



Master Supply Agreement

Intelligent Congestion Management Program

Transport for NSW (ABN 18 804 239 602)

Cubic Transportation Systems (Australia) Pty Limited (ABN 82 003 617 561)

Contents

	Page
Part A Overview	2
1 Objectives	2
1.1 Definition of Objectives	2
1.2 Effect of the Objectives	2
1.3 Governance review	2
2 Structure of Agreement	3
2.1 Agreement structure	3
2.2 Modules and Statements of Work	3
3 Conditions precedent	4
3.1 Commencement of Agreement	4
3.2 Conditions Precedent	4
3.3 TfNSW's benefit	5
3.4 Time for satisfaction of Conditions Precedent	5
3.5 Upon satisfaction of Conditions Precedent	5
3.6 Failure to satisfy Conditions Precedent	5
4 Term	5
4.1 Initial Term	5
4.2 Further terms	6
4.3 SOWs	6
4.4 End of Term	6
5 Entities entitled to rely on Agreement	6
5.1 Supply for benefit of Eligible Customers	6
5.2 Business Change	7
Part B Delivery and Run	8
6 Program and Solution overview	8
6.1 The Enhanced Core Transport Management System	8

6.2	Delivery of future functionality	8
6.3	Phased delivery	9
6.4	Non-exclusive supply	9
6.5	Suitability of Environment	9
6.6	Option to take over Equipment and Software	9
7	General performance obligations	10
7.1	Obligation to supply	10
7.2	Volumes	11
7.3	Supplier responsibilities	11
7.4	Restriction on off-shoring	12
7.5	Quality Management Plan	13
8	Engagement with Other Suppliers	14
8.1	General	14
8.2	Lead role in delivery of overall Solution	14
8.3	Multi vendor environment	14
8.4	Principle of Fix First	16
8.5	Procurement of third party goods and services	16
9	Documentation	17
9.1	General	17
9.2	Procedures Manuals	17
10	Acceptance	17
10.1	General	17
10.2	Supplier responsibility	18
10.3	Review by TfNSW	18
10.4	Acceptance Certificates	18
10.5	Failure to satisfy Acceptance Tests	18
10.6	Project Documentation Approval Process	19
11	Timing	20

11.1	Timing	20
11.2	Milestones	20
11.3	Delays	20
11.4	Liquidated Damages	21
11.5	Not used	21
12	TfNSW Inputs	22
13	Performance Standards	23
13.1	Service Levels	23
13.2	Service Credits	24
13.3	Performance monitoring	24
13.4	Action Plans for failures	24
14	Continuous Improvement and Innovation	24
14.1	Philosophy	24
14.2	General	25
14.3	Application Changes	25
14.4	Roadmap	26
14.5	Technology Evolution	26
14.6	Innovation Forums	27
15	Disabling Code	27
16	Business Continuity	28
Part C	Resources	30
17	Supplier Personnel	30
17.1	Supplier Personnel to perform Services	30
17.2	Key Personnel	31
17.3	Conduct of background checks	31
17.4	Information about Personnel	32
17.5	Drugs and alcohol	32
17.6	Non-solicitation	33

17.7	Subcontractor personnel	33
18	Subcontracting	33
18.1	No subcontracting without approval	33
18.2	Supplier's responsibility	34
18.3	Novation of subcontracts	34
18.4	Termination of Subcontractors	35
19	Access	35
19.1	Access to TfNSW's premises or systems	35
19.2	Obligation to notify	36
19.3	Refusal of access	36
19.4	Workplace health and safety obligations	36
	Part D Financial Terms	38
20	Not used	38
21	Charges	38
21.1	Charges	38
21.2	Charges all inclusive	38
21.3	Taxes	38
21.4	Expenses	38
21.5	Most favoured pricing	38
22	Invoices and payment	39
22.1	Invoices	39
22.2	Payment	39
22.3	Disputed Amounts	39
22.4	Set Off	39
22.5	Late invoicing	39
23	GST	40
23.1	Recovery of GST	40
23.2	Time for payment of GST amount	40

23.3	Indemnity and reimbursement payments	40
23.4	Adjustment events	40
23.5	Interpretation	40
24	Benchmarking	41
24.1	Initiation of a benchmark	41
24.2	Selection of benchmarker	41
24.3	Benchmarking process	41
24.4	Benchmarking Report	42
24.5	Benchmarking dispute process	42
24.6	Implementation of Benchmarking Report	43
24.7	Costs of a benchmark	43
Part E	Governance and compliance	44
25	Governance	44
25.1	Governance model	44
25.2	Contract representatives	44
25.3	Authority	44
25.4	Reports	45
26	Change Control Procedure	45
27	Records and audit	45
27.1	Supplier to keep proper records	45
27.2	Audit	45
27.3	Security Audit	46
27.4	Special Audit	47
27.5	Costs and Remedying Non-compliance	47
28	Compliance	48
28.1	Compliance with Laws	48
28.2	Compliance with TfNSW Policies	49
28.3	Standards	49

28.4	Reputation	50
28.5	SME Participation Plan – Reporting and Compliance	50
28.6	Anti-bribery and anti-corruption	51
29	Probity Events	51
29.1	Probity Event Notice by Supplier	51
29.2	Probity Event Notice by TfNSW	51
29.3	Probity Investigations	51
29.4	Remedial action	51
30	Dispute Resolution	52
30.1	Disputes	52
30.2	Escalation	52
30.3	Mediation	53
30.4	Arbitration	53
30.5	No legal proceedings	54
30.6	Continuation of obligations	54
Part F	Information Handling	55
31	Confidentiality	55
31.1	Obligations of confidence	55
31.2	Permitted use and disclosures	55
31.3	Security	56
31.4	Publicity	56
32	Privacy	56
33	TfNSW Data	57
33.1	General	57
33.2	Backup of TfNSW Data	57
33.3	Security and confidentiality of the TfNSW Data	58
33.4	Restoration of lost TfNSW Data	59
33.5	Records and retention of TfNSW Data	59

34	Return of Information	59
35	GIPAA	60
36	Intellectual Property	60
36.1	System	60
36.2	Supplier Material	60
36.3	Created IP	62
36.4	Third Party Material	63
36.5	TfNSW Material	65
36.6	Moral Rights	65
36.7	Escrow	65
36.8	Supplier indemnity	66
36.9	Conduct of Supplier Infringement Claims	66
	Part G Non-performance	68
37	Action Plans	68
37.1	Preparation	68
37.2	Approval	68
37.3	Implementation	68
38	Suspension	69
39	Step in	70
39.1	TfNSW's right to take action	70
39.2	Supplier must co-operate	71
39.3	Payment of fees	71
39.4	Supplier liability	71
40	Force Majeure	71
40.1	Suspension of obligations	71
40.2	No relief	71
40.3	Responsibilities of the affected party	72
40.4	Agents and Subcontractors	72

40.5	No liability for failure to perform	72
40.6	Termination	72
41	Termination and expiry	72
41.1	Termination by TfNSW for cause	72
41.2	Termination by TfNSW for convenience	73
41.3	Termination by Supplier for cause	73
41.4	Partial Termination	74
41.5	Consequences of expiry or termination	74
41.6	Survival	75
42	Disengagement	75
42.1	Planning for Disengagement	75
42.2	Updating the Disengagement Plan	76
42.3	Disengagement Services	76
42.4	Fees for Disengagement Services	76
Part H Liability 78		
43	Assessment of risk	78
43.1	Due diligence	78
43.2	Reviews by TfNSW	78
44	Representations and warranties	78
44.1	Standard representations and warranties	78
44.2	Supplier's representations and warranties	79
44.3	Defects during the Warranty Period	81
44.4	Implied Warranties	81
45	Indemnities	81
46	Liability	82
46.1	Exclusion of consequential loss	82
46.2	Limitation of Liability	82
46.3	Exclusions From Liability Limitations	83

46.4	Civil Liability Act	83
46.5	Liability to Eligible Customers and the State of New South Wales	83
47	Insurance	84
47.1	Insurance Policies	84
47.2	Insurance requirements	84
47.3	Certificate of currency	84
48	Security	85
48.1	Financial Security	85
48.2	PPSA	85
Part I	Legal	86
49	Notices	86
49.1	Notice requirements	86
49.2	Notice takes effect	87
49.3	Deemed receipt	87
50	General	87
50.1	Definitions in the Glossary	87
50.2	Interpretation	88
50.3	No partnership or employment relationship	88
50.4	Further assurances	88
50.5	Prohibition and enforceability	88
50.6	Severability	88
50.7	Amendment	88
50.8	Waivers	89
50.9	Rights cumulative	89
50.10	Exercise of rights	89
50.11	Indemnities	89
50.12	Entire agreement	89

50.13 Governing law and submission to jurisdiction	89
50.14 Costs and expenses	90
50.15 Antecedent Breaches And Obligations	90
50.16 Assignment	90
50.17 Discontinuance of TfNSW or any Eligible Customer	90
50.18 To extent not excluded by Law	91
50.19 Time of essence	91
50.20 Counterparts	91
50.21 Attorneys	91
Schedule 1 Definitions and Interpretation	92
Schedule 2 Pricing Terms	119
Schedule 3 Performance Framework	120
Schedule 4 Governance and Management	121
Schedule 5 Disengagement	122
Schedule 6 Service Modules	123
Schedule 7 Reporting Requirements	124
Schedule 8 Change Control	125
Schedule 9 Templates	126
TfNSW Policies	127Schedule 10
Parent Company Guarantee	128Schedule 11
Financial Security	129Schedule 12
Escrow Deed	130Schedule 13
Subcontractor Deed	131Schedule 14
Execution page	132

Date:

Parties

- 1 **Transport for NSW (ABN 18 804 239 602)** of Level 1, 18 Lee Street, Chippendale NSW 2008 (**TfNSW**)
 - 2 **Cubic Transportation Systems (Australia) Pty Limited (ABN 82 003 617 561)** of Level 23, 477 Pitt Street, Sydney NSW 2000 (**Supplier**)
-

Background

- A TfNSW has operational control over public transport services in New South Wales. It is constituted as a corporation under the *Transport Administration Amendment Act 2010* (NSW) and is a NSW government agency.
- B TfNSW is undertaking the Intelligent Congestion Management Program (**ICMP**) to implement a new world class intelligent transport management solution to proactively manage congestion and assist in delivering seamless, safe and reliable customer journeys across all modes of transport in NSW.
- C On 8 November 2017, TfNSW issued a Request for Proposal (**RFP**) seeking a key strategic partner to enable the development and delivery of the ICMP. The scope of the RFP was the Enhanced Core Transport Management System.
- D The Supplier is a supplier of technology products and professional services, and provided a response to the RFP.
- E In reliance on the proposal documents described in Recital D, and other representations made by the Supplier to TfNSW in the course of discussions with TfNSW, TfNSW has decided to enter into this Agreement to engage the Supplier to design, develop, implement, support and maintain the Enhanced Core Transport Management System and integrate the Enhanced Core Transport Management System with the Customer Environment.
- F The ICMP contemplates further sourcing processes beyond the initial RFP. TfNSW may (but is not obliged to) also engage the Supplier, and if so engaged the Supplier must:
 - (i) supply additional Products and Services from time to time on the terms of Statements of Work to be entered into under this Agreement; and
 - (ii) act as systems integrator for the purposes of integrating the System with products and services procured by TfNSW from Other Suppliers in order to create the Solution.

The parties agree

Part A Overview

1 Objectives

1.1 Definition of Objectives

TfNSW's objectives in entering into this Agreement include:

- (a) establishing a “best of breed” solution which is world class, that is as good or better than any other transport management solution anywhere in the world;
 - (b) leading the planning and coordination for the proactive, real-time management of the NSW transport network;
 - (c) enabling seamless, safe and reliable journeys for NSW customers on a multi-modal basis across all modes of transport and with emergency services;
 - (d) support of optimal, relevant and timely decision-making and resource utilisation;
 - (e) enhancing information delivery channels to operators, stakeholders and customers; and
 - (f) achieving the Outcomes,
- (together, the **Objectives**).

1.2 Effect of the Objectives

- (a) The Supplier is not responsible for delivering the Objectives (other than the Outcomes), but must perform its obligations under this Agreement in a manner that supports the Objectives.
- (b) In interpreting and construing this Agreement, reference may be made to the Objectives:
 - (i) in determining TfNSW's intentions and objectives in entering into this Agreement; and
 - (ii) as an aid to the dispute resolution procedures set out in this Agreement.
- (c) For clarification, the Objectives are non-exhaustive and are not intended to:
 - (i) alter the plain meaning of the specific terms and conditions of this Agreement; or
 - (ii) impose obligations on TfNSW or the Supplier that are not otherwise provided for in this Agreement.

1.3 Governance review

- (a) As part of the meeting of the Executive Relationship Forum conducted under Schedule 4 (Governance and Management), at least once each Year the parties must review whether the performance of the Supplier under this Agreement during the previous Year was such that the Outcomes (including in particular the

innovation Outcome) were achieved and it supported the achievement of the Objectives.

- (b) If the Supplier has not achieved the Outcomes, the Supplier must prepare an Action Plan to ensure that the Outcomes are achieved and the Products are delivered and Services are performed in a manner that supports the achievement of the Objectives, in the forthcoming Year.
- (c) As part of the Executive Relationship Forum, the parties will discuss variations to the Outcomes and Objectives to reflect changes in the business environment and the parties' relationship since the Execution Date.

2 Structure of Agreement

2.1 Agreement structure

- (a) This Agreement consists of the following parts:
 - (i) clauses 1 (Objectives) to 50 (General), which apply to the supply of all Products and Services under this Agreement;
 - (ii) the Schedules, which apply to the supply of all Products and Services under this Agreement;
 - (iii) Modules, which apply to the supply of Products and Services under this Agreement only when selected in the SOW relating to those Products or Services;
 - (iv) any SOWs entered into in accordance with clause 2.2; and
 - (v) any document incorporated by reference in:
 - (A) a clause to this Agreement;
 - (B) a Schedule to this Agreement;
 - (C) a Module to this Agreement; or
 - (D) a SOW

(the Agreement).
- (b) If there is any inconsistency between the parts of this Agreement set out in paragraph (a), then the part listed earlier will prevail to the extent of that inconsistency.

2.2 Modules and Statements of Work

- (a) This Agreement is structured as a master agreement under which TfNSW may engage the Supplier to provide Products and Services under one or more SOWs.
- (b) Additional terms and conditions specific to the supply of different types of Products and Services are set out in the Modules. Each SOW must state which Modules apply to it. Once a Module is selected in a SOW, then all of the terms in that

Module apply to and are incorporated into that SOW, except to the extent that the SOW expressly states that particular terms of the Module do not apply.

