction.
- (b) The Supplier must resume carrying out the Services when directed by TfNSW's Representative and without any unreasonable delay.
- (c) Subject to clause 5.2(d), any costs incurred by the Supplier by reason of any suspension must be borne by the Supplier.
- (d) If there is a suspension under clause 5.2(a) other than due to an act or omission of the Supplier or its personnel and the suspension causes the Supplier to incur more cost than would otherwise have been incurred but for the suspension, then the Supplier is entitled to be reimbursed by TfNSW for the actual necessary costs reasonably incurred by the Supplier in respect of the period of suspension.
- (e) The Supplier must:
  - (i) take all reasonable steps to mitigate the costs referred to in clause 5.2(d); and
  - (ii) provide TfNSW's Representative with any information reasonably requested to substantiate the costs referred to in clause 5.2(d).

### **5.3 Program**

- (a) The Supplier must not, unless permitted under this Agreement, depart from the Program.

- (b) If requested by TfNSW's Representative, the Supplier must update the Program to take account of delays to any Target Date.
- (c) No review by TfNSW's Representative of, nor any comment by TfNSW's Representative upon or in connection with, a Program or an updated Program will:
  - (i) relieve the Supplier from any of its liabilities or obligations, including the obligation to use its best endeavours to achieve Completion by the Target Date; or
  - (ii) evidence or constitute a direction by TfNSW's Representative to accelerate, disrupt, prolong or vary any or all of the Services.

#### **5.4 Working hours**

The working hours and days for the Services on the Site shall be as stated in the Contract Details or otherwise as permitted by TfNSW's Representative.

#### **5.5 Completion**

- (a) The Supplier must give TfNSW's Representative prior written notice of the date upon which the Supplier anticipates that Completion will be achieved.
- (b) When the Supplier is of the opinion that Completion has been achieved, the Supplier must in writing request TfNSW's Representative to issue a Certificate of Completion.
- (c) As soon as reasonably practicable following receipt of the Supplier's notice under clause <sup>1</sup> 5.7(b), TfNSW's Representative must give the Supplier either:
  - (i) a Certificate of Completion evidencing the Date of Completion of the Works; or
  - (ii) written reasons for not issuing a Certificate of Completion.
- (d) If TfNSW's Representative gives the Supplier a written notice under clause 5.7(c)(ii):
  - (i) the Supplier must notify TfNSW's Representative in writing when the Supplier has complied with the requirements of that written notice; and
  - (ii) clause 5.7(c) will again apply until TfNSW's Representative gives a Certificate of Completion for the Works.

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### **<sup>1</sup> A Obligation to remedy Defects**

- (a) The Supplier must, until the end of the Defects Liability Period, rectify any Defects promptly after a Defect is detected or notified to it. The Supplier must carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the Site as is reasonably possible.

(e) A Certificate of Completion does not prejudice any rights or powers of TfNSW.

(f) If TfNSW's Representative is of the opinion that Completion of a  
Separable

Portion has been reached, TfNSW's Representative may at any time issue a

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Certificate of Completion, whether or not a notice has been issued under clause 5.7(a) or clause 5.7(b).

(b) Without limiting or otherwise restricting any other right TfNSW may have under this Agreement or at law, TfNSW's Representative may, at any time before the end of the Defects Liability Period:

(i) direct the Supplier by written notice to rectify any Defect, in which case the Supplier must rectify the Defect in accordance with the terms of that direction and at the Supplier's sole cost; and

(ii) if the Supplier fails to carry out the rectification in accordance with such a direction, TfNSW may have the Defect rectified by a third party and all costs incurred by TfNSW in connection with the rectification will be a debt due and payable by the Supplier to TfNSW on demand.

(c) Any direction under clause 5A(b)(i) may provide in respect of the rectification work that there is to be an additional and separate Defects Liability Period commencing on the date the rectification work is completed.

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## **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) the Procurement Framework, the Code and the NSW Guidelines as more particularly described in Schedule 5 (Compliance with NSW Procurement Policy Framework, Supplier Code of Conduct and Building and Construction Guidelines);

- (b) all other TfNSW standards, policies and procedures notified from time to time (other than any which are expressly inconsistent with this Agreement);
- (c) all other reasonable requirements and directions of TfNSW in relation to the Goods and Services, including that the Supplier must reasonably co-operate with other TfNSW suppliers; and
- (d) 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 SME Participation Plan (SMEPP)

- (a) This clause only applies where the Supplier has submitted a SMEPP to TfNSW as part of any proposal leading to the award of this Agreement.
- (b) In this clause a **SMEPP** means a Small and Medium Enterprise Participation Plan being a plan demonstrating how the Supplier will promote the participation of small and medium enterprise in its supply chains in accordance with the SNSW Government's Small and Medium Enterprises and Regional Procurement Policy.
- (c) The Supplier acknowledges that TfNSW has relied on the SMEPP in awarding this Agreement to the Supplier.
- (d) The Supplier must comply with the requirements and commitments provided for in the SMEPP in connection with Goods and Services to be provided under this Agreement.
- (e) The Supplier must make such changes to the SMEPP as TfNSW (acting reasonably) may require from time to time having regard to:
  - (i) the objectives of the NSW Government's SME and Regional Procurement Policy;
  - (ii) the Supplier's compliance or non-compliance with the SMEPP; or (iii)

the effectiveness of the SMEPP.
- (f) The Supplier must report to TfNSW on the Supplier's compliance against its SMEPP at such times and in such manner as TfNSW may require and the Supplier agrees to take all steps required on its part to assist in the monitoring of compliance by the Supplier with the SMEPP.
- (g) Any non-compliance by the Supplier with this clause or any material noncompliance with its SMEPP commitments is a material breach of this Agreement.
- (h) TfNSW may take into consideration non-compliance by the Supplier with the SMEPP when evaluating other tenders submitted by the Supplier to TfNSW in

the future and may report such non-compliance to other Government Agencies or Relevant Authorities (including to Procurement NSW).

#### **6.4 Aboriginal Participation Plan**

- (a) This clause only applies where the Supplier has submitted an Aboriginal Participation Plan to TfNSW as part of any proposal leading to the award of this Agreement or where the Supplier is required under the Aboriginal Procurement Policy to provide an Aboriginal Participation Plan.

- (b) In this clause:

**Aboriginal Participation Fund** means the Aboriginal Participation Fund established and administered by Training Services NSW

**Aboriginal Participation Plan** or **AP Plan** means an Aboriginal Participation Plan demonstrating how the Supplier will promote Aboriginal participation under this Agreement.

**Aboriginal Procurement Policy** means the NSW government's "Aboriginal Procurement Policy" and published at <https://buy.nsw.gov.au/policylibrary/policies/aboriginalprocurement-policy> (as updated, amended or varied from time to time).

**Actual Aboriginal Participation** is the percentage that each commitment to Aboriginal participation in the AP Plan has been realised.

**Shortfall** means the dollar value of the difference between Aboriginal participation commitment in the AP Plan and the Actual Aboriginal Participation.

- (c) The Supplier must submit an Aboriginal Participation Plan to TfNSW within 30 days of the Commencement Date. The AP Plan must:
- (i) be based on any draft AP Plan (if any) that the Supplier provided to TfNSW in any proposal that it provided to TfNSW before entering into this Agreement (including any amendments that TfNSW may have requested to that draft AP Plan);
  - (ii) have regard to the objectives of the Aboriginal Procurement Policy; and
  - (iii) specify how any non-financial commitments are to be valued so that any Shortfall can be calculated.
- (d) The Supplier must make such changes as TfNSW (acting reasonably) may require to the AP Plan from time to time having regard to:
- (i) the objectives of the Aboriginal Procurement Policy;
  - (ii) the Supplier's compliance or non-compliance with the AP Plan; or (iii) the effectiveness of the AP Plan.

- (e) The Supplier must comply with the requirements and commitments provided for in its AP Plan when providing the Services. Any non-compliance by the Supplier with this clause or with its AP Plan commitments is a material breach of this Agreement.
- (f) At any time TfNSW may conduct an audit of the Supplier's compliance with the AP Plan and the Supplier must provide TfNSW with full access to all relevant records.
- (g) The Supplier must provide to TfNSW quarterly compliance reports setting out the progress and compliance against its AP Plan for the quarters ending March, June, September and December every year. Each quarterly compliance Report must detail how the Supplier's AP Plan is being implemented and quantify, with appropriate calculations and verifiable evidence, the Actual Aboriginal Participation achieved to date and since the previous quarterly compliance report.
- (h) TfNSW may establish additional reporting and other mechanisms to monitor compliance by the Supplier with its commitments under the AP Plan and the Supplier agrees to take all steps required on its part to assist in the monitoring of compliance by the Supplier with the AP Plan.
- (i) At the earlier of the end of this Agreement or the Completion of the Services the Supplier must provide a Final Report to TfNSW identifying:
  - (i) whether or not over the course of this Agreement each of its obligations under the AP Plan were met; and
  - (ii) if not, the Shortfall.

The Final report must include appropriate calculations and verifiable evidence to support the Actual Aboriginal Participation reported and the calculation of any Shortfall.

- (j) If at the end of the Agreement there is any Shortfall then it must be paid into the Aboriginal Participation Fund by (at TfNSW's option) one of the following:
  - (i) TfNSW retaining an amount equivalent to the Shortfall from monies otherwise owed to the Supplier and paying it into that Fund; or
  - (ii) The Supplier paying the Shortfall to TfNSW within 30 days of the end of this Agreement.

Where (ii) applies but the Supplier fails to pay the amount, then the Shortfall may be recovered by TfNSW as a liquidated debt due from the Supplier to TfNSW.

- (k) TfNSW may take into consideration non-compliance by the Supplier with the AP Plan when evaluating other tenders submitted by the Supplier to TfNSW in the future and may report such non-compliance to other Government Agencies or relevant authorities (including to NSW Procurement).
- (l) The obligations of the Supplier under this clause survive the termination of this Agreement.

## **6.5 Disability Participation Plan and Diversity Plan**

- (a) This clause only applies where the Supplier has submitted a Disability Participation Plan and/or a Diversity Plan to TfNSW as part of any proposal leading to the award of this Agreement.
- (b) In this clause:
 

**Disability Participation Plan** means a plan demonstrating how the Supplier will promote opportunities for people with disabilities in relation to this Agreement in the Proponent's workplace or in its supply chains.