- (c) The clauses and Schedules to this Agreement apply to each SOW.
- (d) If TfNSW wishes to obtain any Products or Services from the Supplier, TfNSW may:
 - (i) prepare and submit a draft SOW to the Supplier; or
 - (ii) request the Supplier to prepare and submit a draft SOW,provided that each draft SOW must be in the form set out at Schedule 9 (Templates), or such other form as is agreed between the parties.
- (e) The Supplier must, within 10 Business Days (or such longer period as requested by the Supplier and agreed to by TfNSW), provide to TfNSW:
 - (i) in the case of paragraph (d)(i), the Supplier's proposed amendments to the draft SOW; or
 - (ii) in the case of paragraph (d)(ii), a draft SOW.
- (f) If TfNSW notifies the Supplier that it requires any changes to the draft SOW, then the Supplier must within 5 Business Days re-submit the draft SOW to TfNSW to incorporate such changes.
- (g) Following execution of a SOW, the SOW will be deemed to be incorporated into this Agreement and will be subject to the terms and conditions of:
 - (i) the clauses of this Agreement and the Schedules; and
 - (ii) the relevant Modules selected in the SOW.
- (h) The Supplier has no obligation to provide the Products and Services (and TfNSW will have no liability to pay any Charges for such Products and Services) unless those Products and Services are described in a SOW that has been duly executed by the parties.

3 Conditions precedent

3.1 Commencement of Agreement

- (a) Subject to clause 3.1(b), this Agreement does not commence until each of the Conditions Precedent has been satisfied or waived in accordance with this clause 3.
- (b) The following clauses of this Agreement commence on the Execution Date: clauses 32, 31, 33, 34, 35, 36, 44, 50 and Schedule 1 (Definitions and Interpretation).

3.2 Conditions Precedent

This Agreement is conditional on the Supplier delivering to TfNSW:

- (a) an original Parent Company Guarantee properly executed by all parties other than TfNSW and unconditionally released to TfNSW for execution and dating;
 - (b) an original Financial Security properly executed by all parties; and
 - (c) copies of certificates of currency proving that the policies of insurance required under this Agreement have been effected and are current,
- (the **Conditions Precedent**).

3.3 TfNSW's benefit

Each of the Conditions Precedent is for the sole benefit of TfNSW and may only be waived in writing by TfNSW in its absolute discretion.

3.4 Time for satisfaction of Conditions Precedent

- (a) The Supplier must satisfy the Conditions Precedent on or before the Cut Off Date.
- (b) The Supplier must promptly notify TfNSW if it discovers that any Condition Precedent is satisfied or becomes incapable of being satisfied.

3.5 Upon satisfaction of Conditions Precedent

TfNSW will notify the Supplier of the date on which it is satisfied that all Conditions Precedent have either occurred or been unconditionally waived by TfNSW.

3.6 Failure to satisfy Conditions Precedent

- (a) If any Condition Precedent is not satisfied on or before the Cut Off Date, then:
 - (i) TfNSW may, by giving notice to the Supplier, terminate this Agreement;
 - (ii) the Supplier will indemnify TfNSW against all Losses suffered or incurred by TfNSW arising out of or in connection with the failure of the Conditions Precedent to be so satisfied; and
 - (iii) the Supplier will not be entitled to bring any Claim against TfNSW arising out of or in connection with the failure of the Conditions Precedent to be so satisfied or the Project.
- (b) If TfNSW terminates this Agreement, this Agreement has no further effect and neither party is liable to the other, except in respect of a breach of clause 3.4.

4 Term

4.1 Initial Term

This Agreement commences on the Commencement Date and continues until the Expiry Date, unless it is terminated earlier or extended under clause 4.2 or an extension to an Initial SOW Term extends beyond the Expiry Date under clause 4.2.

4.2 Further terms

- (a) TfNSW may extend this Agreement on the same terms and conditions:
 - (i) for up to 3 years after the Expiry Date, by giving the Supplier at least 3 months' notice before the Expiry Date (**the First Further Term**); and
 - (ii) for up to a further 3 years after the First Further Term by giving the Supplier at least 3 months' notice before the expiry of the First Further Term (**the Second Further Term**).
- (b) The Supplier acknowledges that one of the factors that TfNSW will take into account in determining whether or not to exercise an option under this clause 4.2 will be whether the Supplier has performed its obligations in a manner that has achieved the Outcomes (including, in particular, the innovation Outcome) and supported the achievement of the Objectives.

4.3 SOWs

- (a) Each SOW commences on the SOW Commencement Date and, unless terminated earlier or extended under clause 4.2 continues for the Initial SOW Term.
- (b) Where specified in a SOW, TfNSW may extend the term of that SOW for one or more Extended SOW Term(s) by following the process set out in that SOW.

4.4 End of Term

The Supplier must give TfNSW a notice:

- (a) 6 months before the Expiry Date, the end of the First Further Term (if relevant) and the end of the Second Further Term (if relevant), advising TfNSW of the end of the Term; and
- (b) if different from the dates in paragraph (a), 6 months before the expiry date of an Initial SOW Term and any Extended SOW Term(s) (if relevant), advising TfNSW of the end of the term for a SOW.

5 Entities entitled to rely on Agreement

5.1 Supply for benefit of Eligible Customers

The Supplier acknowledges and agrees that:

- (a) the Products and Services supplied under this Agreement are to be provided to and for the benefit of TfNSW and the Eligible Customers as required by TfNSW from time to time;
- (b) each of TfNSW and the Eligible Customers may make use of the Products and Services under and in accordance with this Agreement from time to time;
- (c) any obligation on the Supplier under this Agreement to perform an act or supply any Product or Service is an obligation to perform that act or supply that Product or Service for the benefit of TfNSW and/or any Eligible Customer as required by TfNSW from time to time;

- (d) notwithstanding the foregoing, it must only accept instructions to supply the Products or Services or to vary any of the Products or Services from TfNSW, and not from any Eligible Customer;
- (e) a breach of this Agreement or negligence by the Supplier in relation to the performance or failure to perform this Agreement may result in a Loss being suffered by an Eligible Customer;
- (f) in addition to entering into this Agreement in its own right, TfNSW is acting as the trustee of the benefits expressed to be given to each Eligible Customer under this Agreement; and
- (g) any obligation of TNSW under this Agreement may be performed by TfNSW or any of the Eligible Customers.

5.2 Business Change

- (a) The Supplier acknowledges and agrees that TfNSW may by giving notice to the Supplier:
 - (i) use the Products and Services (including for the benefit of an Eligible Customer);
 - (ii) sublicense or permit one or more persons to use any of the Products or Services;
 - (iii) assign some or all of its rights under this Agreement to one or more persons;
 - (iv) novate all or part of this Agreement to one or more persons; or
 - (v) require the Supplier to supply one or more of the Products or Services directly to any other Eligible Customer,for the purposes of facilitating or implementing a Business Change.
- (b) The Supplier consents to any novation or assignment notified to the Supplier in accordance with clause 5.2(a).
- (c) The Supplier must, on request by TfNSW, do all things reasonably necessary to:
 - (i) facilitate a Business Change; and
 - (ii) give effect to or implement any of the arrangements contemplated in clause 5.2(a) (including promptly executing all necessary documents and granting all necessary rights).
- (d) Any assistance required by TfNSW from the Supplier in connection with a Business Change in addition to the Supplier's obligations in clause 5.2(c) will be subject to the parties agreeing a Change Request.
- (e) In addition to any other rights that TfNSW has, TfNSW may disclose the terms of this Agreement and any Confidential Information of the Supplier to any Eligible Customer or any adviser or personnel of any such person for the purposes of facilitating or implementing a Business Change.

Part B Delivery and Run

6 Program and Solution overview

6.1 The Enhanced Core Transport Management System

- (a) The Products and Services that make up the Enhanced Core Transport Management System are described in the Initial SOW.
- (b) The Supplier must supply and deliver the Enhanced Core Transport Management System, and provide Systems Integration Services so that the Enhanced Core Transport Management System is integrated with the Customer Environment so as to meet the Customer Requirements and achieve Acceptance by the date required under the Initial SOW and this Agreement.

6.2 Delivery of future functionality

- (a) The ICMP contemplates that the Solution will in the future incorporate additional or enhanced capabilities beyond the Enhanced Core Transport Management System (**Future Functionality**). The Future Functionality may include, for example:
 - (i) integrated planning;
 - (ii) situational awareness;
 - (iii) operational decisions;
 - (iv) proactive network management; and/or
 - (v) information delivery.
- (b) Some or all of the Future Functionality may (at TfNSW's discretion) be delivered under an alliance agreement or other collaborative arrangement.
- (c) TfNSW may, but is not obliged to, procure additional Products and Services from the Supplier under future SOWs in order to deliver Future Functionality. The Supplier must supply and deliver the any Products and Services specified in a SOW, and (if required by the SOW) provide Systems Integration Services so that those Products and Services are integrated with the Customer Environment so as to meet the Customer Requirements and achieve Acceptance by the date required under the SOW and this Agreement.
- (d) Alternatively TfNSW may procure products and services from Other Suppliers in order to deliver Future Functionality. Where TfNSW procures Future Functionality from Other Suppliers as part of the Solution, if requested by TfNSW the Supplier must:
 - (i) take a lead role working with TfNSW and the Other Suppliers in implementing that Future Functionality in accordance with clause 8; and
 - (ii) provide Systems Integration Services on the terms of Module 6A (Delivery Services) for a price to be calculated in accordance with Schedule 2 (Pricing Terms), and otherwise on terms to be agreed in a SOW.

6.3 Phased delivery

- (a) Each element of the System and Solution may be delivered in a number of Phases. These may include, for example, separate Phases for the development of more detailed documents such as detailed design documentation and the implementation of the Products and Services. Where this is the case, the Phases will be described in a SOW.
- (b) Where there are Phases, the Supplier must not commence work on any subsequent Phase unless and until TfNSW has given its written consent to such work commencing.
- (c) TfNSW is under no obligation to give its consent under paragraph (b). TfNSW may elect not to proceed with a Phase, by terminating the SOW (or part thereof) in respect of that Phase, with immediate effect, by notice to the Supplier.
- (d) As at the Commencement Date, the Enhanced Core Transport Management System will be delivered over the Phases described in the Initial SOW.

6.4 Non-exclusive supply

- (a) The Supplier is a non-exclusive supplier of the Products and Services to TfNSW.
- (b) Nothing in this Agreement shall be construed so as to imply that the Supplier has the right to be the sole supplier to TfNSW of services or products in the nature of the Products or Services. In particular, TfNSW may procure further products or services relating to the System, Solution or ICMP from any party and may do so at any time without first referring to the Supplier.
- (c) TfNSW is under no obligation under this Agreement to acquire any minimum volumes of Products or Services or meet any minimum level of Charges.

6.5 Suitability of Environment

- (a) During the preparation of each SOW, the Supplier must identify the components of the environment (including Equipment, Software and peripherals) on which the System and any Deliverables are to be installed, accessed, used or be interoperable with and specify them in the SOW (the **Specified Operating Environment**).
- (b) The Supplier represents and warrants to TfNSW that:
 - (i) the Specified Operating Environment will enable the System and any Products to run and meet the Customer Requirements and Specifications and other requirements of this Agreement; and
 - (ii) the Specified Operating Environment, as detailed in the SOW, is and will be appropriate, suitable and fit for the purpose of TfNSW operating the System.

6.6 Option to take over Equipment and Software

- (a) This clause 6.6 does not apply in respect of Equipment that is used by the Supplier to provide any Services under an "as-a-service" model, unless such Equipment is physically located at TfNSW's premises (including any data centre used by TfNSW).

- (b) Where the ownership or lease of any item of Equipment or the licence for any item of Software used to provide the Services or the System is held by the Supplier, TfNSW may elect at any time during the Term (including any Disengagement Period) by notice to the Supplier to take:
 - (i) ownership of that item of Equipment;
 - (ii) an assignment or novation of the lease for that item of Equipment;
 - (iii) an assignment or novation of the licence for that item of Software.
- (c) For Supplier owned or leased Equipment, the Supplier must sell (or procure the sale of) that Equipment to TfNSW (or its nominee) at a price to be calculated in accordance with Schedule 2 (Pricing Terms).
- (d) Title to the Supplier-owned Equipment purchased by TfNSW or the Supplier-leased Equipment and licensed Software transferred to TfNSW under clauses 6.6(a) and 6.6(c) will pass to TfNSW (or its nominee) when:
 - (i) in relation to Supplier owned Equipment: TfNSW (or its nominee) has paid the Supplier in full for that purchased Equipment; and
 - (ii) in relation to the Supplier leased Equipment and licensed Software: TfNSW (or its nominee) has paid the relevant lease costs or other amounts relating to that Leased Equipment or Software.
- (e) In relation to third party Software licences, if the Supplier is unable to procure an assignment or novation on terms satisfactory to TfNSW, the Supplier must procure for TfNSW licences on terms no less favourable to TfNSW.
- (f) The Supplier must:
 - (i) promptly perform all actions necessary to effect such novation or procurement of new licences; and
 - (ii) pay any novation and procurement costs.
- (g) The Supplier must transfer the purchased Equipment and Software to TfNSW free of all encumbrances.
- (h) The Supplier must provide to TfNSW, at the time of delivery of each item of purchased or leased Equipment all associated documentation and internal operating Software that is resident on that Equipment and can be transferred with that Equipment.
- (i) If requested to do so by TfNSW, the Supplier must offer to sell to TfNSW or its nominee any other Material or property that is in current use to supply the Services at its then market value, as determined by independent market valuation.

7 General performance obligations

7.1 Obligation to supply

The Supplier must:

- (a) provide the Products and Services to TfNSW in accordance with this Agreement, including in accordance with each SOW;
- (b) ensure that each Product and Service:
 - (i) is consistent with and meets the Customer Requirements and Specifications;
 - (ii) is consistent with, and interoperable with (where applicable), each of the other Products and Services and the Customer Environment;
 - (iii) meets the applicable Acceptance Criteria;
 - (iv) complies with World's Best Practice;
 - (v) complies with the standards set out in ITIL and any subsequent or successor standard;
 - (vi) in respect of the Services only, complies with any reasonable directions of TfNSW; and
 - (vii) otherwise complies with this Agreement; and
- (c) perform all services, functions and responsibilities not specifically described in this Agreement but which are necessary or incidental to, or customary for or generally considered in the industry to be part of, the provision of the Products and Services contemplated by this Agreement.

7.2 Volumes

- (a) The Supplier must increase or decrease the supply of the Services in accordance with TfNSW's requirements from time to time.
- (b) Nothing in this Agreement requires TfNSW to purchase any minimum quantity or value of Products or Services from the Supplier.
- (c) If TfNSW forecasts its anticipated demand for the Products or Services, such forecasts are indicative only. TfNSW will not be liable to the Supplier if any forecast is not met, for whatever reason.

7.3 Supplier responsibilities

The Supplier must:

- (a) work with TfNSW in an efficient and co-ordinated manner;
- (b) take all reasonable steps to effectively manage TfNSW and Other Suppliers in respect of any TfNSW Inputs;
- (c) not adversely affect any TfNSW systems in any way without TfNSW's prior written consent;
- (d) ensure that it maintains appropriate resources to fulfil its obligations under this Agreement;

- (e) maintain all authorisations, permits and licences required to provide the Products and Services and otherwise perform its obligations under this Agreement, and produce evidence of such to TfNSW upon request;
- (f) provide TfNSW with all information required for the proper enjoyment of the Products and Services, and such further information as TfNSW may reasonably request; and
- (g) control, co-ordinate, supervise, direct and complete all activities necessary to provide the Products and Services.

7.4 Restriction on off-shoring

- (a) The Supplier must not perform any Services or supply any Products from or at a location outside of Australia or NSW without TfNSW's prior written consent.
- (b) The Supplier must not transfer, take or send TfNSW Data which is a State Record or Personal Information outside the jurisdiction of New South Wales, Australia, without TfNSW's prior written consent.
- (c) The Supplier must notify TfNSW if it intends to perform any of the Services outside of Australia or NSW prior to commencing those Services. In its notification the Supplier must provide TfNSW with any information that TfNSW requires in order to assess the risks to TfNSW in implementing the proposed off-shoring including:
 - (i) details of the proposed offshoring;
 - (ii) details of the proposed location and operations including organisational capability and evidence that the proposed Supplier Personnel who will have responsibility for performance of the Services are suitably skilled;
 - (iii) the nature of the Services to be performed offshore;
 - (iv) evidence that the technology, security measures, systems and processes to be used at the proposed offshore facility will be sufficient to meet the requirements of this Agreement and compatible with TfNSW's systems and processes; and
 - (v) if required by TfNSW, an independent supply chain audit of such off-shore performance.
- (d) TfNSW may require access to any proposed offshore facility as a condition of providing consent under this clause 7.4.
- (e) Without limiting clause 7.4(a), TfNSW will not provide consent to a proposed offshoring if TfNSW considers that:
 - (i) the proposed offshoring would breach or cause TfNSW to breach any proposed or existing Law or TfNSW regulatory obligation or be inconsistent with any TfNSW Policy;
 - (ii) any concerns of any Government Authority relating to the proposed offshoring have not been addressed to the applicable Government Authority's satisfaction; or

- (iii) the proposed offshoring will adversely impact the delivery of services to customers, the customer experience or the business of TfNSW or any Eligible Customer.
- (f) The Supplier is not discharged from any obligation or liability under this Agreement by an approval granted under this clause 7.4 and must ensure that it complies with the terms of this Agreement with respect to the approved offshore Services.
- (g) The Supplier must, prior to and, during and after the implementation of any offshoring work with TfNSW to mitigate any risks to TfNSW.
- (h) TfNSW will not be required to pay any costs, Charges or expenses associated with any offshoring, and the Supplier will pay any reasonable costs and expenses incurred by TfNSW in connection with any approved offshoring including any costs associated with TfNSW obtaining Government Authority approvals to effect such offshoring.
- (i) Where following the approval of a proposed offshoring:
 - (i) the Supplier is in breach of any term of this Agreement (including any Performance Measure);
 - (ii) such breach has a material adverse impact on TfNSW; and
 - (iii) there are reasonable grounds for TfNSW to believe that the breach has occurred as a result of the offshoring,

TfNSW may, without prejudice to any other rights or remedies it may have under this Agreement or at Law, require that the relevant offshored Services be provided from NSW until such time as the Supplier is able to provide to TfNSW an Action Plan for continued provision of the Services from offshore that is reasonably satisfactory to TfNSW.

7.5 Quality Management Plan

- (a) The Supplier must:
 - (i) provide the Products and Services in accordance with the Quality Management Plan; and
 - (ii) ensure that the Quality Management Plan is and will remain in accordance with the standards set out in the relevant SOW.
- (b) The Supplier must:
 - (i) at its own cost, have its compliance with the Quality Management Plan audited by a third party approved by TfNSW once every 12 months, unless TfNSW has reason to suspect that the Supplier is not complying with its obligations in relation to the Quality Management Plan, in which case TfNSW may require an additional audits to be performed;
 - (ii) permit TfNSW's Representatives to be present during such audit; and
 - (iii) deliver a copy of the auditor's report to TfNSW within 5 Business Days of receipt of the auditor's report.

- (c) TfNSW has the right, at any time, to audit at its own cost the Supplier's compliance with the Quality Management Plan.
- (d) If an audit performed by TfNSW reveals that the Supplier is not materially complying with the Quality Management Plan:
 - (i) the Supplier must reimburse TfNSW for its reasonable costs of performing such audit;
 - (ii) TfNSW will notify the Supplier of the areas of non-conformance with the Quality Management Plan identified through the audit; and
 - (iii) if required by TfNSW, the Supplier must provide an Action Plan to remedy any areas of non-conformance with the Quality Management Plan identified through the audit.

8 Engagement with Other Suppliers

8.1 General

Nothing in this clause 8 (Engagement with Other Suppliers) limits the Supplier's obligation to provide any Systems Integration Services or other Services under a SOW.

8.2 Lead role in delivery of overall Solution

- (a) As the provider of the Enhanced Core Transport Management System, the Supplier is a strategic partner of TfNSW and has a lead role in the delivery of the overall Solution.
- (b) As part of that lead role, the Supplier must:
 - (i) if requested by TfNSW and with the assistance of TfNSW, manage the performance of Other Suppliers;
 - (ii) advise TfNSW from time to time of any issues they are aware of with supply by any Other Suppliers,

as required to assist the Other Suppliers to effectively and efficiently provide goods and services to TfNSW that are related to the overall Solution. For clarity, this paragraph (b) does not make the Supplier liable for the performance or non-performance of any Other Suppliers

8.3 Multi vendor environment

- (a) The Supplier acknowledges that:
 - (i) TfNSW has, or may have, in place agreements with a number of Other Suppliers for the provision of goods or services; and
 - (ii) in order for TfNSW to receive the benefit of the System and Solution, it is essential that the Supplier actively collaborates and co-operates with TfNSW and Other Suppliers in relation to the performance of the Supplier's obligations under this Agreement.

- (b) The parties acknowledge that it is necessary that the Supplier, TfNSW and Other Suppliers perform their respective obligations in a coordinated manner so that the Products and the Services are delivered in accordance with this Agreement.
- (c) The Supplier must:
 - (i) provide assistance and co-operation (including relevant information) to TfNSW and Other Suppliers including:
 - (A) as reasonably necessary to enable TfNSW and Other Suppliers to perform the TfNSW Inputs;
 - (B) agreeing on procedures with TfNSW and Other Suppliers for the division of responsibilities in relation to services that may overlap between the Supplier and Other Suppliers; and
 - (C) the provision of reasonable access to documentation and other materials of the Supplier which are used in the performance of the Services that are necessary for TfNSW and Other Suppliers to provide goods and services to TfNSW;
 - (ii) provide reasonable assistance in relation to the Supplier's knowledge and other information in the possession or control of the Supplier in respect of the System, Solution or the Services, as reasonably required by TfNSW including in relation to any action (including legal action) taken by TfNSW against Other Suppliers;
 - (iii) provide such assistance to the TfNSW and Other Suppliers as is necessary to:
 - (A) connect or interface any Equipment or Software to; or
 - (B) make any Equipment or the output of any services compatible with, the Products or Services or the Supplier's facilities or systems used to provide the Products or Services;
 - (iv) provide TfNSW and Other Suppliers with reasonable assistance to enable the coordinated resolution of incidents, problems and management of Change Proposals and SOW Changes;
 - (v) provide TfNSW and Other Suppliers with reasonable access to individual Supplier Personnel;
 - (vi) participate in training and other familiarisation processes, as requested or provided by TfNSW, to facilitate the Supplier obtaining the knowledge necessary to receive or use goods or services provided by TfNSW and Other Suppliers;
 - (vii) provide TfNSW with assistance as reasonably necessary to assist TfNSW in facilitating resolution of disputes involving Other Suppliers; and
 - (viii) in performing its obligations under this Agreement, avoid delaying TfNSW and Other Suppliers in their provision of goods or services.

8.4 Principle of Fix First

- (a) Without prejudice to its other obligations in this Agreement, the Supplier acknowledges and agrees to perform its obligations under this Agreement and the Services in accordance with the principle of “fix first”.
- (b) “Fix first” means that where an incident or issue occurs which has (or has the potential to have) an adverse impact on the Solution, the System, the Services or TfNSW, the Supplier must:
 - (i) advise TfNSW as soon as it becomes aware of the incident or issue, even if the incident or issue is not directly under the control of the Supplier;
 - (ii) use its best endeavours to resolve the incident or issue in accordance with this Agreement;
 - (iii) provide TfNSW and/or any Other Supplier all reasonable assistance in connection with the investigation, diagnosis and resolution of the incident or issue;
 - (iv) maintain continuous contact with TfNSW as necessary to ensure that there is no delay in the investigation, diagnosis and resolution of the incident or issue; and
 - (v) coordinate any action it takes with TfNSW Personnel and third party personnel as necessary to ensure a coordinated approach to the investigation, diagnosis and resolution of the incident or issue.

8.5 Procurement of third party goods and services

- (a) If:
 - (i) under a SOW, the Supplier is required to procure any goods or services (including Software) from a third party; and
 - (ii) there is an existing agreement between an Eligible Customer and such third party in respect of such goods and services, including a NSW government “whole of government arrangement”,then TfNSW may direct the Supplier to procure such goods or services under the existing agreement between the relevant Eligible Customer and the third party.
- (b) From time to time, TfNSW may request that the Supplier use best endeavour to:
 - (i) obtain goods or services that may be available from a third party supplier at prices more favourable than may otherwise be available to TfNSW directly; and
 - (ii) make such goods or services available to TfNSW under this Agreement.
- (c) The Supplier must notify TfNSW from time to time of any relationships that the Supplier has with such third party suppliers that may be of benefit to TfNSW in this respect.

9 Documentation

9.1 General

- (a) The Supplier must, by the applicable date specified in the SOW develop and deliver to TfNSW the Documentation.
- (b) The Supplier must deliver the Documentation to TfNSW in electronic form or such other form agreed by the parties in writing.
- (c) The Supplier must ensure that:
 - (i) the Documentation contains sufficient information to enable TfNSW to properly use the System;
 - (ii) the Documentation contains sufficient information to enable TfNSW to train others with the requisite industry skills to use the System; and
 - (iii) the Documentation otherwise meets the requirements set out in this Agreement including the relevant SOW.

9.2 Procedures Manuals

- (a) The Supplier must develop a procedures manual which documents and comprises a suite of processes, procedures and standards for management and delivery of the System (**Procedures Manual**). The Procedures Manual must align with TfNSW Policies. All processes and procedures, and any updates to them, must be presented to TfNSW for approval prior to being implemented by the Supplier.
- (b) All documentation related to the System must be referenced in the Procedures Manual and all versions of such must be held within TfNSW's document management system, as notified by TfNSW from time to time.
- (c) The Supplier must work with TfNSW and any Other Supplier to ensure that the processes and procedures provide a seamless service to TfNSW.
- (d) If TfNSW requests a change to any process or procedure, the Supplier must within a reasonable time (not to exceed 5 Business Days) implement the requested change and provide an updated version of the process or procedure to TfNSW for its approval.
- (e) The Supplier must maintain and keep the Procedures Manual current and ensure that TfNSW is supplied with an electronic copy of the Procedures Manual within 5 Business Days of any changes being approved by TfNSW.

10 Acceptance

10.1 General

- (a) The details regarding the Acceptance Tests (including relevant Acceptance Criteria) that will apply to particular Products and Services are set out in Module 6E (Testing Services) to this Agreement and will be set out in the applicable SOW.

- (b) The Supplier must ensure that each Product and Service that is subject to Acceptance Testing achieves Acceptance by the date required in the relevant SOW or Project Management Plan.
- (c) For the avoidance of doubt, any Documentation may be subject to Acceptance in accordance with this clause 10 if so specified in a SOW, otherwise Documentation will be subject to approval in accordance with the Project Documentation Approval Process.

10.2 Supplier responsibility

- (a) Before the Supplier submits a Product or Service to TfNSW for Acceptance, the Supplier must conduct comprehensive internal quality control measures to ensure that that Product or Service fully conforms to the Customer Requirements and Specifications and the requirements of this Agreement.
- (b) The Supplier must provide TfNSW with a written copy of the results of any testing it performs under paragraph (a) when the Supplier submits the relevant Product or Service to TfNSW for Acceptance.

10.3 Review by TfNSW

- (a) Following submission of a Product or Service for Acceptance, the Supplier must promptly perform the Acceptance Tests in relation to that Product or Service (unless otherwise requested by TfNSW).
- (b) TfNSW may observe any or all of the Acceptance Tests.

10.4 Acceptance Certificates

- (a) TfNSW will provide the Supplier with an Acceptance Certificate for the relevant Product or Service within 10 Business Days following the successful completion of Acceptance Tests to TfNSW's satisfaction. The date of the Acceptance Certificate will be the Acceptance Date for that Deliverable.
- (b) No Product or Service will be deemed to have been accepted by TfNSW until TfNSW has issued an Acceptance Certificate in relation to that Product or Service.

10.5 Failure to satisfy Acceptance Tests

- (a) If a Product or Service fails to pass any Acceptance Tests, TfNSW may:
 - (i) require the Supplier to rectify or replace the Product or Service (at its own cost) within 5 Business Days (or such other period as may be agreed between the parties) and the process in this clause 10 (Acceptance) will be repeated for such rectified or replaced Product or Service;
 - (ii) provide an Acceptance Certificate in relation to the Product or Service subject to the Supplier rectifying any Defects identified by TfNSW within the period specified by TfNSW; or
 - (iii) provide an Acceptance Certificate in relation to the Product or Service on an "as is" basis subject to the parties agreeing an appropriate reduction to the Charges in relation to the Product or Service.

- (b) The failure of a Product or Service to pass Acceptance Tests on 3 or more occasions constitutes a material breach of this Agreement which is not capable of being remedied under clause 41.1(a)(ii), provided that TfNSW may not exercise its right to terminate under clause 41.1(a)(ii) unless:
 - (i) the Executive Relationship Forum has been convened within 10 Business Days of the last occurring failed Acceptance Test and the parties have not agreed how to resolve the matter at that Executive Relationship Forum; or
 - (ii) the Executive Relationship Forum does not meet within such 10 Business Day period.