**Diversity Plan** means a plan demonstrating how the Supplier will encourage and support diversity and inclusion in the Supplier's workforce.

**Plan** means each of a Disability Participation Plan and a Diversity Plan and both of them jointly.
- (c) The Supplier acknowledges that TfNSW has relied on the Plan in awarding this Agreement to the Supplier.
- (d) The Supplier must comply with the commitments provided for in the Plan in connection with Goods and Services to be provided under this Agreement.
- (e) The Supplier must make such changes to the Plan as TfNSW (acting reasonably) may require from time to time having regard to:
  - (i) the objectives of the Plan;
  - (ii) the Supplier's compliance or non-compliance with the Plan; or (iii) the effectiveness of the Plan.
- (f) The Supplier must report to TfNSW on the Supplier's compliance against the Plan at such times and in such manner as TfNSW may require and the Supplier agrees to take all steps required on its part to assist in the monitoring of compliance by the Supplier with the Plan.
- (g) Any non-compliance by the Supplier with this clause or any material failure to meet its commitments in the Plan is a material breach of this Agreement.
- (h) TfNSW may take into consideration non-compliance by the Supplier with the Plan when evaluating other tenders submitted by the Supplier to TfNSW in the future and may report such non-compliance to other Government Agencies or Relevant Authorities (including to Procurement NSW).

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## 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 this Agreement provides otherwise.

## **7.2 Timing of submission of payment claims and payment schedules**

- (a) The Supplier will issue payment claims for the Charges upon the achievement of the payment milestones stated in Schedule 3 and in accordance with the requirements set out in clause 7.5 (Correctly rendered payment claim).
- (b) Within 10 Business Days after receipt of a correctly rendered payment claim, TfNSW will provide the Supplier with a payment schedule. The payment schedule must identify the payment claim to which it relates and state the payment, if any, which TfNSW will be making in regard to the Charges.
- (c) If the payment schedule is for an amount less than the amount claimed by the Supplier, the payment schedule must indicate reasons why it is less. Reasons why the amount of a payment schedule may show an amount less than the amount claimed (excluding payments already made) include amounts which TfNSW is entitled to withhold, set off or otherwise deduct.

## **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 at TfNSW's option.

## **7.4 Payment**

Subject to the terms of this Agreement and provision by the Supplier of a properly completed Tax Invoice for the relevant payment, TfNSW must pay the amount specified in the payment schedule issued under clause 7.2(b) within 15 Business Days after receipt of that payment claim.

## **7.5 Correctly rendered payment claim**

For the purposes of this Agreement, a payment claim is not correctly rendered unless:

- (a) the amount claimed in the payment claim is correctly calculated under this Agreement;

- (b) the payment claim 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;
- (c) the payment claim 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;
- (d) the payment claim is addressed to “Transport for NSW” with attention to the TfNSW Representative and identifies this Agreement; and
- (e) the payment claim 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 payment claims**

Where TfNSW considers that a payment is not correctly rendered TfNSW will issue to the Supplier within 10 Business Days after receipt of the payment claim 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.

## **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, 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, the Supplier must provide to TfNSW:

- (a) a list of any of the Supplier Personnel; and
- (b) accurate information about the identity, qualifications, job history and character 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 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 from the last Date of Completion, 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) In carrying out the Services, the Supplier must:
  - (i) identify and adequately address any workplace health and safety risks associated with performance of its obligations, including the preparation of an appropriate Work Health and Safety Management Plan (WHSMP) and Safe Work Method Statements (SWMS);
  - (ii) continuously review the WHSMP and SWMS and amend them as required to ensure they continue to be appropriate;
  - (iii) provide copies of its WHSMP 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 WHSMP and SWMS.
- (d) TfNSW may in its discretion request the Supplier to consider making changes to the WHSMP and SWMS.
- (e) Without prejudice to (a) above, the Supplier must consult, co-operate and coordinate 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 Act 1988*).
- (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.

#### **9.15 Principal Contractor**

- (a) Without limiting clause 9.14, for the purpose of the WH&S Laws and for each or any construction project commissioned by TfNSW in relation to the Works and the provision by the Supplier of the Works, the Supplier:

- (i) is, under this Agreement, engaged by TfNSW as the principal contractor in respect of each or any such construction project, and the Supplier accepts any such engagement;
  - (ii) is authorised by TfNSW to have such management of the workplace and to discharge the duties of a principal contractor in relation to each and any such construction project;
  - (iii) is responsible as principal contractor for each and any such construction project at all times until the construction project is completed; and
  - (iv) acknowledges and agrees that it has control and management of the workplace, and that it is to discharge the duties of a principal contractor under the WH&S Laws in respect of each and any such construction project.
- (b) In this clause, the terms "**workplace**", "**construction project**", "**construction work**" and "**principal contractor**" have the same meanings as given to those terms under WH&S Laws.

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## 10 Business continuity and disaster recovery

### 10.1 Develop plan

Within 2 months 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.

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## **11 Sub-contracting**

### **11.1 Subcontracting**

Other than the pre-agreed subcontractors specified in the Contract Details, 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:

- (a) must ensure its Subcontractors are competent, appropriately accredited, qualified, licensed and trained to undertake that part of the Services to be performed by them; and
- (b) 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.

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## **12 Change control**

### **12.1 Change request**

Either party may request a change (including any addition or omission) to:

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

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

### **12.2 Change request by TfNSW**

If a Change is requested by TfNSW, 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.

## **12.7 Change order**

The Supplier acknowledges that whether or not TfNSW has accepted or rejected a Change Proposal under clause 12.6, TfNSW's Representative may at any time prior to the Date of Completion (but without limiting clause 4.5) direct the Supplier to carry out a Change by a written document titled "Change Order".

## **12.8 Valuation of Change**

- (a) Where a Change is directed by TfNSW (either by way of a Change Notice or a Change Order) in accordance with this clause 12, TfNSW's Representative will:
  - (i) determine the value of the Change as agreed; or
  - (ii) to the extent that clause 12.8(a)(i) does not apply, determine a reasonable amount by reference to market rates.
- (b) Any Change valued by TfNSW's Representative pursuant to clause 12.8(a) will be added to or deducted from the Charges (as the case may be).

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

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

### **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 and Privacy).

### **13.6 Know-how use**

Subject to clause 14 (Confidentiality and 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 and sole option:
  - (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 Other remedies**

Without limiting any other rights TfNSW may have, if, as a result of any Infringement Claim, TfNSW is prevented from using the Goods (to the extent that such Goods are to be incorporated into the Works) or the results of the Services, the Supplier must, at TfNSW's option and at the Supplier's cost:

- (a) promptly procure for TfNSW the right to use the Goods or the results of the Services (as applicable) on reasonable commercial terms as contemplated under this Agreement free of any claim or liability for infringement;
- (b) promptly procure for TfNSW replacement goods or materials which comply with the relevant Specifications; or
- (c) promptly modify the Goods or materials so that they cease to infringe those rights (while still complying with the applicable Specifications).

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## **14 Confidentiality and Privacy**

### **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 Act 1988* (Cth) and all other applicable 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 and Personal Information Protection Act 1998* (NSW), 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 Not applicable**

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## **15 Representatives, reporting and audits**

### **15.1 Responsibilities**

The parties acknowledge and agree that:

- (a) 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;
- (b) TfNSW's Representative will act as the agent of TfNSW (not as an independent certifier, assessor or valuer) in discharging each of the functions of TfNSW's Representative under this Agreement; and
- (c) the Supplier must comply with any direction given by TfNSW's Representative under a provision of this Agreement. Except as expressly provided in this Agreement, TfNSW's Representative may give a direction orally but must confirm that oral direction in writing as soon as practicable.

### **15.2 Delegation by Representatives**

- (a) 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. Either party may revoke any appointment under this clause 15.2 by notice in writing to the other party.
- (b) As at the Commencement Date, TfNSW's Representative is deemed to have appointed the person specified in the Contract Details to carry out the particular functions specified in the Contract Details.

### **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; and

- (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 carrying out of the Services and until the expiry of 7 years from the last Date of Completion;
- (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 Project Plans**

- (a) TfNSW and the Supplier acknowledge and agree that each of the Project Plans are to be developed by the Supplier in accordance with:
  - (i) good industry practice and all laws;
  - (ii) the details set out in the Supplier's Proposal; and
  - (iii) the requirements of this clause 15.6, together with any other details as may be required by TfNSW's Representative.
- (b) The Supplier must, prior to commencing the Works on the Site in accordance with this Agreement, submit to TfNSW's Representative the Project Plans.
- (c) TfNSW's Representative may:
  - (i) review the Project Plans submitted to it under clause 15.6(b); and
  - (ii) if TfNSW's Representative reasonably considers that any plan does not comply with requirements of this Agreement, give notice to the Supplier within 5 Business Days after receipt of the relevant Project Plan specifying the area of non-compliance.
- (d) If TfNSW's Representative gives a notice under clause 15.6(c)(ii), the Supplier must:
  - (i) amend the relevant Project Plan to address the matters the subject of that notice; and

- (ii) resubmit the amended Project Plan to TfNSW's Representative.
- (e) Clause 15.6(c) applies to any resubmitted Project Plan as if it were the Project Plan originally submitted under clause 15.6(b).

**15.7 Annual audit** TfNSW may conduct itself, or appoint a third party to conduct, an audit of the Supplier's performance and compliance with this Agreement.

#### **15.8 Costs of audit**

The auditors' costs incurred by TfNSW in the audit under clause 15.7 will be paid by TfNSW. However, where the auditor objectively 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.

#### **15.9 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).

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### **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 times during the carrying out of the Services, 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, 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 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 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).

### **16.4 Third party warranties**

- (a) The Contractor must, as a condition precedent to Completion, procure and provide TfNSW with the warranties specified in the Contract Details.
- (b) These warranties must be in favour of TfNSW. No third party warranty will be construed in any way to modify or limit any of the rights, powers or remedies of TfNSW against the Supplier under this Agreement or otherwise at law or in equity. If the Supplier is unable to or fails for any reason to provide any warranty required by this Agreement the Contractor is deemed to have provided the warranty itself on like terms.

[REDACTED]

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## 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 against, all liability or loss arising out of or in connection with:
  - (i) 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 negligence or breach; and
  - (ii) loss of, or damage to, or loss of use of, any real or personal property, or the personal injury, disease or illness (including mental illness) to or death of, any person caused or contributed to by the Supplier or Supplier Personnel or arising out of the carrying out of the Services.