10.6 Project Documentation Approval Process

- (a) The Supplier must ensure that the Project Documentation and any other documentary Deliverable complies with this Agreement.
- (b) Within 15 Business Days following submission by the Supplier of a Project Document or other documentary Deliverable, TfNSW will notify the Supplier of any comments on the Project Document or other documentary Deliverable. For clarification, whilst TfNSW does not propose to review Project Document or other documentary Deliverable, TfNSW reserves the right to reject any Project Document or other documentary Deliverable that is not in accordance with this Agreement.
- (c) The Supplier must, within 10 Business Days or such longer period of time specified in writing by TfNSW, after receipt of a notice from TfNSW:
 - (i) under clause 10.6(b), amend the relevant Project Document or other documentary Deliverable having regard to comments provided by TfNSW; and
 - (ii) under clause 10.6(b) rejecting the Project Document or other documentary Deliverable, amend the relevant Project Document or other documentary Deliverable so that they are in accordance with the Agreement.
- (d) If the Supplier disagrees with any notice issued by TfNSW under clause 10.6(b) it must promptly and in any event no later than 10 Business Days of receipt of such a notice, give notice of such disagreement to TfNSW.
- (e) The Supplier will not be entitled to any extension of time under clause 11.3 if the Supplier submits the Project Document or other documentary Deliverable in a manner or at a time which prevents TfNSW from reviewing it in the time allowed under this clause 10.6.
- (f) If, at any time, TfNSW reasonably considers a Project Document or other documentary Deliverable is incomplete or does not comply with this Agreement, then TfNSW may give notice to the Supplier requiring the Supplier to:
 - (i) submit to TfNSW within 10 Business Days of such notice an Action Plan to correct the matter the subject of the notice under this clause 10.6(f); and/or
 - (ii) amend the Project Document or other documentary Deliverable to correct such incompleteness or non-compliance.

- (g) Any notice issued under this clause 10.6 will not entitle the Supplier to any extension of time to any Milestone Date.
- (h) If the Supplier is required to amend any Project Document or other documentary Deliverable pursuant to clauses 10.6(c) or 10.6(f), it must continue to resubmit the Project Document or other documentary Deliverable under those clauses until all comments notified by TfNSW to the Supplier within 20 Business Days of TfNSW's receipt of the revised Project Document or other documentary Deliverable have been addressed.

11 Timing

11.1 Timing

The Supplier must perform its obligations under each SOW in accordance with the timeframes specified in that SOW, including any Project Management Plan.

11.2 Milestones

- (a) The Supplier must meet each Milestone by its relevant Milestone Date.
- (b) A Milestone will only be successfully achieved once TfNSW has:
 - (i) issued an Acceptance Certificate in respect of all the Deliverables that comprise the Milestone; and
 - (ii) notified the Supplier that all other tasks and activities corresponding to that Milestone have been successfully performed (as determined by TfNSW acting reasonably).

11.3 Delays

- (a) If the Supplier becomes aware of any delay (or likely delay) which will (or is likely to) affect the Supplier's ability to meet a Milestone Date or comply with a Project Management Plan, the Supplier must notify TfNSW as soon as practicable (**Delay Notice**). The Supplier's Delay Notice must contain (to the extent such information is known to the Supplier):
 - (i) the reason for the delay;
 - (ii) its best estimate of the date it will meet the Milestone or comply with the Project Management Plan;
 - (iii) an Action Plan, including the steps that have been taken and are being taken to manage the delay and its causes;
 - (iv) any anticipated impact on TfNSW, any TfNSW Inputs or other dependencies; and
 - (v) be signed by the Supplier Representative.

A Delay Notice will not relieve the Supplier from any of its obligations under this Agreement.

- (b) TfNSW will consider any Delay Notice in good faith and TfNSW will grant an extension to any Milestone Date or date for compliance with the Project Management Plan referred to in the Delay Notice by the period of the delay where the Supplier has demonstrated to TfNSW's reasonable satisfaction that:
 - (i) the delay was caused by the failure of TfNSW to perform or procure the performance of a TfNSW Input;
 - (ii) the Supplier has complied with its obligation to manage Other Suppliers effectively (if applicable); and
 - (iii) the Supplier has taken all reasonable steps to minimise the delay.
- (c) The parties agree that an extension under paragraph (b) or otherwise agreed between the parties is for the purposes of aiding the management of the delivery of the System by the Supplier, and does not:
 - (i) constitute a waiver by TfNSW of any rights it may have in respect of the obligation to achieve the Milestone Date or comply with a Project Management Plan including:
 - (A) any right to terminate this Agreement (wholly or in part) under clause 41.1; or
 - (B) any right to claim or recover loss; or
 - (ii) relieve the Supplier of its obligations to meet any original Milestone Dates or obligation to comply with a Project Management Plan,unless expressly agreed otherwise by the parties (and any such agreement must refer to this clause 11.3(c)).

11.4 Liquidated Damages

- (a) Without limiting any other rights or obligations under this Agreement or at Law, if the Supplier fails to meet a Critical Milestone Date, the Supplier must pay liquidated damages calculated in accordance with the terms of the relevant SOW (as applicable).
- (b) Each party acknowledges that the liquidated damages are a reasonable and genuine pre-estimate of the Loss that TfNSW will suffer as a result of a delay in meeting a Critical Milestone Date.
- (c) Liquidated damages must be applied against the next invoice provided by the Supplier under this Agreement or, at TfNSW's option, must be paid to TfNSW within 30 days of the date on which they accrue.
- (d) TfNSW may agree to waive any liquidated damages that apply to a particular Critical Milestone Date. However, any such waiver does not act as a waiver of TfNSW's right to enforce any liquidated damages that would apply to any other Critical Milestone Dates.

11.5 Not used

12 TfNSW Inputs

- (a) Subject to paragraph (e):
- (i) TfNSW acknowledges that if it delays or does not perform or supply or procure the performance or supply of a TfNSW Input, the Supplier may be unable to comply with its obligations under this Agreement or any SOW which are dependent on the TfNSW Input having been performed or supplied; and
 - (ii) if the Supplier is unable to comply with an obligation under this Agreement or any SOW which is dependent on a TfNSW Input being performed or supplied:
 - (A) the Supplier will be excused and not be liable for its failure or delay to provide the Products and Services while such TfNSW Input has not been performed or supplied; and
 - (B) where the obligation is a timeframe required to be met under this Agreement or any SOW, TfNSW agrees to adjust that timeframe and any dependant timeframe by such period as is reasonable in the circumstances to reflect the delay.
- (b) The Supplier must:
- (i) promptly notify TfNSW of any failure by TfNSW to perform or supply, or procure the performance or supply, of the TfNSW Input; or
 - (ii) if the Supplier anticipates, or ought reasonably to have anticipated, that TfNSW is about to fail to perform or supply, or procure the performance or supply, of the TfNSW Input, notify TfNSW of such,
- and, in any event, within 5 Business Days of becoming aware of such failure or anticipated failure, provide to TfNSW such information:
- (iii) as the Supplier has or has access to in relation to its failure to comply with its obligations under this Agreement or any SOW; and
 - (iv) as TfNSW may reasonably request in relation to that failure to comply with its obligations under this Agreement or any SOW,
- so as to assist TfNSW to assess whether such failure was caused by the non-performance of the relevant TfNSW Input.
- (c) The Supplier is entitled to recover its reasonable holding costs (**Reasonable Holding Costs**) in respect of the Services it is required to perform in respect of a Milestone Date or the Implementation Plan if:
- (i) TfNSW fails to perform or supply, or procure the performance or supply, of a TfNSW Input; and
 - (ii) those Reasonable Holding Costs have been incurred by the Supplier as a direct result of such failure,

but only in respect of the period:

(iii) commencing on the date that the Supplier was due to complete the relevant Milestone or perform the relevant Services; and

(iv) ending on the date that the relevant TfNSW Input is performed or supplied,

provided that the Supplier can substantiate its claim for Reasonable Holding Costs and demonstrate how it has minimised such Reasonable Holding Costs, to TfNSW's reasonable satisfaction.

(d) The parties agree that they will document the Reasonable Holding Costs payable by TfNSW in writing (either in the form of a SOW or in accordance with the Change Control Procedure). Unless otherwise agreed between the parties, the Reasonable Holding Costs will be calculated in accordance with the rate card set out at Schedule 2 (**Pricing Terms**).

(e) The parties agree that this clause 12 does not apply:

(i) to the extent that any failure by the Supplier to comply with its obligations under this Agreement or any SOW, or an act or omission of the Supplier, caused or contributed to the non-performance or non-supply of the relevant TfNSW Input;

(ii) to the extent that the Supplier could have:

(A) avoided its failure to comply with its obligations under this Agreement or any SOW; or

(B) avoided or minimised the Reasonable Holding Costs,

including by the taking of reasonable precautions or the use of reasonable workarounds; or

(iii) where the Supplier has failed to provide a notice to TfNSW as required by paragraph (b).

(f) The Supplier acknowledges that:

(i) the TfNSW Inputs are the only tasks and inputs it is entitled to request from TfNSW;

(ii) the TfNSW Inputs are sufficient to enable it to perform its obligations under this Agreement; and

(iii) this clause 12 sets out the Supplier's exclusive rights and remedies in relation to the non-performance or non-supply of a TfNSW Input.

13 Performance Standards

13.1 Service Levels

The Supplier must meet or exceed the Service Levels.

13.2 Service Credits

- (a) If the Supplier fails to meet a Service Level, TfNSW is entitled to Service Credits.
- (b) Service Credits:
 - (i) are not intended to be an estimate of the loss that TfNSW or an Eligible Customer suffers as a result of the Supplier failing to meet the Service Levels, but are rather an agreed reduction in the Charges to reflect the Supplier's failure to perform the Services to the standard agreed by the parties; and
 - (ii) are in addition to, and do not limit, any other rights or remedies available to TfNSW for the Supplier's failure to meet the Service Levels.

13.3 Performance monitoring

- (a) If the Supplier fails to meet the Service Levels, the Supplier must promptly notify TfNSW, or where TfNSW becomes aware of such failure, TfNSW may notify the Supplier.
- (b) The Supplier must implement performance monitoring tools to monitor its compliance with the Service Levels and provide TfNSW with real time access to those tools.

13.4 Action Plans for failures

If requested by TfNSW, the Supplier must provide TfNSW with an Action Plan in relation to any failure to meet Service Levels.

14 Continuous Improvement and Innovation

14.1 Philosophy

- (a) TfNSW wishes to be:
 - (i) a key partner and preferred customer of the Supplier and to be part of the journey with the Supplier in the development of its products and services; and
 - (ii) at the frontier and cutting edge of developments in the world market for transport management solutions.
- (b) Consistent with this approach, TfNSW:
 - (i) expects that the Supplier will enable it to achieve World's Best Practice in the delivery of transport management systems;
 - (ii) is prepared to co-develop with the Supplier future versions of Supplier products and services;
 - (iii) wishes to have visibility over and input to the Supplier roadmap;

- (iv) expects that ideas will be proactively brought to TfNSW by the Supplier without TfNSW having to ask;
 - (v) does not expect to always pay for TfNSW's requirements to be built into the Supplier's roadmap;
 - (vi) expects to have priority access to future evolutions of the Supplier's products and services (including developments that the Supplier makes at the request of other customers) under this Agreement without additional charge; and
 - (vii) is prepared to open up Intellectual Property Rights that it has funded or contributed to, in return for receiving reciprocal benefits (e.g. cost savings).
- (c) The Supplier agrees to:
- (i) do all things necessary to ensure that TfNSW benefits from access to the Supplier's knowledge assets developed and captured through the Supplier's work globally; and
 - (ii) perform its obligations under this Agreement in a manner consistent with TfNSW's expectations outlined in this clause 14.1.
- (d) The Supplier must ensure that any contract, arrangement or understanding that it enters into with any third party after the Execution Date does not prevent or restrict the Supplier from complying with any of its obligations in this clause 14.

14.2 General

The Supplier acknowledges that the technologies employed by TfNSW will continue to evolve and change over the Term. The Supplier must, at a minimum, ensure that the technologies used in the System and Solution remain consistent with TfNSW's then-current business and IT objectives and operational needs.

14.3 Application Changes

- (a) The Supplier must proactively supply to TfNSW all Application Changes relevant to the System made available to other customers at no charge to TfNSW. At a minimum, the Supplier must supply to TfNSW once per Year all Application Changes made available by the Supplier in that Year free of charge.
- (b) Without limiting clause 14.3(a) or 14.4:
- (i) the Supplier must notify TfNSW of any proposed Application Changes relevant to the System as early as is practicable and at least as soon as the Supplier makes such Application Change available to any of its other customers;
 - (ii) the Supplier must provide TfNSW with a description of such Application Change, together with any additional information that may be requested by TfNSW, to assess the benefits and risks of implementing the Application Change;
 - (iii) if TfNSW notifies the Supplier that it wishes to implement the Application Change, then the Supplier must prepare and submit a draft SOW in respect of such Application Change (and the provisions of clause 2.2 will apply);

- (iv) the installation of the Application Change and implementation of any standard integrations (that is, integrations that have already been developed in connection with the Application Change) must be performed by the Supplier at no additional cost to TfNSW;
- (v) subject to paragraph (vi), the SOW will set out the charges for any new integrations to be developed and implemented by the Supplier, as required as a result of the Application Change; and
- (vi) the Supplier must implement changes to any then-existing integrations (including remedying any Incident, Defect or Problem that is caused to any then-existing integrations by an Application Change) that are required as a result of the Application Change at no additional cost to TfNSW.

14.4 Roadmap

- (a) The Supplier must provide to TfNSW its current product roadmap relating to the System and transport management solutions:
 - (i) every 6 months, and
 - (ii) as soon as the Supplier provides an updated version of such roadmap to any of its other customers.
- (b) The Supplier must:
 - (i) give TfNSW the option to participate in any user or advisory forums and research and development and other technical forums that it convenes;
 - (ii) provide TfNSW with visibility of and the ability to input to and influence any changes to its product roadmap and to provide suggestions, comments or feedback to the Supplier in respect of its product roadmap; and
 - (iii) include enhancements requested by TfNSW from time to time in its product roadmap if requested to do so by TfNSW.