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## 18 Risk and Insurance

### 18.1 [REDACTED]

[REDACTED]

[REDACTED]

**18.2 Insurance**

Before the Commencement Date, the Supplier must obtain on terms reasonably approved by TfNSW and thereafter 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.

**18.3 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.

**18.4 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 (Risk and Insurance), including any cancellation of a policy or reduction of limit of coverage below that required by this Agreement.

**18.5 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.

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**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.

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## 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) cooperate 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.

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## **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 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.

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## **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 three (3) 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; or
- (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

- (a) TfNSW may terminate this Agreement by giving not less than 60 days' written notice to the Supplier provided that TfNSW must pay the amounts required under clause 23.2 (Early termination charges).
- (b) The Supplier must comply with any instructions of TfNSW to wind down and stop work.
- (c) The Supplier must leave the Site by the date stated in the termination notice and remove all temporary work, materials and other unfixed things it has brought onto the Site apart from Goods and materials or which payment has been made or is due any other items identified in the termination notice as to be retained on the Site.

## 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 on notice to the Supplier.

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## **23 Events following termination**

### **23.1 Obligations on termination**

On 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 or performed under this Agreement; and
- (b) not used.

### **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);
- (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; and
- (c) the amounts due to the Supplier for all work carried out (as determined under clause 7)) to the date the termination notice takes effect, after taking into account previous payments and any deductions or set-offs.

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 and Privacy), 17 (Liability), 18 (Risk and Insurance), 19 (Disputes), and 28 (General) survive the termination or expiry of this Agreement, as do any rights and remedies accrued before termination or expiry.

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## **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 Supplier 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).

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## **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.

### **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.

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## **26 Not used 27 Modern Slavery**

### **27.1 Compliance**

- (a) The Supplier warrants that, as at the date of its execution of this Agreement:
  - (i) any Modern Slavery Information it has provided to TfNSW is, to the best of its knowledge, complete and accurate.
  - (ii) neither the Supplier, any entity that it owns or controls or, to the best of its knowledge, any subcontractor of the Supplier, has been convicted of a Modern Slavery Offence; and
  - (iii) the Supplier is not aware of any circumstances within its operations that could give rise to an official investigation or prosecution of a Modern Slavery Offence.

- (b) The Supplier:
  - (i) must not, and must take reasonable steps to ensure that any entity that it owns or controls does not, engage in any activity or practice in the nature of Modern Slavery in its operations;
  - (ii) must take reasonable steps to ensure that Modern Slavery is not occurring in its (or in any entity that it owns or controls) supply chains; and
  - (iii) must otherwise comply, and take reasonable steps to ensure that any entity that it owns or controls complies, with the Modern Slavery Laws and the Related Offence Provisions, to the extent applicable.

## **27.2 Modern Slavery Information** (a) The

Supplier must:

- (i) subject to any restrictions under any applicable laws by which it is bound, provide to TfNSW, within 30 days of a request by TfNSW, any Modern Slavery Information and other assistance, as reasonably requested by TfNSW, to enable TfNSW to meet its obligations under the Modern Slavery Act 2018 (NSW) and associated regulatory requirements (for example, annual reporting requirements and any NSW Procurement Board directions), including cooperating in any Modern Slavery audit undertaken by TfNSW (including by a third party on behalf of TfNSW) or the NSW Audit Office and providing reasonable access to TfNSW's/Audit Office's auditors to interview the Supplier's staff;
  - (ii) within 7 days of providing a Modern Slavery Statement to the Commonwealth, provide a copy of that Modern Slavery Statement to TfNSW; and
  - (iii) notify TfNSW in writing as soon as it becomes aware of either or both of the following:
    - (A) a material change to any of the Modern Slavery Information it has provided to TfNSW; and
    - (B) any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).
- (b) Without limiting clause 27.2(a)(ii), in providing Modern Slavery Information to TfNSW as to any actual or suspected occurrence of Modern Slavery in the Supplier's operations or supply chains (or in those of any entity that it owns or controls), the Supplier must provide sufficient Modern Slavery Information:
- (i) to identify where the occurrence has arisen in those operations or supply chains and its scale and severity; and
  - (ii) to enable TfNSW to be satisfied, acting reasonably, that the Supplier is taking reasonable steps to respond to and address that occurrence in

accordance with any internal Modern Slavery policy and procedures of the Supplier and any relevant Code of Practice/Conduct or other guidance issued by the Anti-slavery Commissioner or the NSW Procurement Board.

- (c) Promptly following execution of this Agreement, the Supplier must communicate to its relevant staff (and those of any entity that it owns or controls):
  - (i) the name and contact details of a specified representative of the Supplier whom staff are invited to contact in respect of any actual or suspected occurrence of Modern Slavery in the Supplier's operations and supply chains (or in those of any entity that it owns or controls); and
  - (ii) where to access further information about Modern Slavery Laws, including contact details for the Anti-slavery Commissioner.
- (d) In providing any requested Modern Slavery Information to TfNSW, the Supplier must:
  - (i) make such inquiries in relation to its operations and supply chains as may be reasonably expected to inform its response; and
  - (ii) communicate openly about the extent to which the Modern Slavery Information it provides is complete and accurate (including a statement as to the limitations of the Modern Slavery Information provided).
- (e) The Supplier may provide any Modern Slavery Information or report requested by TfNSW in the form of a previously-prepared statement or re-purposed report, for example a statement provided in response to a similar request for Modern Slavery Information from another Australian public sector agency, or refer TfNSW to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same Modern Slavery Information as that sought by TfNSW.
- (f) The Supplier must, during the carrying out of the Services and for a further period of seven (7) years from the last Date of Completion:
  - (i) maintain; and
  - (ii) upon TfNSW's reasonable request, give TfNSW access to, and/or copies of,  
  
a complete set of records in the possession or control of the Supplier to trace, so far as practicable, the supply chain of all goods and services provided under this Agreement and to enable TfNSW to assess the Supplier's compliance with this clause 27 (Modern Slavery).
- (g) The Supplier consents to TfNSW sharing Modern Slavery Information obtained from the Supplier, including records referred to in clause 27.2(f), with any other NSW Government agency or entity:

- (i) for the purpose of identifying or addressing that actual or potential Modern Slavery; or
  - (ii) to the extent TfNSW has a reasonable belief of Modern Slavery actually or potentially occurring in the operations or supply chains of the Supplier or any entity that it owns or controls.
- (h) Without limiting any other provision of this clause 27.2, the Supplier:
- (i) agrees that the communication of such information to any Government Agency is a communication falling within section 30 of the Defamation Act 2005 (NSW); and
  - (ii) releases and indemnifies TfNSW and the State of New South Wales from and against any Claim in respect of any matter arising out of such communications, including the use of such information by the recipient.

### **27.3 Modern Slavery policy, due diligence processes, staff programs and training (a)**

Without affecting the generality of clause 27.1(b), if the Supplier:

- (i) submits a Modern Slavery Statement; or
- (ii) Self-Assesses as at high risk of causing or contributing to Modern Slavery in its operations or supply chains, the Supplier must, if, and to the extent, requested by TfNSW:
- (iii) develop and implement, and ensure that any entity that it owns or controls and which is exposed to similar risks develops and implements, a Modern Slavery plan, which includes a strategy on how to respond to and address an actual or suspected case of Modern Slavery and due diligence processes in relation to Modern Slavery in its operations and supply chains;
- (iv) provide programs and training for its staff about Modern Slavery, including to:
  - (A) ensure compliance with the Modern Slavery Laws and any Modern Slavery strategy and due diligence processes of the Supplier;
  - (B) promote awareness of the risks of Modern Slavery taking place in the Supplier's operations and supply chains; and
  - (C) develop capacity to assess and effectively address such risks; and
- (v) provide TfNSW with:
  - (A) a copy of each of the strategy and processes referred to in clause 27.3(a)(iv) and Modern Slavery Information on their implementation; and

- (B) Modern Slavery Information on implemented training and programs.

#### **27.4 Subcontractors**

The Supplier must take reasonable steps to ensure that all subcontracts of the whole or part of this Agreement contain Modern Slavery provisions that are reasonably consistent with the provisions in this clause 27 (Modern Slavery), having regard to the nature of the procurement.

#### **27.5 Response to Modern Slavery incident**

- (a) If the Supplier becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Supplier must take reasonable steps to respond to and address the occurrence in accordance with any applicable policies and guidance as identified in clause 27.2(b)(ii).
- (b) Any action taken by the Supplier under clause 27.5(a) will not affect any rights of TfNSW under this Agreement, including its rights under clause 27.6 (Termination on ground of Modern Slavery).

#### **27.6 Termination on ground of Modern Slavery**

In addition to any other right or remedy of TfNSW under this Agreement or at law, including rights of termination or rights to damages, TfNSW may, in its sole discretion, terminate this Agreement, upon written notice, with immediate effect and without any requirement to pay compensation in respect of such termination (other than payment for work performed by the Supplier under this Agreement and unpaid up until the date of termination), on any one or more of the following grounds:

- (a) The Supplier has failed to disclose to TfNSW, prior to execution of this Agreement, that the Supplier, or any entity owned or controlled by the Supplier, has been convicted of a Modern Slavery Offence;
- (b) The Supplier, or any entity owned or controlled by the Supplier, is convicted of a Modern Slavery Offence during the term of this Agreement;
- (c) In TfNSW's reasonable view, the Supplier has failed to notify TfNSW as soon as it became aware of an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls);
- (d) In TfNSW's reasonable view the Supplier has failed to take reasonable steps to respond to and address an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls); or
- (e) In TfNSW's reasonable view, the Supplier has otherwise committed a substantial breach (including multiple minor (non-trivial) breaches) of clause 27.1 (Compliance), clause 27.2 (Modern Slavery Information) or clause 27.4 (Subcontractors).

## **28 General**

### **28.1 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.

### **28.2 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.

### **28.3 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.

### **28.4 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.

### **28.5 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.

### **28.6 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.

### **28.7 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.

### **28.8 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.

### **28.9 Counterparts**

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

### **28.10 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.

### **28.11 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.

### **28.12 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.

### **28.13 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

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## 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.

**Anti-slavery Commissioner** means the Anti-slavery Commissioner appointed under the *Modern Slavery Act 2018* (NSW).

**Authority** means a statutory authority, statutory corporation, government or semi-government body (including TfNSW in its capacity as an Authority), utility service provider or recognised provider of emergency services.

**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.

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

**Certificate of Completion** means the certificate issued in accordance with clause 5.5(c)(i).

**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).

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**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.

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

**Completion** means that stage in the execution of the Services when:

- (a) the Works are complete in accordance with this Agreement except for minor Defects:
  - (i) which do not prevent the Works from being reasonably capable of being used for its intended purpose;
  - (ii) which the Supplier has reasonable grounds for not promptly rectifying; and
  - (iii) rectification of which will not prejudice the safe and convenient use of the Works;
- (b) all commissioning, certification and testing required by this Agreement to be carried out and passed has been carried out and passed;
- (c) all Documentation required under this Agreement which, in the opinion of TfNSW's Representative, is essential for the use and operation of the Works has been supplied to TfNSW's Representative to the satisfaction of TfNSW's Representative;
- (d) without limiting paragraph (c), the as-installed, third party warranties and handover information has been provided to TfNSW's Representative; and
- (e) the Supplier has done everything else which this Agreement requires it to do as a condition precedent to Completion.

**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).

**Contaminated** or **Contamination** has the same meaning given to it in the Contaminated Land Management Act 1997 (NSW).

**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* (Cth).

**Date of Completion** means the date on which the Supplier brings the Works to Completion as certified in the Certificate of Completion.

**Defect** means any defect, shrinkage, fault or omission in the Works which is not in accordance with the requirements of this Agreement.

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

**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 the Program.

**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 and all other documentation which, in TfNSW's reasonable opinion, is necessary to enable TfNSW to make full and proper use of the Works.

**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.

**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.

**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* (Cwth), as amended from time to time.

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

**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(d).

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

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.

**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  
**Licensed Area** has the meaning given to that term Schedule 6.

**Modern Slavery** has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.

**Modern Slavery Information** may include (as applicable) information about:

- (a) any risks of, actual or suspected occurrences of, and/or remedial action taken in respect of, Modern Slavery;
- (b) Modern Slavery policies and due diligence frameworks;
- (c) Modern Slavery training programs;
- (d) Supplier engagement with its supply chain and/or subcontractors in relation to Modern Slavery;
- (e) Modern Slavery audits (including any independent audit of the Supplier or its owned or controlled entities) and factory inspections; and
- (f) the source, place and country of origin of goods and services being supplied,

but excludes “personal information” as defined in the *Privacy and Personal Information Protection Act 1998* (NSW) or information which tends to identify individuals.

**Modern Slavery Laws** means, as applicable, the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cwth).

**Modern Slavery Offence** has the same meaning as in the *Modern Slavery Act 2018* (NSW).

**Modern Slavery Statement** means a modern slavery statement as required or volunteered under the *Modern Slavery Act 2018* (Cwth).

**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.

**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 3.4 (Delivery).

**Program** means a program for the performance of the Services as set out in Schedule 4, as updated from time to time in accordance with clause 5.5.

**Project Plan** means the:

- (a) Construction Environmental Management Plan;
- (b) Work Health and Safety Management Plan;
- (c) COVID Safe Plan;
- (d) Asbestos Removal Control Plan; and
- (e) Site Management Plan.

**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, and/or Charges).

**Rejection Notice** means a notice in accordance with clause 3.6 (Errors and Defects).

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

**Related Offence Provisions** means those provisions of the *Crimes Act 1900* (NSW), the *Human Tissue Act 1983* (NSW) and the Commonwealth *Criminal Code* which create slavery and associated offences, as listed from time to time in Schedule 2 to the *Modern Slavery Act 2018* (NSW).

**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 or sub-contractor of that party.

**Resources** includes facilities, infrastructure, systems, equipment, software, procedures, processes and other resources, but excludes personnel.

**Self-Assess** means self-assesses using a methodology that is satisfactory to TfNSW, acting reasonably.

**Services** means the provision of the Works and the services set out in Schedule 2 and all other services, things and tasks required to be provided by the Supplier to comply with its obligations under this Agreement.

**Site** means the site for the Works described in the Contract Details.

[REDACTED]

**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.

**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's Proposal** means the document set out in Schedule 7.

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

**Target Date** means, in relation to a Separable Portion, the date specified in the Contract Details.

**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.

**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.

**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 Personnel** means employees, partners, agents and sub-contractors (including employees of sub-contractors) of TfNSW.

**TfNSW Representative** means the person identified the Contract Details as the TfNSW Representative, as varied by notice to the Supplier from time to time. Where there are two persons nominated for the position of TfNSW Representative:

- (a) each of those persons has the full authority to carry out all of the functions of the TfNSW Representative under this Agreement; and
- (b) for the avoidance of doubt:

- (i) a specific function of the TfNSW Representative under this Agreement does not need to be carried out by both of those persons; and
- (ii) where notices or other information are to be issued to the TfNSW Representative under this Agreement, the parties must issue such notices or other information to both of those persons.

**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.

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

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

**WH&S Laws** means any Law relating to work health and safety and includes the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2011 (NSW).

**Works** means the physical works (including the Goods), a brief description of which is set out in the Contract Details, which the Supplier must construct, commission, complete and hand over to TfNSW in accordance with this Agreement.

## 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, reenactments or replacements of any of them);
- (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.

[REDACTED]

[REDACTED]

[REDACTED]

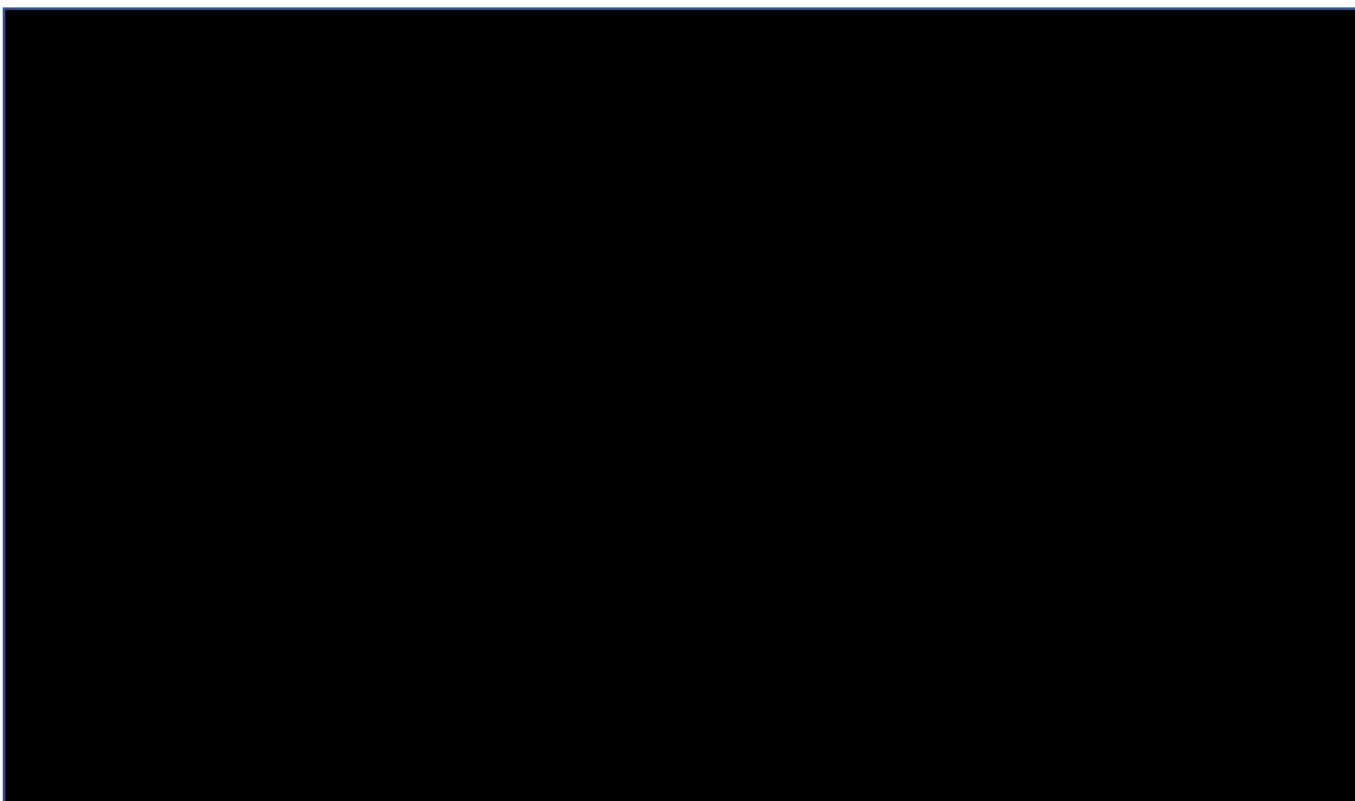
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]









1	[REDACTED]	[REDACTED]
---	------------	------------

67

No.	Payment milestone description	Total Milestone Payment (Exclusive of GST)
1	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]

**Table 2: Breakdown per Separable Portion**

No.	Separable Portion	Base lump Sum (Ex GST)	Site Establishment lump sum (Ex GST)	Artwork to East Facing Windows lump sum (Ex GST)	Blind Replacement Like for Like lump sum (Ex GST)	Sound Dampening lump sum (Ex GST)	Total per Separable Portion lump sum (Ex GST)
1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[illegible]

[illegible]

[illegible]

The figure displays a 2x4 grid of heatmaps, where each heatmap represents the distribution of 1000 data points across a 2D space. The grid is divided into four quadrants by a central horizontal and vertical line. The data points are represented by black squares, with the density of squares indicating the concentration of points in each region. In the top row, the first column shows a high density of points, while the second and third columns show lower densities. In the bottom row, the first column also shows a high density of points, with some points scattered in the second and third columns. The fourth column is mostly empty in both rows.