14.5 Technology Evolution

- (a) The Supplier must:
 - (i) monitor, analyse and report to TfNSW every 6 months on new technology and emerging trends relating to transport management solutions;
 - (ii) where requested by TfNSW, demonstrate how the Supplier would implement that new technology for TfNSW and what effect, if any, it would have on TfNSW;
 - (iii) identify any new technology that is likely to:
 - (A) improve the efficiency and effectiveness of the System, Solution and Services;
 - (B) result in cost savings or improved sustainability for TfNSW;

- (C) improve the availability or quality of services in respect of the System or Solution;
 - (D) improve security relating to the System or Solution;
 - (E) reduce or mitigate risks in relation to the System or Solution; or
 - (F) improve the ability of TfNSW to fulfil its functions.
- (b) The Supplier must continually introduce and implement Technology Evolution to improve the System and Services and keep pace with technological advancements and improvements throughout the Term, having regard to World's Best Practice and technology and processes that the Supplier or any of its competitors are using in similar solutions anywhere in the world.
- (c) The Supplier must provide TfNSW with a report every 6 months setting out:
 - (i) a description of the developments which the Supplier has created for its other customers in respect of transport management or the System (or other Software solutions similar to the System); and
 - (ii) a description of the impact which implementing such developments for TfNSW would have on the System, Solution and TfNSW.
- (d) If requested by TfNSW, the Supplier must:
 - (i) provide any additional information regarding such Technology Evolution;
 - (ii) if TfNSW wishes the Supplier to implement any such developments, prepare and submit a draft SOW in respect of such Technology Evolution in which case the provisions of clause 2.2 will apply; and
 - (iii) supply such Technology Evolution to TfNSW at no additional cost.

14.6 Innovation Forums

- (a) If requested by TfNSW, the Supplier must:
 - (i) actively participate in any innovation (or similar) forum relevant to the Solution convened by TfNSW from time to time;
 - (ii) bring its ecosystem partners and its ideas to any such innovation forum; and
 - (iii) identify opportunities for joint development and proof of concepts.
- (b) If as a result of any such innovation forum or otherwise TfNSW agrees to fund any development by the Supplier that is potentially commercially advantageous to the Supplier, then the Supplier acknowledges that any funding will be agreed on terms that include reciprocal benefits to TfNSW (which may, for example, be by reservation of Intellectual Property Rights or reductions in future operating costs).

15 Disabling Code

- (a) The Supplier must:

- (i) use appropriate processes and up-to-date Industry Best Practice detection Software (**Detection Software**) designed to prevent the introduction of Disabling Code into:
 - (A) the Software, Equipment or other systems used by the Supplier in the course of supplying the Products or Services;
 - (B) the Customer Environment;
 - (C) the System; and
 - (D) the Products and Services; and
 - (ii) prior to supplying a Product that is susceptible to Disabling Code or that is to be connected to the Customer Environment, scan the Product using the Detection Software.
- (b) The Supplier must not:
 - (i) supply or connect to the Customer Environment any Product containing a Disabling Code; or
 - (ii) introduce a Disabling Code into a Product or the Customer Environment.
- (c) In addition to any other rights that TfNSW may have, if Disabling Code is introduced by the Supplier into a Product or Service or the Customer Environment, then the Supplier must pay the Losses incurred by TfNSW relating to:
 - (i) identifying and removing the Disabling Code; and
 - (ii) restoring any data lost, damaged or corrupted as a result of the Disabling Code to the last backed-up version of that data and otherwise remedying the impact of the Disabling Code.

16 Business Continuity

- (a) The Supplier must develop and implement a Business Continuity Plan within 90 days after the Commencement Date, to provide for the continuity of critical business functions at agreed Service Levels in the event of the loss, disablement, impairment or suspension of key facilities, resources, technologies or suppliers due to a Force Majeure Event, and also for Service Levels to be fully restored within a timeframe acceptable to TfNSW after such an event.
- (b) The Supplier must liaise with TfNSW in the development of the plan and ensure that the plan is acceptable to TfNSW.
- (c) The Supplier must consult with TfNSW prior to making material changes to business continuity arrangements and capabilities.
- (d) The Business Continuity Plan must:
 - (i) be based upon a formal assessment of the applicable risks and business impacts;

- (ii) contain defined recovery periods (recovery time objectives) in a business continuity event;
 - (iii) be developed and reviewed in accordance with recognised best Industry Best Practice and business continuity review guidelines issued by TfNSW, and in accordance with relevant requirements of any Government Authority;
 - (iv) be reviewed and updated at least annually;
 - (v) be available to be audited by or on behalf of TfNSW at least annually;
 - (vi) undertake a periodic (no less than annual) program of testing designed to validate the currency and validity of business continuity arrangements;
 - (vii) be available to be tested at least annually in accordance with TfNSW's requirements, with a representative of TfNSW present to verify the results of any actions for rectification; and
 - (viii) adequately protect TfNSW's interests at all times in relation to this Agreement to a level reasonably acceptable to TfNSW.
- (e) The Supplier must provide TfNSW with a copy of the updated Business Continuity Plan, test plan and test results annually and from time to time upon request.
- (f) The Supplier must not increase the Charges or charge TfNSW any additional fees in relation to business continuity activities and testing.
- (g) The Supplier must immediately notify TfNSW of a business continuity event affecting the System or which required the Business Continuity Plan to be invoked.
- (h) Following any event that required the Business Continuity Plan to be invoked, the Supplier must conduct a post-event review with TfNSW.
- (i) The Supplier must allow TfNSW, its authorised representatives and any Government Authority reasonable site visits, at reasonable times, to the Supplier's premises for the purpose of monitoring, reviewing or auditing business continuity risks for TfNSW associated with the System.
- (j) The Supplier must ensure that paragraphs (a) to (i) will apply equally to any Subcontractor.

Part C Resources

17 Supplier Personnel

17.1 Supplier Personnel to perform Services

- (a) The Supplier must:
 - (i) ensure that the Supplier Personnel do not represent themselves as being an employee, partner or agent of TfNSW;
 - (ii) ensure that the Supplier Personnel comply with all of the Supplier's obligations under this Agreement;
 - (iii) subject to clause 17.1(b), after receiving notice from TfNSW requiring the Supplier to remove any of the Supplier Personnel (which may be given in TfNSW's absolute discretion), immediately cease the involvement of those Supplier Personnel in the performance of the Services, terminate such Supplier Personnel's access to TfNSW's systems and premises and promptly provide replacements suitable to TfNSW; and
 - (iv) provide prompt notice to TfNSW if there are material changes to the availability of Supplier Personnel that will affect the performance of the Services and must comply with any reasonable direction given by TfNSW, including promptly providing a replacement suitable to TfNSW.
- (b) If TfNSW is of the reasonable opinion that a Supplier Personnel is not performing the Supplier's obligations in a satisfactory manner, TfNSW may direct the Supplier to take reasonable remedial steps in relation to that person or to replace that person with another person approved by TfNSW (acting reasonably).
- (c) The Supplier must comply with any direction made by TfNSW under clause 17.1(b) at its own cost, and may not charge TfNSW for any time taken to perform a hand-over to the replacement Supplier Personnel.
- (d) The Supplier must ensure that all Supplier Personnel have the necessary visas and other work permits to carry out their relevant tasks and activities in connection with the Services.
- (e) The Supplier must not engage, employ or otherwise use the services of any person to provide the Services who has:
 - (i) been dismissed from TfNSW for reasons of misconduct; or
 - (ii) resigned from TfNSW in circumstances where the person was being investigated by TfNSW for misconduct.
- (f) Before employing, engaging or otherwise using the services of any person to provide the Services, Supplier must take all necessary steps to identify whether the circumstances described in this clause 17 apply.
- (g) The Supplier will be responsible for all acts and omissions of the Supplier Personnel as if they were those of the Supplier.

17.2 Key Personnel

- (a) TfNSW may at any time by providing notice to the Supplier (including by specifying in a SOW):
 - (i) nominate certain Supplier Personnel as Key Personnel; or
 - (ii) advise the Supplier that previously nominated Key Personnel are no longer so nominated and those people will cease to be Key Personnel.
- (b) The Supplier must not:
 - (i) remove (temporarily or permanently) or replace Key Personnel from providing the Services; or
 - (ii) appoint a person as Key Personnel,without TfNSW's prior written approval to the Supplier's replacement plan (including the proposed person and replacement timeframe).
- (c) Unless requested to do so by TfNSW or agreed in writing by TfNSW, the Supplier will only be entitled to remove or change personnel named as Key Personnel should they leave the employment of the Supplier, terminate their services contract with the Supplier or be unable to work for the Supplier by reason of illness or incapacity.

17.3 Conduct of background checks

- (a) The Supplier must:
 - (i) conduct criminal history checks on Supplier Personnel (in every jurisdiction in which the relevant Supplier Personnel resided in the prior 7 years) and clear them to TfNSW's satisfaction:
 - (A) before commencing work; and
 - (B) when requested by TfNSW, provided that TfNSW may not make such a request in respect of a Supplier Personnel within 2 years of the last criminal history check having been conducted in respect of that Supplier Personnel;
 - (ii) promptly notify TfNSW if any Supplier Personnel:
 - (A) commits or is convicted of a criminal offence (including fraud); or
 - (B) is under criminal investigation, or under arrest, for a criminal offence (including fraud);
 - (iii) conduct other background, security or other checks on, and clear such Supplier Personnel as may be required by TfNSW from time to time;
 - (iv) where permitted by Law, provide the results of such checks to TfNSW or alternatively certify that they have been obtained; and

- (v) not use any Personnel in the performance of its obligations under this Agreement who do not meet the background check requirements specified by TfNSW (acting reasonably) from time to time.
- (b) TfNSW may:
 - (i) require the Supplier to report on its compliance with this clause 17.3 and to provide evidence to TfNSW of clearances;
 - (ii) carry out the background checks referred to in clause 17.3(a) itself; and/or
 - (iii) conduct such other investigations and background checks as TfNSW considers appropriate.
- (c) The Supplier must provide reasonable assistance as requested by TfNSW for purposes of TfNSW exercising its rights under clause 17.3(b).
- (d) The Supplier must obtain any consents required from Supplier Personnel for purposes of any checks to be performed as contemplated by this clause 17.3.
- (e) If the Supplier is unable to obtain any consent from a person, then, unless TfNSW agrees otherwise in writing, the Supplier must not engage that person to perform, or remove that person from performing, the Supplier's obligations under this Agreement.

17.4 Information about Personnel

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

- (a) accurate information about the identity, qualifications, job history and character of any Supplier Personnel nominated by TfNSW; and
- (b) a list of the Supplier Personnel with actual or proposed access to TfNSW premises or systems.

17.5 Drugs and alcohol

Irrespective of anything else contained in this Agreement:

- (a) where on reasonable grounds (and whether or not drug or alcohol testing has been performed) TfNSW suspects any Supplier Personnel to be affected by drugs or alcohol, TfNSW may require that person to cease any work and vacate the relevant TfNSW property and the Supplier must ensure this occurs; and
- (b) the Supplier:
 - (i) agrees that TfNSW may randomly perform drug and alcohol tests on any Supplier Personnel in accordance with TfNSW's Policies and requirements; and
 - (ii) must ensure that Supplier Personnel submit to and comply with TfNSW's testing and instructions in respect of any following any such tests;
 - (iii) must ensure that the Supplier Personnel are aware of this clause and of TfNSW's drug and alcohol policy;

- (iv) acknowledges that a key principle included in TfNSW's drug and alcohol policy is zero tolerance; and
- (v) acknowledges and agrees that any breach of TfNSW's drug and alcohol policy by any Supplier Personnel may result in TfNSW requiring that the relevant Supplier Personnel must no longer perform Services for TfNSW and in such event the Supplier will:
 - (A) immediately comply with TfNSW's requirement; and
 - (B) be liable for all Losses suffered by TfNSW as a result of any disruption caused as a result.

17.6 Non-solicitation

- (a) Neither party may, without the prior written consent of the other party, engage, employ or induce or cause a third party to induce the other party's personnel engaged in the performance of the Agreement to enter into a contract for service or a contract of employment with it.
- (b) The restriction in paragraph (a) shall apply during the Term and for a period of six months after the end of the Term.
- (c) A general solicitation for employment which is placed in good faith such as a newspaper advertisement shall not constitute a breach of this clause 17.6.

The parties agree that the restrictions in this clause 17.6 are necessary to protect the legitimate interests of each party.

17.7 Subcontractor personnel

For the avoidance of doubt, the obligations in respect of Supplier Personnel under this clause 17 apply to Subcontractor personnel.

18 Subcontracting

18.1 No subcontracting without approval

- (a) Subject to clause 18.1(c), the Supplier must not subcontract to any person, the whole or any part of the Supplier's obligations under this Agreement without the prior written approval of TfNSW.
- (b) The Subcontractors in respect of each SOW are as set out in that SOW.
- (c) If the Supplier wishes to subcontract the whole or any part of the Supplier's obligations under this Agreement, the Supplier must:
 - (i) obtain TfNSW's written consent to such Subcontractor, which may be given or withheld by TfNSW in its own discretion. If, within 15 Business Days of receiving a notice from the Supplier requesting its consent to a particular Subcontractor, TfNSW has not responded to the Supplier, then TfNSW will be deemed to have consented to such subcontractor; and
 - (ii) provide TfNSW with:

- (A) copies of the relevant subcontracts, excluding details of any fees payable under those subcontracts;
 - (B) written details of the specific tasks to be subcontracted;
 - (C) the name and address and qualifications of the proposed Subcontractor; and
 - (D) all other information reasonably requested by TfNSW in respect of the proposed Subcontractor.
- (d) If requested by TfNSW, the Supplier must ensure that a Subcontractor enters into a Subcontractor Deed with TfNSW and the Supplier. If the Supplier fails to execute, or procure a Subcontractor's execution of, the Subcontractor Deed, TfNSW may revoke its approval in respect of that Subcontractor.
- (e) Any information provided under in relation to a proposed Subcontractor must be given to TfNSW in sufficient time to allow TfNSW to give adequate consideration to the matters referred to in clause 18.1(c) prior to the Supplier entering into the subcontract.
- (f) Clause 18.1(a) does not apply to individuals that are engaged by the Supplier as contractors on a labour hire basis.

18.2 Supplier's responsibility

- (a) The Supplier will not be relieved of any of its liabilities or obligations under this Agreement and the Supplier will be liable to TfNSW for the acts and omissions of a Subcontractor or any personnel of a Subcontractor, as if they were the acts or omissions of the Supplier or the Supplier Personnel.
- (b) Any obligations performed by a Subcontractor are deemed to be obligations performed by the Supplier. The Supplier must notify TfNSW promptly if a Subcontractor breaches any subcontract relating to this Agreement.
- (c) The Supplier must ensure that a Subcontractor is aware of, and complies with, all of the terms of this Agreement that are relevant to that Subcontractor's role in the performance of the applicable obligations, including in particular the obligations in respect of Personnel under clause 17.
- (d) The Supplier must ensure that a Subcontractor does not further subcontract, assign or otherwise transfer the performance of the obligations to any other person without TfNSW's prior consent.