[REDACTED]

[REDACTED]

## Schedule 4 - Program

# Schedule 5 – Procurement Framework, the Code and the NSW Guidelines

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## 1 Terminology

- (a) In addition to terms defined in this Agreement, terms used in this clause 1 have the same meaning as is attributed to them in the New South Wales Industrial Relations Guidelines: Building and Construction Procurement (NSW Guidelines) (as published by the NSW Treasury July 2013 and updated September, 2017). The NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).
- (b) In particular, as stated in clause 3.1 of the NSW Guidelines; any relevant document or procedure referencing the Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction - means a reference to these reissued Guidelines. Relevant documents may include but not are limited to: a Practice Direction, a workplace relations management plan or a model contract clause.
- (c) Note the NSW Government Supplier Code of Conduct (the ‘Code’) replaced the NSW Government Code of Practice for Procurement in February, 2020. The Code is available at [www.buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct](http://www.buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct).
- (d) The NSW Government Procurement Policy Framework (Procurement Framework) applies to the procurement of goods and services of any kind including construction. The framework identifies the requirements that apply to tendering, managing contracts and supplier relationships. The Procurement Framework is available at [www.buy.nsw.gov.au/policy-library/policies/procurement-policy-framework](http://www.buy.nsw.gov.au/policy-library/policies/procurement-policy-framework).
- (e) For clarity, if there is an inconsistency between the requirements of the above documents and this Agreement, this Agreement shall take precedence to the extent of any inconsistency. Where the Supplier becomes aware of such an inconsistency it should notify TfNSW accordingly.

---

## 2 Primary Obligation

- (a) The parties must comply with and meet any obligations imposed by the Procurement Framework, the Code and the NSW Guidelines.
- (b) The Supplier must notify the Construction Compliance Unit (CCU) and TfNSW of any possible non-compliance with the Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Supplier engages a subcontractor or consultant, the Supplier must ensure that that contract imposes on the subcontractor or consultant equivalent obligations to those in this clause, including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the Code and the NSW Guidelines.
- (d) The Supplier must not appoint or engage another party in relation to the contract where that appointment or engagement would breach a sanction imposed on the other party in relation to the Code or NSW Guidelines.

---

### **3 Access and information**

- (a) The Supplier must maintain adequate records of compliance with the Code and NSW Guidelines by it, its subcontractors, consultants and related entities.
- (b) The Supplier must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
  - (i) enter and have access to sites and premises controlled by the Supplier, including but not limited to the Site;
  - (ii) inspect any work, material, machinery, appliance, article or facility;
  - (iii) access information and documents;
  - (iv) inspect and copy any record relevant to the project; (v) have access to personnel; and (vi) interview any person;

as is necessary for the authorised personnel to monitor and investigate compliance with the Code and NSW Guidelines, by the Supplier, its Subcontractors, consultants, and related entities.

- (c) The Supplier, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

---

### **4 Sanctions**

- (a) The Supplier warrants that at the time of entering into this Agreement, neither it, nor any of its related entities, are subject to a sanction in connection with the Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the Code and NSW Guidelines apply.
- (b) If the Supplier does not comply with, or fails to meet any obligation imposed by, the Code or NSW Guidelines, a sanction may be imposed against it in connection with the Code or NSW Guidelines.
- (c) Where a sanction is imposed:
  - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
    - A. record and disclose details of noncompliance with the Code or NSW Guidelines and the sanction; and
    - B. take them into account in the evaluation of future procurement processes and responses that may be submitted by the Supplier, or its related

entities, in respect of work to which the Code and NSW Guidelines apply.

---

**5 Compliance**

- (a) The Supplier bears the cost of ensuring its compliance with the Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Supplier is not entitled to make a claim for reimbursement from TfNSW or the State of NSW for such costs.
- (b) Compliance with the Code and NSW Guidelines does not relieve the Supplier from responsibility to perform the works and any other obligation under the contract, or from liability for any Defect in the works or from any other legal liability, whether or not arising from its compliance with the Code and NSW Guidelines.
- (c) Where a change in this Agreement or the Services is proposed, and that change may, or may be likely to, affect compliance with the Code and NSW Guidelines, the Supplier must immediately notify TfNSW (or nominee) of the change, or likely change and specify:
  - (i) the circumstances of the proposed change;
  - (ii) the extent to which compliance with the Code and NSW Guidelines will be, or is likely to be, affected by the change; and
  - (iii) what steps the Supplier proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety (WHS) Management Plan); and

TfNSW will endeavour to direct the Supplier as to the course it must adopt within 10 Business Days of receiving the notice.

**Schedule 6 – Licensed Area**

[Redacted content]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(5) [REDACTED]

(6) [REDACTED]

[REDACTED]

[REDACTED] Millers  
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[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

(7) [REDACTED]

[REDACTED]

[REDACTED] in any capacity or for any other purpose and includes but is not  
limited to any:

[REDACTED]

[REDACTED]

[REDACTED] 74

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] are, facility or service, the Lessors Property and  
[REDACTED] Infrastructure Facility, and

(10) [REDACTED]  
[REDACTED] for  
[REDACTED] purification but does not include  
Hazardous Materials or Dangerous Goods.

[REDACTED]

[REDACTED]  
[REDACTED]  
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[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED] gates.

(d) [REDACTED]

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[REDACTED]  
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[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] legislation.

[REDACTED]  
[REDACTED]  
[REDACTED] Ausgrid.

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]  
[REDACTED]  
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[REDACTED]

(4) [REDACTED]

[REDACTED]

(1) [REDACTED]

[REDACTED] substantial  
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[REDACTED]  
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[REDACTED] in  
[REDACTED]

(d) [REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

(iii) [REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED] promptly  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED] Licensed  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] area by the Licensor, engage a gardener approved by the  
Licensor to do so.

(2) [REDACTED] Licensed Area in its state of repair, order and condition as at the  
Commencement Date.

[REDACTED]

(1) [REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]

(c) [REDACTED]

[REDACTED] which  
[REDACTED]

[REDACTED]

[REDACTED] or  
[REDACTED]

[REDACTED]

[REDACTED]

(i) [REDACTED]

(j) [REDACTED]

[REDACTED] Property  
[REDACTED]

[REDACTED] Area  
[REDACTED] ities  
[REDACTED] (ensee)  
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] risk.  
[REDACTED]

[REDACTED]

[REDACTED]

(1) [REDACTED]

[REDACTED] relating  
[REDACTED] ty

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] releases the  
[REDACTED]

[REDACTED]  
[REDACTED] Area  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED] the  
[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] to  
[REDACTED] hich  
[REDACTED] an  
[REDACTED]

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[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] carried

[REDACTED] (including

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] before  
[REDACTED]

[REDACTED] or  
[REDACTED] the  
[REDACTED] this  
[REDACTED]

[REDACTED] relation  
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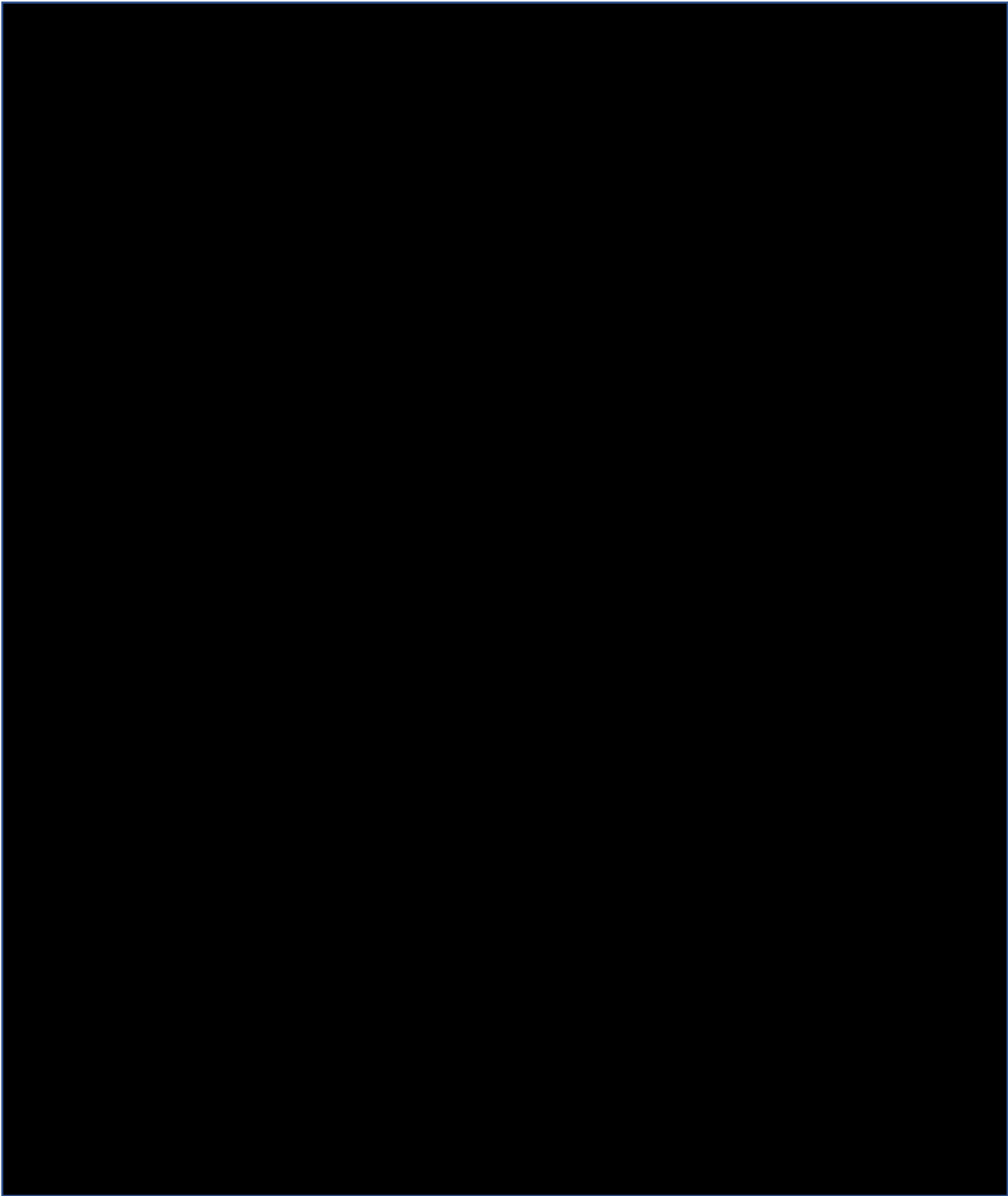
[REDACTED]