18.3 Novation of subcontracts

- (a) The Supplier must ensure that its subcontract with each Subcontractor includes express provisions requiring the Subcontractor to unilaterally novate the subcontract from the Supplier to TfNSW (**Novation**).
- (b) On receipt of a notice from TfNSW requiring a Novation, the Supplier must:
 - (i) do all things necessary to:
 - (A) execute the Novation in the form reasonably required by TfNSW;

- (B) give effect to such Novation; and/or
 - (C) assist TfNSW to assume the responsibilities of a counterparty to the relevant subcontract; and
- (ii) not exercise, or refuse to exercise, any right or power under the subcontract that may be contrary to the interests of TfNSW, pending novation of that subcontract.
- (c) The Supplier acknowledges that a Novation reasonably required by TfNSW may include an indemnity from the Supplier, in the favour of TfNSW, in respect of any cause of action arising under the subcontract before the effective date of the relevant Novation.
- (d) The parties will agree a change to this Agreement that reflects the change (if any) in:
 - (i) the scope of the Services;
 - (ii) the Charges; and
 - (iii) the TfNSW Inputs,as a consequence of the Novation.
- (e) If requested by TfNSW, the Supplier must ensure that a Subcontractor attends meetings of governance forums.

18.4 Termination of Subcontractors

TfNSW may, by giving reasonable notice to the Supplier and on reasonable grounds, require the Supplier to cease using any Subcontractor. On receipt of a notice directing the removal of a Subcontractor, the Supplier must promptly cease using that Subcontractor to perform the Services and terminate such Subcontractor's access to TfNSW's systems and premises.

19 Access

19.1 Access to TfNSW's premises or systems

When accessing TfNSW's premises or systems, the Supplier must:

- (a) only access TfNSW's premises or systems for the purposes approved in advance by TfNSW;
- (b) comply with any TfNSW Policies in respect of access to such premises or systems; and
- (c) comply with reasonable directions given to them by TfNSW from time to time and with the Supplier's own internal security standards.

19.2 Obligation to notify

The Supplier must notify TfNSW immediately upon it becoming aware of a security breach:

- (a) at a site from which it provides the Services; or
- (b) related to the Products or Services, the System, Solution or this Agreement.

19.3 Refusal of access

- (a) If a member of Supplier's Personnel does something which if done by the Supplier would not comply with this Agreement, TfNSW may, for any period, refuse that person access to its systems or premises.
- (b) If it is appropriate and practicable to do so, TfNSW will give the Supplier prior notice of the refusal of access under 19.3(a).
- (c) The Supplier must replace any member of the Supplier Personnel refused access under 19.3(a) without cost to TfNSW.

19.4 Workplace health and safety obligations

The Supplier must:

- (a) comply with all of its obligations under any applicable Laws relating to safety including the WHS Act and WHS Regulation;
- (b) ensure that all Supplier Personnel are suitably trained and equipped to undertake the Services for the Supplier;
- (c) be responsible for and assume liability for its obligations assigned to it by the WHS Act and WHS Regulation;
- (d) take reasonable steps to ensure the health, welfare and safety of the Supplier Personnel;
- (e) ensure that the Supplier Personnel are not exposed to risks to their health or safety arising from the provision of any Services;
- (f) promptly inform TfNSW and the relevant authorities of the occurrences of any serious injury (or any other matter as required by Part 3 of the WHS Act) suffered by any person in connection with the Services or any event which would create a risk for TfNSW, the Eligible Customers and/or the Supplier Personnel;
- (g) prepare and submit to TfNSW for its review and comment within 15 Business Days of the Commencement Date or as otherwise as required by TfNSW, a draft project safety management plan documenting how the Supplier will comply with its various obligations under this clause 19.4. The final project safety management plan must be submitted to TfNSW for its approval no later than 15 Business Days after receiving TfNSW comments on the Supplier's draft project safety management plan;
- (h) to the extent permitted by Law, indemnify TfNSW and the Eligible Customers against all claims which may be imposed under or which may arise out of

enforcement of any section of the WHS Act or WHS Regulation as a result of any breach by the Supplier or the Supplier Personnel of the WHS Act or WHS Regulation, including any refusal or failure by the Supplier or the Supplier Personnel to comply with any instructions, directions and requests of TfNSW or the Eligible Customers;

- (i) undertake an assessment of the risks associated with the provision of the Products and Services and prepare and submit to TfNSW within one month of the Commencement Date a site specific Safe Work Method Statement (**SWMS**) that meets the requirements of Schedule 10 (TfNSW Policies) that complies with the requirements of Part 6.3 of the WHS Regulation;
- (j) maintain and keep up to date the SWMS; and
- (k) ensure that the Services are carried out in accordance with the SWMS, and if a risk to the health or safety of a person arises because of non-compliance with SWMS, ensure that work is stopped immediately and not resumed until the SWMS is complied with (unless an immediate cessation of work is likely to increase the risk to health and safety, in which event the Supplier must stop the work as soon as it is safe to do so).

Part D Financial Terms

20 Not used

21 Charges

21.1 Charges

The Charges must be calculated in accordance with Schedule 2 (Pricing Terms) and any SOW.

21.2 Charges all inclusive

- (a) The Charges are the only amounts payable by TfNSW in respect of this Agreement.
- (b) Other than as is expressly set out in this Agreement or any SOW, the Supplier is responsible for all its costs which arise as a result of providing the Products and Services.

21.3 Taxes

- (a) The Supplier must pay any taxes payable upon, or in respect of, this Agreement or the performance of the Supplier's obligations under this Agreement wherever and however such taxes arise.
- (b) TfNSW may withhold any withholding payments required by Law to be withheld.

21.4 Expenses

- (a) The Supplier must not charge TfNSW any expenses in connection with this Agreement except as permitted by Schedule 2 (Pricing Terms) without TfNSW's prior written consent.
- (b) Where TfNSW provides its consent to the Supplier recovering an expense, the Supplier must only seek to recover actual expenses:
 - (i) incurred in accordance with the TfNSW Policies relating to expenses;
 - (ii) substantiated with appropriate supporting documentation and receipts;
 - (iii) up to the amount approved by TfNSW in advance; and
 - (iv) calculated on a pass through basis (without mark up, administration fee, overhead or margin).

21.5 Most favoured pricing

- (a) The Supplier must ensure that the Charges are (at all times) no less favourable to TfNSW than the fees or charges offered by the Supplier to any other customer for similar products and services.

- (b) If the Supplier offers a lower price to any other customer for similar products and services, the Supplier must immediately:
 - (i) notify TfNSW of the details of the lower price; and
 - (ii) reduce the Charges to a level equivalent to the lower price.
- (c) The Supplier must certify to TfNSW that it is in full compliance with this clause 21.5 on request by TfNSW.

22 Invoices and payment

22.1 Invoices

- (a) The Supplier must only invoice TfNSW the applicable Charges in accordance with Schedule 2 (Pricing Terms) or as set out in a SOW.
- (b) The Supplier must ensure that invoices are provided in the form, and contain the information, reasonably required by TfNSW from time to time and comply with the requirements for a Tax Invoice.
- (c) The Supplier must submit a form of invoice for TfNSW's approval before the Commencement Date and otherwise upon request by TfNSW.
- (d) The Supplier must provide TfNSW with substantiation reports for invoices at the timing, frequency and in the form TfNSW reasonably requires from time to time.

22.2 Payment

- (a) TfNSW must pay correctly invoiced Charges into a bank account in Australia, as notified by the Supplier to TfNSW, within 30 days of its receipt of the invoice.
- (b) Any payment made to the Supplier by TfNSW does not imply or constitute an acceptance of any Products and Services, an admission on the part of TfNSW that the Products and Services have been properly provided or a waiver or release of the Supplier's obligations under this Agreement.

22.3 Disputed Amounts

TfNSW may withhold payment of all or any part of an invoice that TfNSW disputes, in good faith. TfNSW is not required to make any payment of such withheld amounts until the relevant dispute has been resolved or the parties agree otherwise.

22.4 Set Off

TfNSW may set off against the Charges payable to the Supplier under this Agreement any amount that the Supplier owes to TfNSW.

22.5 Late invoicing

- (a) Unless otherwise approved by TfNSW at its sole and absolute discretion, the Supplier must not render an invoice for any Products and Services more than 90 days after the date on which the Supplier was first entitled to invoice such amounts. If the Supplier is unable to provide an invoice within such 90 day period, the

Supplier may provide a Notice to TfNSW setting out its reasons why it is unable to do so. In this case, TfNSW (acting reasonably) may grant an extension of up to 30 days for the Supplier to provide its invoice. A notice under this clause 22.5 must be received by TfNSW prior to the expiry of the relevant 90 day period.

- (b) Without limiting any other provision of this Agreement, TfNSW will not be liable for any amounts included in an invoice rendered contrary to this clause 22.5 and will not otherwise have any liability for costs, charges or fees associated with such Products and Services, except where an invoice is delayed due to a dispute, a delayed approval by TfNSW or where TfNSW expressly approves delayed submission of an invoice.

23 GST

23.1 Recovery of GST

If one party (**supplying party**) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (**receiving party**) must also pay an amount (**GST amount**) equal to the GST payable in respect of that supply.

23.2 Time for payment of GST amount

Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.

23.3 Indemnity and reimbursement payments

If one party must indemnify or reimburse another party (**payee**) for any loss or expense incurred by the payee, the required payment does not include any amount which the payee (or an entity that is in the same GST group as the payee) is entitled to claim as an input tax credit, but will be increased under clause 23.1 (Recovery of GST) if the payment is consideration for a taxable supply.

23.4 Adjustment events

If an adjustment event arises in respect of a taxable supply made by a supplying party, the GST amount payable by the receiving party under clause 23.1 (Recovery of GST) will be recalculated to reflect the adjustment event and a payment will be made by the receiving party to the supplying party, or by the supplying party to the receiving party, as the case requires.

23.5 Interpretation

In this Agreement:

- (a) terms used that are defined in the GST Act have the meaning given in that Act, unless the context makes it clear that a different meaning is intended;
- (b) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
- (c) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.

24 Benchmarking

24.1 Initiation of a benchmark

- (a) TfNSW may initiate a benchmark in respect of any of the Charges at any time following 1 January 2022, on 60 days' notice to the Supplier.
- (b) TfNSW may benchmark the Charges not more than once every Year.

24.2 Selection of benchmarker

- (a) The benchmarker will be nominated by TfNSW after consultation with the Supplier. TfNSW must not nominate a direct competitor of the Supplier as the benchmarker.
- (b) TfNSW will instruct the benchmarker to conduct the benchmark in accordance with this clause 24 (Benchmarking).
- (c) TfNSW may disclose the terms of this Agreement to the benchmarker and will ensure that the benchmarker is bound to confidentiality terms no less stringent than those contained in this Agreement.

24.3 Benchmarking process

- (a) The benchmarker may carry out the benchmark as it sees fit (including by determining the benchmarking methodology) provided that it complies with this clause 24 (Benchmarking).
- (b) The benchmarker must take into account relevant characteristics of the Products and Services being provided to TfNSW and assess a pool of contracts, normalising for differences in those characteristics, including:
 - (i) scope;
 - (ii) volumes; and
 - (iii) service levels,and other characteristics that, in the benchmarker's expert opinion, warrant consideration in undertaking the benchmarking.
- (c) The parties must co-operate in good faith in the conduct of each benchmark.
- (d) The Supplier must actively participate in the benchmarking including:
 - (i) attending benchmarking meetings, as required;
 - (ii) assisting with data collection; and
 - (iii) providing information and materials to the benchmarker.

24.4 Benchmarking Report

- (a) TfNSW must instruct the benchmarker to provide the results of its benchmark to the parties in the form of a written benchmarking report which identifies (as a minimum):
 - (i) whether any aspect of the Charges are Non-competitive; and
 - (ii) recommended changes that would need to be made to make those Charges (including the Service Levels) competitive.
- (b) TfNSW must instruct the benchmarker to provide both TfNSW and the Supplier with a draft of the benchmarking report before it is finalised and a reasonable opportunity to raise any issues or concerns with the draft benchmarking report before it is finalised.
- (c) If either party has any issues or concerns with the draft benchmarking report it must notify the other party of the issues and concerns as soon as reasonably practicable (providing sufficient detail to enable the other party to understand the issues or concerns).

24.5 Benchmarking dispute process

- (a) The benchmarker will act as an expert and not as an arbitrator and the benchmarking report will be final, subject to the remainder of this clause 24.5..
- (b) Neither party has the right to object to a benchmarking report or the conduct of a benchmark (other than for fraud or non-trivial manifest error).
- (c) If a party considers that a benchmarking report contains a (non-trivial) manifest error and it wishes to dispute the benchmarking report, it must do so in accordance with the process below.
- (d) The disputing party must issue a notice to the benchmarker (**Notice of Dispute**) no later than 10 Business Days after the benchmarker issues the benchmarking report.
- (e) The Notice of Dispute must contain sufficient detail and substantiation to enable the benchmarker to assess the dispute, including proposed amendments to the benchmarking report necessary to correct the errors.
- (f) TfNSW must instruct the benchmarker to respond to a Notice of Dispute within 10 Business Days.
- (g) If the benchmarker determines that:
 - (i) the dispute requires a change to the benchmarking report, it must issue a revised benchmarking report as soon as practicable; or
 - (ii) the dispute does not require a change to the benchmarking report, the benchmarking report as issued by the benchmarker will be final.

24.6 Implementation of Benchmarking Report

- (a) If a benchmarking report identifies that the Charges are Non-competitive, the parties must meet as soon as reasonably practicable (and, in any event, within 10 Business Days) with the aim of agreeing a course of action to ensure that the Charges become and remain competitive.
- (b) If the parties fail to reach agreement on the corrective course of action under clause 24.6(a) within 20 Business Days after receiving the benchmarking report, then either party may escalate the matter to the Executive Relationship Forum for resolution.
- (c) Any adjustments or corrective actions agreed by TfNSW and the Supplier will be effective 3 months from the date the benchmark was initiated.

24.7 Costs of a benchmark

- (a) TfNSW will bear the costs of the benchmarker.
- (b) Each party will bear its own costs of complying with this clause 24 (Benchmarking).

Part E Governance and compliance

25 Governance

25.1 Governance model

The parties must comply with the governance model as set out in Schedule 4 (Governance and Management).

25.2 Contract representatives

- (a) The principal point of contact between the parties in relation to this Agreement will be the TfNSW Representative and the Supplier Representative.
- (b) The Supplier must appoint as the Supplier Representative a senior employee of the Supplier approved by TfNSW, and may only replace that appointed person in accordance with clause 17.2.
- (c) The Supplier Representative is a “Key Personnel” for the purposes of this Agreement.
- (d) TfNSW must appoint an employee or contractor of TfNSW as the TfNSW Representative and may change its nomination from time to time by reasonable notice to the Supplier.
- (e) The TfNSW Representative and the Supplier Representative must:
 - (i) manage the working arrangements between the parties under this Agreement;
 - (ii) monitor and review each party’s performance of its respective obligations and responsibilities under this Agreement on an ongoing basis;
 - (iii) meet at least weekly including to:
 - (A) review performance under this Agreement;
 - (B) review the delivery and operation of the System; and
 - (C) discuss future TfNSW requirements; and
 - (iv) serve as the principal interface between the parties with respect to all issues relating to this Agreement.