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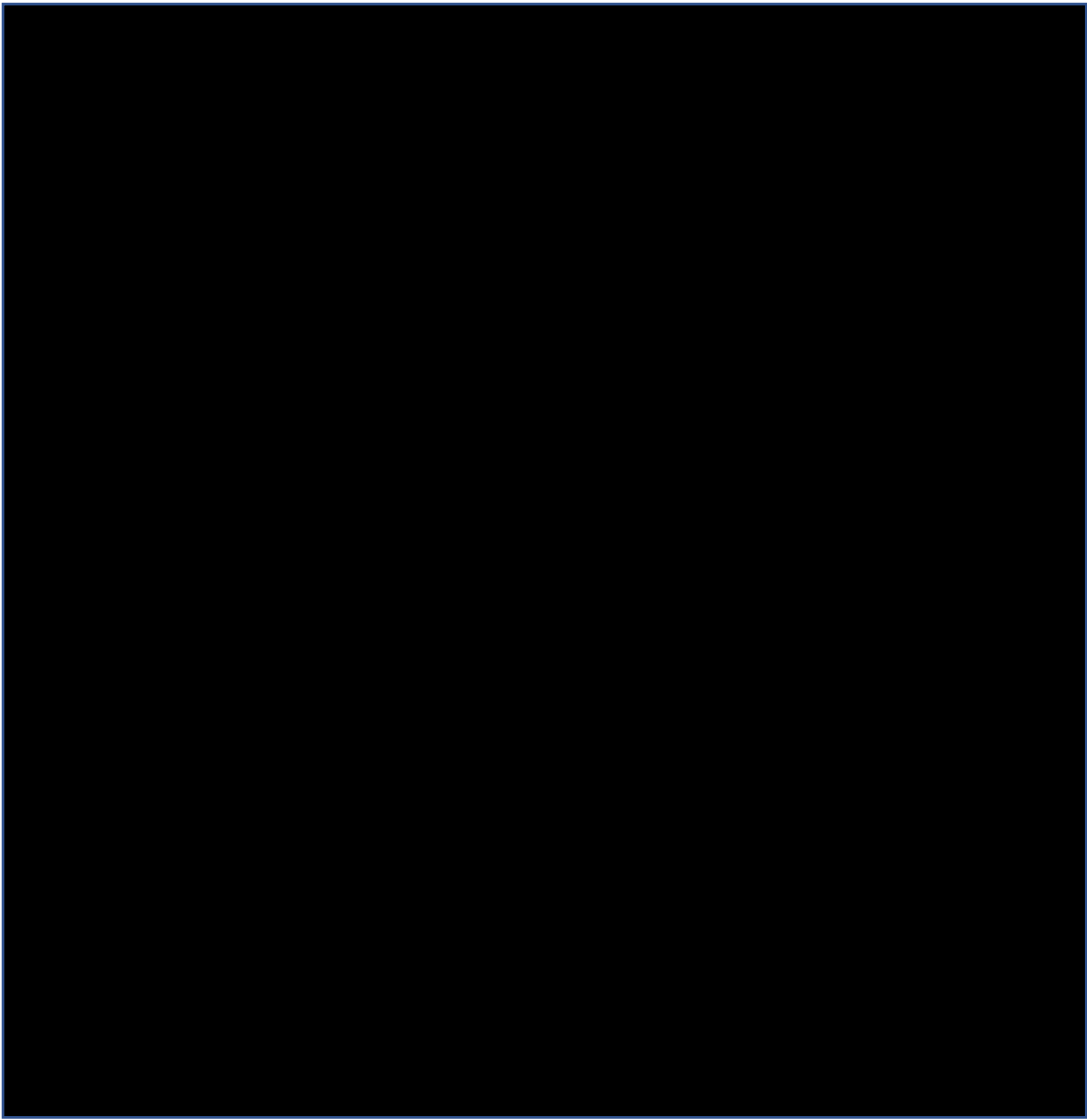
[REDACTED]

[REDACTED]

[REDACTED]