25.3 Authority

- (a) The Supplier acknowledges that any agreement, acceptance, consent or approval by TfNSW with or to the Supplier (as applicable) in respect of any matter or thing under this Agreement is not binding on TfNSW unless such agreement, acceptance, consent or approval is given or made by the TfNSW Representative, or a person authorised by the TfNSW Representative in writing to give or make such agreement, consent or approval.

- (b) TfNSW acknowledges that any agreement, acceptance, consent or approval by the Supplier with or to TfNSW (as applicable) in respect of any matter or thing under this Agreement is not binding on the Supplier unless such agreement, consent or approval is given or made by the Supplier Representative, or a person authorised by the Supplier Representative in writing to give or make such agreement, acceptance, consent or approval.

25.4 Reports

Without limiting any reporting requirements set out in a SOW, the Supplier must:

- (a) provide to TfNSW each of the reports described in Schedule 7 (Reporting Requirements) in accordance with that schedule;
- (b) provide all information reasonably required by TfNSW in relation to the performance of this Agreement or any SOW;
- (c) provide regular progress reports on the Products and Services to TfNSW; and
- (d) provide such reports as are reasonably requested from TfNSW from time to time, each in a form reasonably requested by TfNSW.

26 Change Control Procedure

- (a) Any SOW Change must be made in accordance with the Change Control Procedure set out in Schedule 8 (Change Control) to this Agreement.
- (b) Subject to clause 26(a), any change to the terms of this Agreement, including the Schedules to this Agreement, must be made in accordance with clause 50.7 (Amendment).

27 Records and audit

27.1 Supplier to keep proper records

The Supplier must:

- (a) keep (and must ensure that each Subcontractor keeps) full and proper books of accounts and records relating to matters reasonably required by TfNSW and of other matters relating to the performance of its obligations under this Agreement during the Term and for 7 years after the termination or expiry of this Agreement or any SOW (whichever is the later); and
- (b) promptly respond to any requests for information from TfNSW at any time relating to the performance of obligations under this Agreement.

27.2 Audit

- (a) Subject to clause 27.5(b)(ii) and without limiting any other clause of this Agreement, TfNSW (or its Representatives) may conduct an audit under this clause 27.2 (Audit) no more than once in any Year.

- (b) As part of an audit under this clause 27.2 (Audit), TfNSW or its Representatives (or both of them) may enter any premises occupied by the Supplier or any Subcontractor with 24 hours' notice at all reasonable times to audit the Supplier and any Subcontractors in respect of any matter relating to this Agreement, including:
 - (i) to verify the accuracy of any invoices issued under this Agreement by reference to supporting records (e.g. timesheets);
 - (ii) to examine the performance or provision of the Products or Services; or
 - (iii) to verify the required quality certification and compliance with applicable quality or WHS management system(s), work practices and procedures applicable to the performance of this Agreement.
- (c) If TfNSW provides notice under clause 27.2(b), the Supplier must provide TfNSW or its Representative (or both of them) on request with:
 - (i) access to any premises occupied by it or any Subcontractor;
 - (ii) access to (including the right to copy) any books, accounts, records and other documents relating to the provision of the Products or Services and/or performance of the Supplier's obligations under this Agreement (however, the Supplier will not be required to disclose the Supplier's profit margins or costs associated with providing the Products or Services);
 - (iii) copies of the documents mentioned in clause 27.2(c)(ii);
 - (iv) access to its facilities and systems relating to the provision of the Products or Services and/or performance of the Supplier's obligations under this Agreement;
 - (v) the opportunity to interview relevant Supplier Personnel relating to the provision of the Products or Services and/or performance of the Supplier's obligations under this Agreement; and
 - (vi) all reasonable assistance relating to the conduct of the audit.

27.3 Security Audit

- (a) Subject to clause 27.5(b)(ii) and without limiting any other clause of this Agreement, TfNSW may require a review or audit under this clause 27.3 (Security Audit) no more than once in any Year.
- (b) TfNSW may at any time require the Supplier or a third party (at TfNSW's cost) on reasonable prior notice (unless circumstances reasonably preclude such notice) to conduct a review or audit of the data security requirements and policies in place to protect the System and any TfNSW Data, including practices for physical security, logical security, business continuity plans and systems and processes, back-up and procedures in relation to preventing the introduction of Disabling Code.
- (c) Where the Supplier is required to conduct such a review or audit, the Supplier must as soon as reasonably practicable:

- (i) compare the level of current safeguards and security measures in place with Industry Best Practice; and
 - (ii) provide the results of the audit to TfNSW in writing as soon as reasonably practicable.
- (d) Where TfNSW engages a third party to provide the audit, the Supplier must provide access to the Supplier's premises and documentation, materials and other information (including information in electronic form) to the extent reasonably necessary to enable the third party to conduct such a review or audit.

27.4 Special Audit

- (a) Notwithstanding any other provision in this Agreement, if TfNSW reasonably suspects any Probity Event or any security issue or breach, TfNSW may undertake such an audit of the Supplier as is reasonably appropriate without the notices and restrictions in relation to frequency and timing (**Special Audit**) applicable to audits undertaken in accordance with clauses 27.2 and 27.3 of this Agreement.
- (b) If a Special Audit shows that a Probity Event or any security issue or breach have occurred, then without limiting any other right or remedy it may have under this Agreement or at Law, TfNSW may:
 - (i) recover any reasonable and substantiated fees paid to a third party to conduct the Special Audit from the Supplier; and/or
 - (ii) immediately by notice require the Supplier to remove any Supplier Personnel responsible for or involved in such Probity Event or security issue or breach from performing Services for TfNSW, and the Supplier must comply with that notice.

27.5 Costs and Remedying Non-compliance

- (a) Each party will bear its own costs associated with any audit conducted by TfNSW under this clause 27 (Records and Audit).
- (b) If any audit shows that the Supplier is not complying with this Agreement in any respect, without limiting any of TfNSW's rights or remedies in any way:
 - (i) the Supplier must at its own cost and expense:
 - (A) take such action as is necessary to remedy the non-compliance promptly upon receipt of notice by TfNSW; and
 - (B) demonstrate to TfNSW's reasonable satisfaction that such non-compliance has been remedied (including through preparing an Action Plan if required by TfNSW); and
 - (ii) TfNSW may conduct follow-up audits (and in the case of an audit under clauses 27.2 and 27.3 more frequently than once in any Year) until the Supplier has demonstrated to TfNSW's reasonable satisfaction that such non-compliance has been remedied.

28 Compliance

28.1 Compliance with Laws

- (a) The Supplier must:
 - (i) comply with all relevant Laws in performing its obligations under this Agreement as those Laws exist from time to time; and
 - (ii) ensure that all Products and Services comply with all relevant Laws and are provided in such a manner that the use of those Products and Services will enable TfNSW to comply with all relevant Laws.
- (b) If a Government Change in Law or a Customer Specific Change in Law occurs then:
 - (i) the Supplier must notify TfNSW of the effects of that Government Change in Law or Customer Specific Change in Law (as applicable) including the effects on the Charges, Services and the terms of this Agreement; and
 - (ii) the Supplier must mitigate the adverse impact of that Government Change in Law or Customer Specific Change in Law (as applicable) on the provision of Products and Services under this Agreement and any SOW.
- (c) Without limiting or relieving the Supplier of its obligations under this Agreement (including this clause 28.1), where one or more Government Changes in Law or Customer Specific Changes in Law impacts the Supplier's cost of performing the Services by more than \$100,000 in a year, the parties will negotiate a Change Proposal in accordance with the Change Control Procedure to agree an equitable adjustment to the Charges to take account of such decrease or increase (as applicable) in the Supplier's cost in excess of \$100,000 in the year, provided that in the case of any proposed increase in Charges:
 - (i) the Supplier:
 - (A) can substantiate its claim for its proposed increase in Charges; and
 - (B) demonstrate how it has minimised such proposed increase in Charges,to TfNSW's reasonable satisfaction; and
 - (ii) the proposed increase in Charges reflects a pro-rata portion of the Supplier's increased cost in complying with the Government Change in Law or Customer Specific Change in Law, where the Supplier is required to comply with such Government Change in Law or Customer Specific Change in Law under its other contracts with Government Authorities (including its other contracts with TfNSW).
- (d) The Supplier will not be entitled to any increase in the Charges, and will not be relieved of its obligations to supply the Services in accordance with the terms of this Agreement, as a result of:
 - (i) a General Change in Law; or

- (ii) a Government Change in Law or Customer Specific Change in Law, where the effect on the provision of Products and Services is known at the SOW Commencement Date (in respect of the SOW relevant to those Services).

28.2 Compliance with TfNSW Policies

- (a) The Supplier must comply with each of the TfNSW Policies.
- (b) TfNSW may from time to time with reasonable prior notice to the Supplier, notify the Supplier of any addition, removal or change to the then current TfNSW Policies and the Supplier must comply with any such additional or changed TfNSW Policies.
- (c) Where one or more additions, removals or changes to the then current TfNSW Policies impacts the Supplier's cost of performing the Services by more than \$100,000 in a year, and without limiting or relieving the Supplier of its obligations under this Agreement (including this clause 28.2, then:
 - (i) if such addition, removal or change is a result of a Change in Laws, then clauses 28.1(b) to 28.1(d) will apply; and
 - (ii) in all other cases, where such addition, removal or change impacts the Supplier's cost of performing the Services by more than \$100,000 in a year, the parties will negotiate a Change Proposal in accordance with the Change Control Procedure to agree an equitable adjustment to the Charges to take account of such decrease or increase (as applicable) in the Supplier's cost in excess of \$100,000 in the year, provided that:
 - (A) in the case of any proposed increase in Charges, the Supplier:
 - (1) can substantiate its claim for its proposed increase in Charges; and
 - (2) demonstrate how it has minimised such proposed increase in Charges,to TfNSW's reasonable satisfaction; and
 - (B) the proposed increase in Charges reflects a pro-rata portion of the Supplier's increased cost in complying with such addition, removal or change, where the Supplier is required to comply with such addition, removal or change under its other contracts with TfNSW.

28.3 Standards

Unless otherwise agreed, the Supplier must comply (and must ensure that the Products and Services comply) with the following Australian standards and international standards:

- (a) ISO/IEC/IEEE 15288:2015 Systems and software engineering -- System life cycle processes;
- (b) ISO/IEC 27001:2013 Information technology - Security techniques - Information security management systems -- Requirements;
- (c) ISO/IEC 27032:2012 Information technology -- Security techniques -- Guidelines for cybersecurity;

- (d) ISO/IEC 20000-1:2011 Information technology - Service management;
 - (e) ISO/IEC 20246:2017 Software and systems engineering;
 - (f) ISO 31000:2009 Risk management - Principles and guidelines;
 - (g) NSW Government Health and Safety Management Systems and Auditing Guidelines (5th Edition);
 - (h) AS/NZS 4801:2001 Occupational health and safety management systems;
 - (i) ISO 14001:2015 Environmental Management System;
 - (j) OSHAS 18001:2007 Occupational Health and Safety Management System;
 - (k) AS ISO 15489.1:2017 Information and documentation - Records management - Concepts and principles;
 - (l) ISO/IEC/IEEE 29119-1:2013 Software and systems engineering -- Software testing -- Part 1: Concepts and definitions;
 - (m) ISO 55000:2014 Asset management -- Overview, principles and terminology;
 - (n) ISO 55001:2014 Asset management -- Management systems – Requirements,
- and such other standards as are agreed between the parties from time to time.

28.4 Reputation

To the extent permitted by Law, the Supplier must not knowingly be involved in or connected with anything that is prejudicial to the goodwill, reputation or overall public image of TfNSW or the NSW Government.

28.5 SME Participation Plan – Reporting and Compliance

- (a) This clause only applies where the Supplier has submitted a SMEPP to TfNSW.
- (b) The Supplier acknowledges that TfNSW has relied on the SMEPP in awarding this Agreement to the Supplier.
- (c) The Supplier must comply with the requirements and commitments provided for in the SMEPP and take all steps reasonably required to enable TfNSW to monitor compliance by the Supplier with the SMEPP.
- (d) The parties acknowledge and agree that:
 - (i) TfNSW may establish mechanisms to monitor compliance by the Supplier with its commitments under the SMEPP; and
 - (ii) non-compliance by the Supplier with the SMEPP commitments will entitle TfNSW to terminate this Agreement for material breach in accordance with clause 41.1.
- (e) The Supplier acknowledges that 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 NSW Government Authorities including to Procurement NSW.

- (f) In this clause “**SMEPP**” refers to a Small & Medium Enterprise Participation Plan under the NSW Government’s Small and Medium Enterprises Policy.

28.6 Anti-bribery and anti-corruption

The Supplier must:

- (a) comply with all applicable anti-bribery and anti-corruption legislation including the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) or similar Laws of other countries that are applicable;
- (b) maintain and enforce its own policies and procedures, including adequate procedures to ensure compliance with all applicable anti-bribery and anti-corruption legislation; and
- (c) use all reasonable endeavours to ensure that Supplier Personnel, officers, employees and agents comply with this clause.

29 Probity Events

29.1 Probity Event Notice by Supplier

The Supplier must give notice to TfNSW as soon as it becomes aware that a Probity Event has occurred or is likely to occur. Such notice must describe the nature of the Probity Event and the circumstances giving rise to it or likely to give rise to it.

29.2 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.

29.3 Probity Investigations

The Supplier must:

- (a) promptly comply with any reasonable request from TfNSW for access to Supplier Personnel or access to the personnel of any Related Body Corporate of the Supplier for the purpose of undertaking any investigations that TfNSW may wish to carry out in relation to a Probity Event; and
- (b) use reasonable endeavours to ensure that the Supplier Personnel or the personnel of any Related Body Corporate of the Supplier co-operate with TfNSW and comply with any reasonable requests for information that TfNSW may make in the course of its investigations.

29.4 Remedial action

- (a) 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 actual or likely Probity Event. During any such meeting, the parties must use reasonable endeavours to agree on

the actions to be taken by the Supplier to ensure that the Probity Event does not occur or its impact is minimised.

- (b) If the parties are unable to agree on appropriate actions within 5 Business Days of such meeting or the Supplier fails to implement any actions agreed under clause 29.4(a), TfNSW may give notice to the Supplier setting out the action it must take to address the adverse effect of the Probity Event. Such action may include:
 - (i) terminating any subcontract or contract of employment;
 - (ii) procuring the relevant Supplier Personnel (or the personnel of any Related Body Corporate of the Supplier) to cease having involvement, shares, entitlement, contract, arrangement, significant influence, or power or control over the Supplier, its Related Body Corporate or a Subcontractor;
 - (iii) removing any such personnel from any further involvement with this Agreement.
- (c) The Supplier must comply with a notice under clause 29.4(b) as soon as possible and in any event within 10 Business Days of receiving the notice.