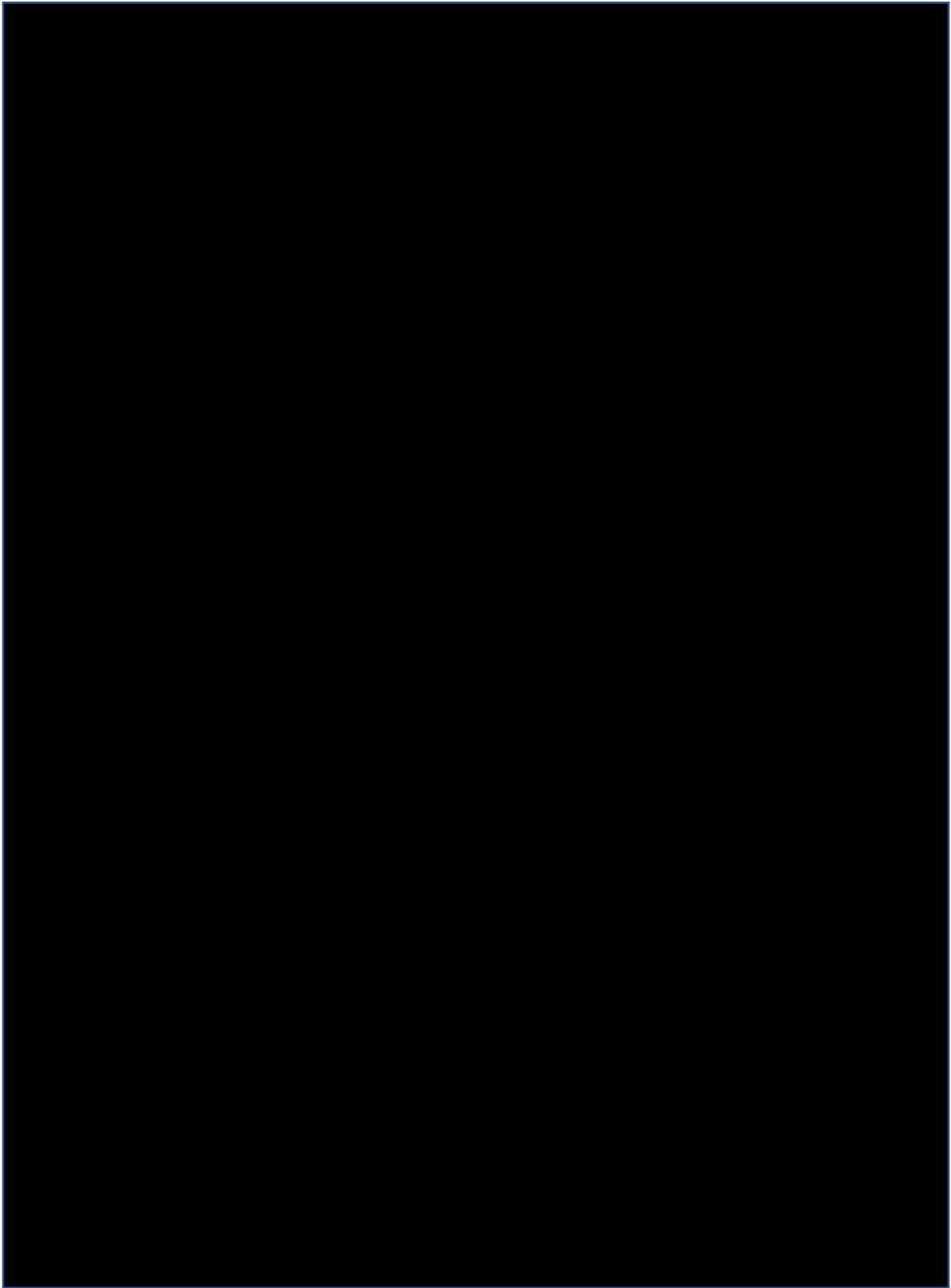
**Annexure B**



14

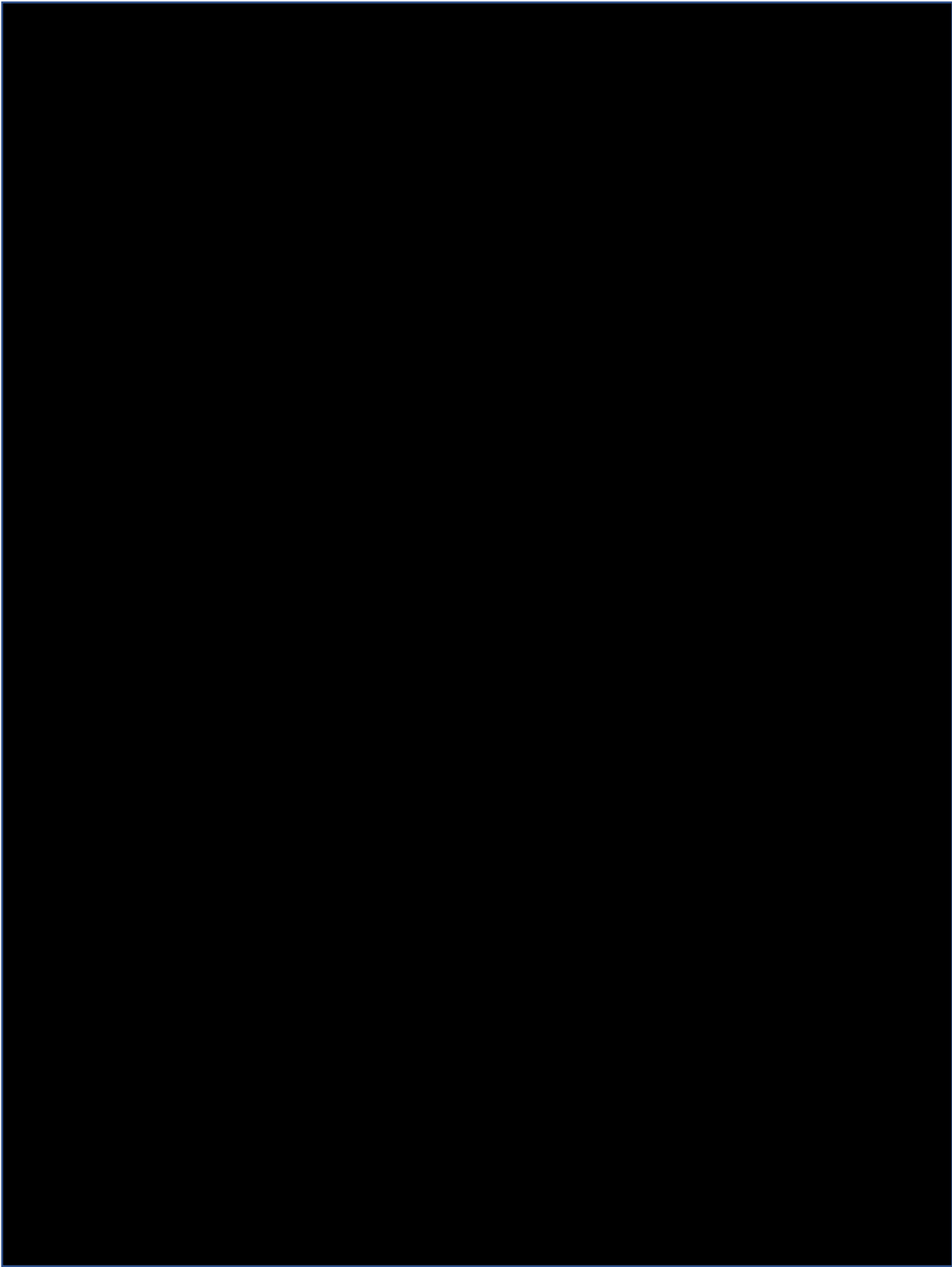
## Schedule 7 – Supplier's Proposal

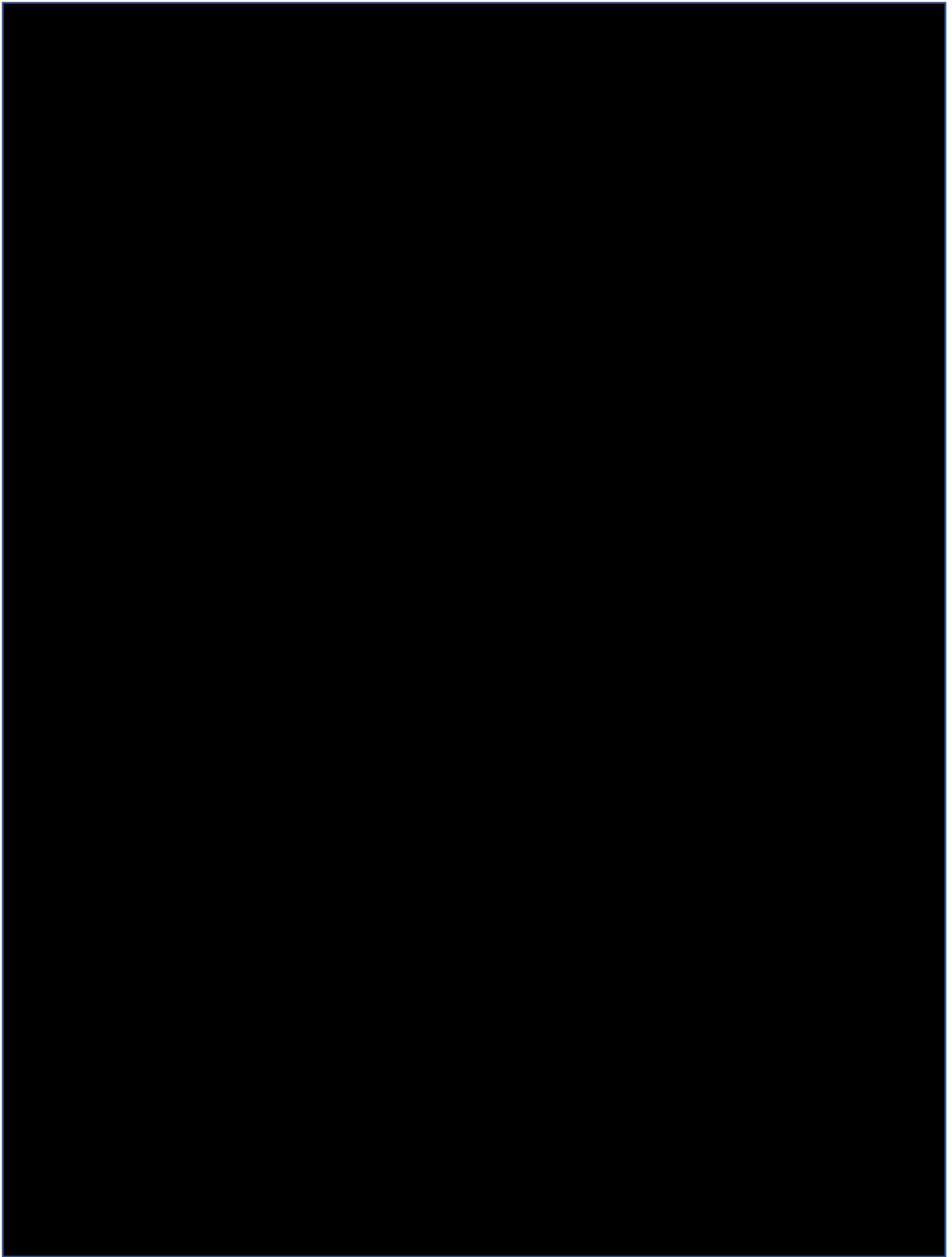




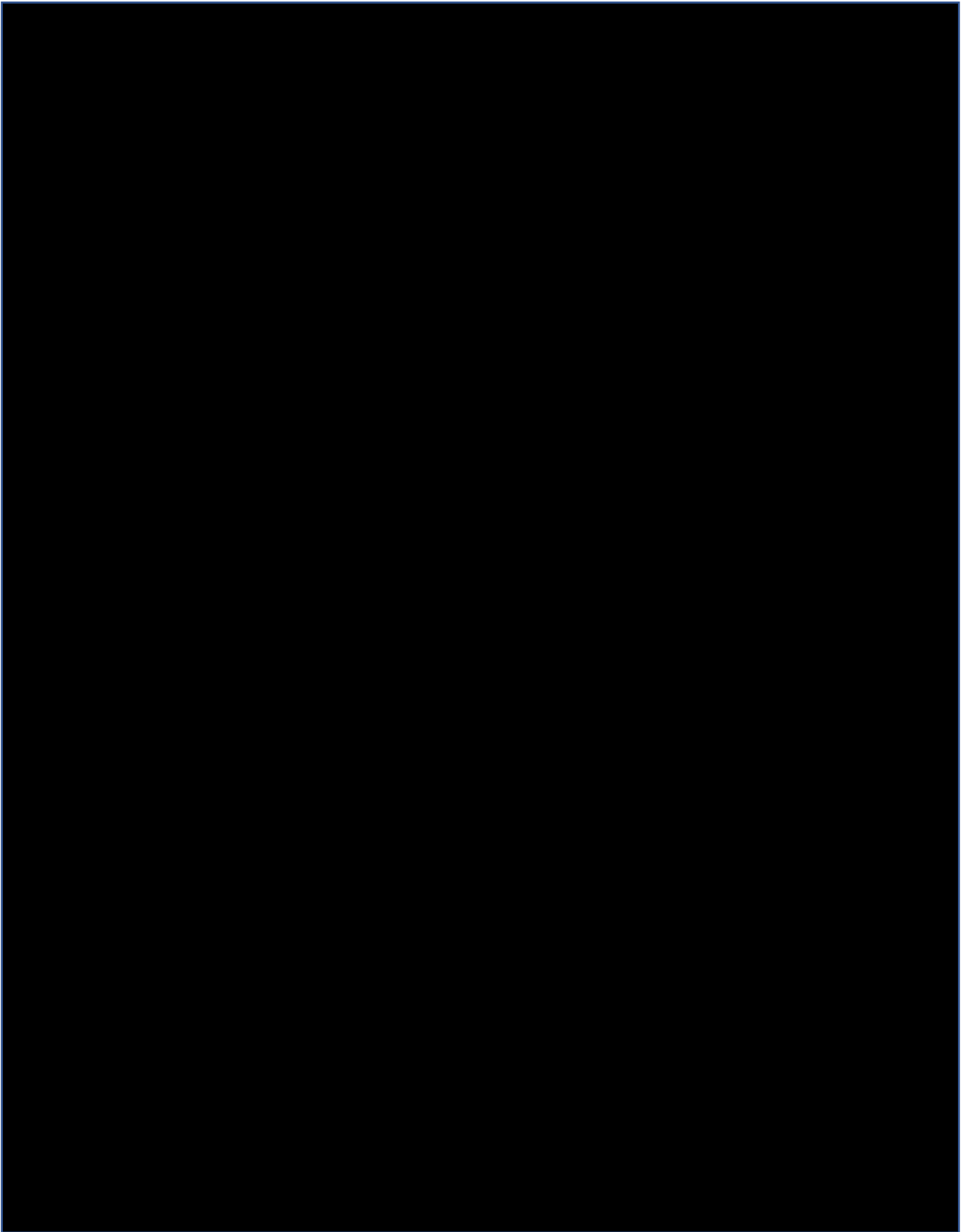


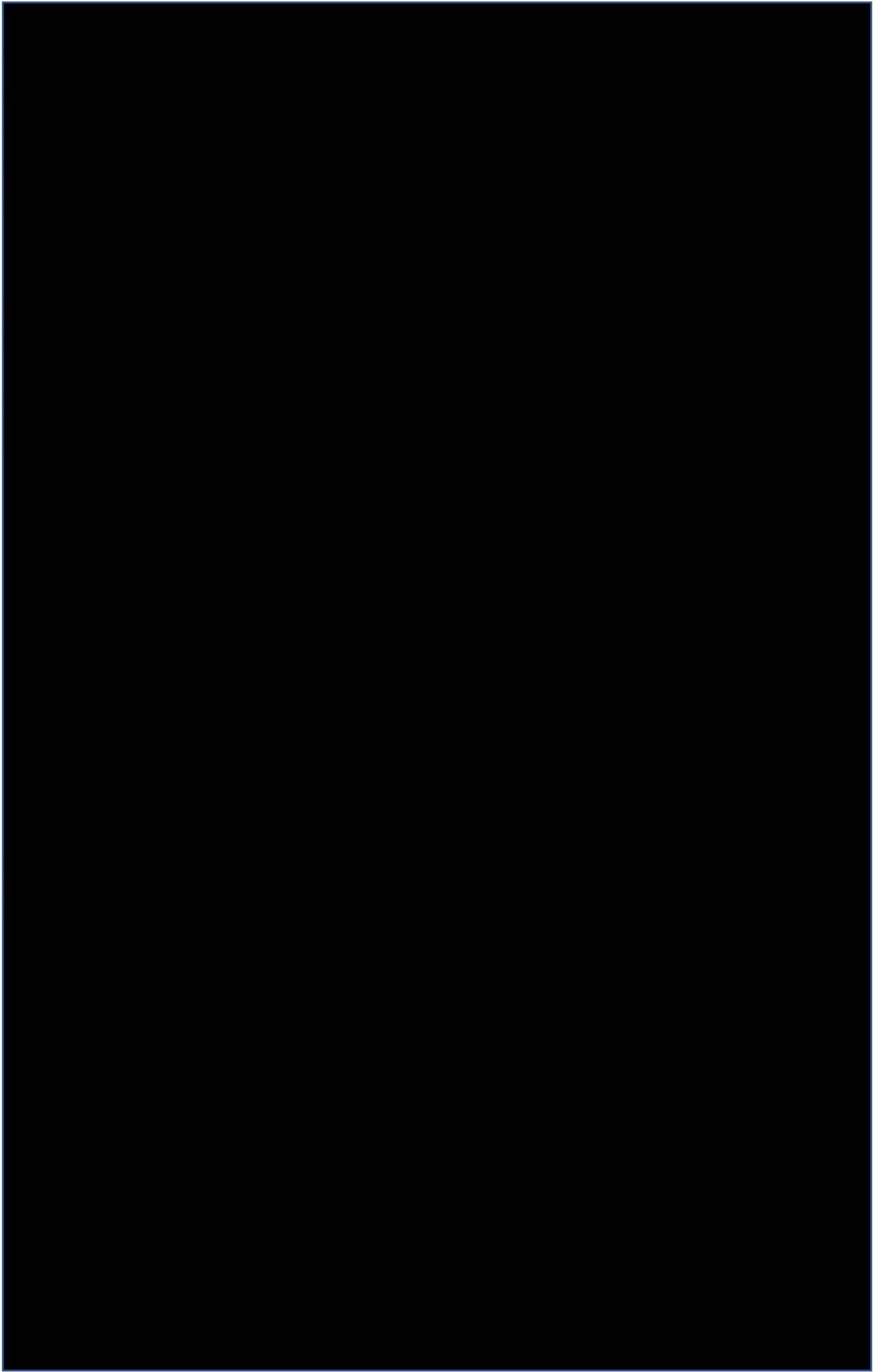
















# Attachment A - Contractor Statement Template

**NOTE:** this form is available online at <https://roads-waterways.transport.nsw.gov.au/documents/about/forms/45062893-contractor-statement-payment.pdf>

 <b>Transport for NSW</b>		<b>Contractor Statement</b>	
		Payment of Workers, Payroll Tax & Worker's Compensation Premiums	
<b>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).</b>		<small>Workers Compensation Insurance Certificate of Currency for the work period in question. Unless the contractor is exempt.</small> 	
<b>Details</b>			
Contractor's Legal Name:		<input type="text"/>	
Contractor's Trading / Business Name:		<input type="text"/>	
Contractor's ABN:		<input type="text"/> Contractor's ACN: <input type="text"/>	
Contractor's Address:		<input type="text"/>	
TfNSW Contract No:		Project/Contract Title: <input type="text"/>	
Description of Works:		<input type="text"/>	
Period of Work this Statement applies to (see Note 3):		From: <input type="text"/> To: <input type="text"/>	
Invoice or Payment Claim Numbers this applies to:		<input type="text"/>	
Invoice or Payment Claim Dates this Statement applies to:		<input type="text"/>	
<b>Declaration</b> <span style="float: right;">Tick one in each row</span>			
I declare that the following is true to the best of my knowledge and belief in respect of the Period of Work above:			
<input type="checkbox"/> All workers engaged by the Contractor in respect of the works have been paid all remuneration entitlements.			
<input type="checkbox"/> All workers compensation insurance premiums have been paid and <b>attached</b> is a true copy of a Certificate of Currency for workers compensation insurance valid for the period covered by this Statement; <b>or</b>		<input type="checkbox"/>	
<input type="checkbox"/> the Contractor is an exempt employer for workers compensation purposes (see Note 6);		<input type="checkbox"/>	
<input type="checkbox"/> 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; <b>or</b>		<input type="checkbox"/>	
<input type="checkbox"/> the Contractor is not required to be registered;		<input type="checkbox"/>	
<input type="checkbox"/> The Contractor has not engaged any subcontractors for the works the subject of this Statement, <b>or</b>		<input type="checkbox"/>	
<input type="checkbox"/> 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		<input type="checkbox"/>	
<input type="checkbox"/> 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):	
<input type="text"/>		<input type="text"/>	
Date:		Position / Job Title of Signatory (print - see Note 4):	
<input type="text"/>		<input type="text"/>	

(Electronic copy is available at: <http://home.rta.nsw.gov.au/forms/categories/contractandroadworks/45062893.pdf>)

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(see Notes on page 2)

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Workers Compensation Insurance Certificate of Currency for the work period, unless the contractor is exempt (note 6).

#### Notes

1. A Contractor is anyone who carries out work under a contract for TfNSW. References to "Subcontractor" and "Principal Contractor" in the legislation in Note 2 have been changed to "Contractor" and "TfNSW" for convenience.
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 laws allow TfNSW to withhold payment from a Contractor without any penalty unless and until the Contractor provides to TfNSW a Statement declaring that:
  - a. All workers compensation insurance premiums have been paid (or the Contractor is exempt); and
  - b. all employees have been paid; and
  - c. all payroll tax payable relating to the work has been paid or the Contractor is exempt.
3. A Statement is required for every Invoice/Payment Claim. The periods covered in each Statement must be sequential and leave no gap.
4. The person signing this declaration must be authorised by the Contractor either to sign this Statement or to sign statements of this kind and must be in a position to know the truth of the Statement. 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 TfNSW 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. 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.

#### Record Retention

TfNSW will keep a copy of this Statement for 7 years. The Contractor must obtain similar statements from its subcontractors and keep them 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 (see Note 2 for full legislation references).

#### 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.

( Electronic copy is available at: <http://home.rta.nsw.gov.au/forms/categories/contractandroadworks/45062893.pdf> )

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).

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



### 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.	<input type="checkbox"/>
• 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	<input type="checkbox"/>
• the Contractor is an exempt employer for workers compensation purposes (see Note 6);	<input type="checkbox"/>
• 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	<input type="checkbox"/>
• the Contractor is not required to be registered;	<input type="checkbox"/>
• The Contractor has not engaged any subcontractors for the works the subject of this Statement; or	<input type="checkbox"/>
• 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	<input type="checkbox"/>
• I am authorised to make this declaration and I am in a position to know the truth of its contents	<input type="checkbox"/>

Signature of Authorised Person:

Name of Signatory (print):

Date:

Position / Job Title of Signatory (print - see Note 4):

( Electronic copy is available at: <http://home.rta.nsw.gov.au/forms/categories/contractandroadworks/45062893.pdf> )

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(see Notes on page 2)

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## 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, Products and Environmental Liability Insurance	Annually for the duration of the contract plus the duration of any warranty or maintenance periods.	<p>(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below; is governed (b) by the law of New South Wales and subject to Australian jurisdictions as defined in clause 2 of the Definitions and Notes below; lists TfNSW,</p> <p>(c) Transport Asset Holding Entity of New South Wales (TAHE), Sydney Trains, NSW Trains, Subcontractors, all affected Authorities and other owners of land and assets located along the Site that interface with the Services which require insurance to be provided or procured by TfNSW as additional named insureds; and includes a cross</p> <p>(d) liability clause as defined in clause 3 of the Definitions and Notes below.</p>	Required if selected in the Contract Details
Motor Vehicle Comprehensive or Third Party Property Damage	Annually for the duration of the contract.	<p>(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below;</p> <p>(b) covers motor vehicles owned or used by the Contractor or its subcontractors directly or indirectly engaged in performance of the Services;</p> <p>(c) and 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;.</p>	Required if selected in the Contract Details
Professional Indemnity	<p>From time contract is awarded to completion of the contract plus 6 years following completion of the contract</p> <p>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</p>	<p>(a) Is an approved insurer as defined in clause 1 of the Definitions and Notes below;</p> <p>(b) a description of the risk covered by the policy; one</p> <p>(c) automatic restatement per period of insurance; and is governed by the law of New South Wales and subject to Australian jurisdiction as defined in</p> <p>(d) clause 2 of the Definitions and Notes below.</p>	Required if selected in the Contract Details

Workers Compensation	Annually.	As per relevant Workers Compensation legislation.	Required if selected in the Contract Details
Fire and Extraneous Perils including	Annually for the duration of the contract	(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below;	Required if selected in the Contract Details

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
Accidental Damage, Burglary, Theft and Transit Insurance (or similar Industrial Special Risks Insurance) whilst in the care, custody and control of the Service Provider.		(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; and (c) lists the Service Provider and all subcontractors for their respective rights, interests and liabilities as named insureds.	
Personal Accident & Illness	Minimum of 104 weeks		Required if selected in the Contract Details

Construction all risks	From the earlier of the Works commencing or time construction contract is awarded to the end of each Defects Liability Period.– covering TfNSW, Construction Manager and subcontractors and other parties as specified in the works contract	<ul style="list-style-type: none"> <li>(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below;</li> <li>(b) covers material damage in relation to Works, temporary works, form works and all other material as supplied in the Agreement (including TfNSW supplied materials, equipment, temporary buildings and the like, including all additional costs of reconstruction, rectification or repair);</li> <li>(c) lists the Supplier and all contractors and subcontractors for their respective rights, interests and liabilities as named insureds;</li> <li>(d) lists TfNSW, Transport Asset Holding Entity of New South Wales (TAHE), Sydney Trains, NSW Trains, Subcontractors, all affected Authorities and other owners of land and assets located along the Site that interface with the Services which require insurance to be provided or procured by TfNSW as additional named insureds;</li> <li>(e) includes a cross liability clause as defined in clause 3 of the Definitions and Notes below; and</li> <li>(f) 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.</li> </ul>	Required if selected in the Contract Details
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
Asbestos Liability Insurance	From the earlier of the Works commencing or time construction contract is awarded to the end of each Defects Liability Period	Asbestos insurance to cover bodily injury, disease, illness (including mental illness) and death, property damage and clean-up costs caused by, arising out of or related to asbestos arising out of or in connection with the carrying out of the Services.	Required if selected in the Contract Details
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 (d) The Comcover insurance scheme for the Australian Federal Government.</p> <p>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).</p>
2	<p>Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.</p>
3	<p>A Cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit under the policy</p>
4	<p>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).</p>