30 Dispute Resolution

30.1 Disputes

- (a) Subject to clause 30.5 (No legal proceedings), any Dispute between the parties must be dealt with in accordance with this clause 30 (Dispute Resolution).
- (b) If a party considers that a Dispute has arisen, it may give a dispute notice to the other party (**Dispute Notice**), which must be in writing and set out reasonable particulars of the Dispute.

30.2 Escalation

- (a) If a Dispute Notice is given under clause 30.1(b), either TfNSW or the Supplier may require, by giving notice to the other, that the TfNSW Representative and the Supplier Representative promptly meet and engage in good faith discussions with the bona fide objective of resolving the Dispute by agreement.
- (b) Subject to clause 30.5, if the TfNSW Representative and the Supplier Representative have not been able to resolve the Dispute within 10 Business Days (or such other period as agreed) after the date of the meeting under clause 30.2(a), then either party may refer the Dispute for resolution under paragraph (c) by notice to the other party.
- (c) If either party refers the Dispute for resolution under this paragraph (c), then the Dispute will be discussed at the next occurring Executive Relationship Forum to resolve the Dispute or, if the next occurring Executive Relationship Forum is not scheduled for more than 15 Business Days after the date of the meeting between the TfNSW Representative and the Supplier Representative under clause 30.2(a), then at a specially convened Executive Relationship Forum.
- (d) If the Dispute is not resolved following the meeting of the Executive Relationship Forum referred to in paragraph (c), then:

- (i) within 5 Business Days of end of the Executive Relationship Forum, each party must nominate a senior executive who has express authority to resolve the Dispute and notify the other party of the identity of that representative; and
 - (ii) within 15 Business Days of the end of the Executive Relationship Forum, the senior executives nominated under paragraph (d)(i) must meet to seek to resolve the Dispute. All aspects of this meeting must be kept confidential and all communications between representatives at the meeting are made on a without prejudice basis.
- (e) If the Dispute is not resolved within 10 Business Days of the meeting of senior executives referred to in paragraph (d), then either party may refer the Dispute to mediation under clause 30.3 by notifying the other party within 15 Business Days after the date of the meeting between the senior executives referred to in paragraph (d).

30.3 Mediation

- (a) If a party refers a Dispute or certain matters for mediation, the Dispute or those matters must be mediated in accordance with, and subject to, the mediation rules of the Resolution Institute.
- (b) The parties must co-operate with the Resolution Institute as facilitator. The parties agree that any mediation must be completed within 4 weeks of the referral referred to in clause 30.2(e).
- (c) If within 10 Business Days after referral of the dispute to the Resolution Institute the parties have not agreed upon the mediator or other relevant particular the mediator and any other relevant particular will be determined in accordance with Resolution Institute's facilitation rules.
- (d) If the Dispute remains unresolved after the end of mediation, then the parties may agree to refer the matter to arbitration under clause 30.4 for resolution. If within 14 days of the end of mediation, the parties have not agreed to refer the matter to arbitration, then either party may commence legal proceedings in relation to the Dispute.

30.4 Arbitration

- (a) Any arbitration to resolve a Dispute will be conducted according to the Australian Centre for International Commercial Arbitration Rules (**ACICA Rules**) and administered by the Australian Centre for International Commercial Arbitration. The seat of the arbitration will be Sydney, Australia. The tribunal is to consist of one arbitrator appointed according to the ACICA Rules. The language of the arbitration is English.
- (b) By agreeing to conduct the arbitration in accordance with the ACICA Rules, the parties are not contracting out of the Model Law for the purpose of section 21 of the *International Arbitration Act 1974* (Cth).
- (c) The parties agree that any award by the arbitration tribunal will be final and binding upon the parties and may be enforced by each party in any court with jurisdiction.

30.5 No legal proceedings

Neither TfNSW nor the Supplier may commence legal proceedings (other than for urgent interlocutory relief) in relation to any Dispute unless the dispute resolution procedures set out in this clause 30 (Dispute Resolution) have been followed.

30.6 Continuation of obligations

Notwithstanding the existence of a Dispute, the parties must continue to perform their obligations under this Agreement.

Part F Information Handling

31 Confidentiality

31.1 Obligations of confidence

- (a) Each party agrees to keep confidential and not to use or disclose, other than as permitted by this Agreement, any Confidential Information of the other party.
- (b) These obligations of confidence extend to any Confidential Information provided to or obtained by a party prior to entry into this Agreement.
- (c) This clause 31 does not apply to Confidential Information:
 - (i) that is in the public domain otherwise than as a result of a breach of this Agreement or other obligation of confidence; or
 - (ii) that is already known by, or rightfully received, or independently developed, by the recipient free of any obligation of confidence.

31.2 Permitted use and disclosures

- (a) Each party may disclose Confidential Information of the other party for the exercise of rights or the performance of obligations under this Agreement.
- (b) Each party may disclose Confidential Information of the other party only on a “need-to-know” and confidential basis:
 - (i) with the prior written consent of the other party;
 - (ii) to its officers, agents, professional advisers (including lawyers), employees, contractors, sub-contractors and insurers;
 - (iii) to its Related Bodies Corporate and their officers, agents, professional advisers (including lawyers), employees, contractors, sub-contractors and insurers;
 - (iv) to any auditor appointed under this Agreement; or
 - (v) in the case of TfNSW only, to:
 - (A) any Eligible Customer, its officers, agents, professional advisers (including lawyers), employees, contractors, sub-contractors and insurers; and
 - (B) third parties whom TfNSW engages, or is considering engaging, including where the Services are terminated for convenience in whole or in part, or after expiry of this Agreement, except that TfNSW agrees not to disclose pricing information of the Supplier,

for the exercise of rights or the performance of obligations under this Agreement.

- (c) Each party who discloses Confidential Information of the other pursuant to paragraph (a) must ensure that such information is kept confidential by the recipients on the basis set out in this clause 31.
- (d) Notwithstanding anything to the contrary in this Agreement, either party may disclose Confidential Information of the other party where such Confidential Information:
 - (i) is required to be disclosed by applicable Law, by a court or Governmental Agency, provided that, prior to disclosing any such Confidential Information, the party making the disclosure has promptly notified the other party to allow that party to take all reasonable steps to maintain such Confidential Information in confidence; or
 - (ii) is required to be disclosed in accordance with the rules of any stock exchange upon which the securities of the party making the disclosure are listed.

31.3 Security

Each party must take reasonable steps to protect the Confidential Information of the other party from unauthorised use or disclosure, and in any event steps no less protective than those taken to protect that party's own Confidential Information.

31.4 Publicity

- (a) The Supplier may not make any public statement about this Agreement, or anything related to the subject matter of this Agreement, without the prior written consent of TfNSW.
- (b) Paragraph (a) will not apply where the Supplier is required to make a public statement in order to comply with the rules of any stock exchange upon which the securities of any Supplier Group Member are listed, provided that, prior to making such statement, the Supplier consults with TfNSW regarding the form and content of the statement.

32 Privacy

The Supplier must when it collects, uses, discloses or holds Personal Information in the course of performing its obligations under this Agreement:

- (a) collect, use, access, disclose or hold such Personal Information obtained in connection with the Agreement only for the purposes of performing its obligations under this Agreement;
- (b) comply with all applicable Privacy Laws as if it were a person subject to the Privacy Laws;
- (c) not do any act or engage in any practice that would breach the Privacy Laws, or which if done or engaged in by TfNSW, would be a breach of any Privacy Laws;
- (d) not disclose Personal Information to any other person without the prior written consent of TfNSW or as expressly required by any Law;

- (e) notify TfNSW immediately upon becoming aware of a breach or possible breach of any of the obligations in this clause 32, whether by the Supplier or Supplier Personnel, and comply with any reasonable direction from TfNSW with respect to remedying that breach;
- (f) notify any individual that makes a complaint to the Supplier regarding the Supplier's acts or practices in relation to such individual's Personal Information, that the complaint may be investigated by the Privacy Commissioner;
- (g) comply with all reasonable directions of TfNSW in relation to the care and protection of Personal Information held in connection with this Agreement or the rights of individuals to access and correct such Personal Information, and take all technical, organisational and other security measures reasonably within the Supplier's power to protect the Personal Information from misuse, interference and loss and from unauthorised access or use, modification or disclosure;
- (h) not allow, or permit access to, or transfer any Personal Information that belongs to TfNSW, has been provided by TfNSW or has been collected, accessed or used by the Supplier with the consent of TfNSW, outside of Australia, unless it has first obtained the TfNSW's approval in writing;
- (i) ensure that any of the Supplier's Personnel who are required to deal with the Personal Information for the purposes of the Agreement are made aware of the obligations of the Supplier under this clause 32; and
- (j) ensure that any agreement with any Subcontractor contains substantially the same or equivalent obligations to this clause 32 which are enforceable by the Supplier against the Subcontractor.

33 TfNSW Data

33.1 General

- (a) The TfNSW Data is and remains the property of TfNSW and all rights, including Intellectual Property Rights, in the TfNSW Data will remain with or vest in TfNSW. To the extent necessary to give effect to this clause, the Supplier hereby assigns to TfNSW all Intellectual Property Rights in the TfNSW Data. The Supplier shall not obtain any right, title or interest to the TfNSW Data save as set out in clause 36.5 (TfNSW Material).
- (b) The Supplier must ensure TfNSW has access at all times (and without condition or additional charge) to the TfNSW Data whilst in the possession or under the control of the Supplier.

33.2 Backup of TfNSW Data

Where Supplier uses, processes or stores TfNSW Data outside the System, the Supplier must:

- (a) make backup copies of TfNSW Data;
- (b) store such backup copies securely; and
- (c) retain such backup copies,

as set out in any Statement of Work or as otherwise required by TfNSW from time to time.

33.3 Security and confidentiality of the TfNSW Data

- (a) The Supplier acknowledges that TfNSW Data is Confidential Information and is subject to the confidentiality obligations in clause 31 (Confidentiality).
- (b) The Supplier must maintain and enforce safety and security procedures and safeguards (including procedures and safeguards against the destruction, loss, disclosure, alteration or unauthorised access or use of TfNSW Data) in accordance with Industry Best Practice and any policies, procedures or standards as may be advised by TfNSW from time to time.
- (c) Without limiting clause 33.3(b), the Supplier must:
 - (i) at all times use the most appropriate, sophisticated and up-to-date pro-active security prevention Software, including virus detection systems and intrusion detection systems for preventing and detecting Disabling Code;
 - (ii) ensure that all systems are constantly updated throughout the Term;
 - (iii) ensure that any new:
 - (A) virus definitions are applied within 24 hours of being issued; and
 - (B) security procedures and Software patches are implemented in accordance with the directions of the Change Advisory Board;
 - (iv) implement practices and procedures that are consistent with industry standards within a reasonable timeframe;
 - (v) pro-actively advise TfNSW on measures which TfNSW should take, or practices and procedures which TfNSW should implement;
 - (vi) at all times pro-actively monitor known security threats (including in relation to Disabling Code); and
 - (vii) promptly informing TfNSW of any security threats or Disabling Code and the steps necessary to avoid their introduction.
- (d) If the Supplier becomes aware of a breach or potential breach of security, the Supplier must immediately notify TfNSW and identify the cause of such breach or potential breach, and do all within its power to remedy any breach and prevent any recurrence of such breach.
- (e) The Supplier must not, and must ensure its Supplier Personnel do not, insert or activate, and must use its best endeavours to prevent any third party from inserting or activating, any Disabling Code into any TfNSW systems, Products or Services at any time.
- (f) If the Supplier becomes aware that any Disabling Code is found to have been installed, released or otherwise introduced into any of TfNSW's systems, Products or Services, then the Supplier must notify TfNSW immediately, and take all reasonable remedial action to eliminate the Disabling Code, prevent re-occurrence and rectify any consequences at its cost.

33.4 Restoration of lost TfNSW Data

In addition to all other rights TfNSW may have under this Agreement or at Law, if any TfNSW Data is lost, destroyed, corrupted or altered in connection with the provision of the Products or Services, the Supplier must, at its cost and expense, take all practicable measures and regardless of cost, convenience or technical difficulty, to immediately restore, re-create or remediate TfNSW Data to the last available backup.

33.5 Records and retention of TfNSW Data

- (a) The Supplier must:
 - (i) establish and maintain complete, accurate and up-to-date records of all TfNSW Data accessed, collected or changed by it, which must include accurate details of the individual Representative who accessed, collected or changed the TfNSW Data and the date, time and manner in which it was accessed, collected or changed; and
 - (ii) make copies of the records referred to in clause 33.5(a)(i) available to TfNSW in real time if possible, and if not possible, within 24 hours of real time.
- (b) On the date any TfNSW Data is no longer needed for the purposes of the Supplier providing the Services, the Supplier and each of its Representatives must within 14 days after such date, at its cost:
 - (i) cease using the relevant TfNSW Data; and
 - (ii) subject to any legal requirement in relation to the retention of records:
 - (A) deliver to TfNSW, or, at TfNSW's option, destroy (in accordance with approved destruction methods) or permanently de-identify, all tangible records of TfNSW Data in the power, possession or control of the Supplier or any person to whom it has given access to these records; and
 - (B) erase, destroy in another way (in accordance with approved destruction methods) or de-identify (including from electronic storage), all intangible records in the power, possession or control of the Supplier or any person to whom it has given access to these records.

34 Return of Information

On termination or expiry of this Agreement for any reason the Supplier must, as requested by TfNSW:

- (a) provide TfNSW with a copy of all TfNSW Data and Confidential Information in the format specified by TfNSW; or
 - (b) delete any TfNSW Data and Confidential Information,
- and certify to TfNSW that it has done so.

35 GIPAA

- (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 (GIPAA)*.
- (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.
- (c) TfNSW may, for benchmarking purposes, disclose to any Government Agency (whether or New South Wales or any other jurisdiction) without identifying the Supplier any terms of this Agreement relating to pricing, scope and performance obligations on condition that prior to making any disclosure TfNSW notifies the Supplier of the identity of the proposed recipient and the extent of the proposed disclosure.
- (d) Nothing in this clause 35 or any other provision of this Agreement operates to limit or restrict any of TfNSW's rights to publish or disclose (on the internet or otherwise) information relating to the Supplier's performance with respect to this Agreement.
- (e) Nothing in this clause 35 or any other provision of this Agreement operates to limit or restrict any of TfNSW's rights to publish or disclose (on the internet or otherwise) any information relating to any tendering process for an agreement analogous to or similar to this Agreement.

36 Intellectual Property

36.1 System

- (a) Different components of the System may be supplied as follows:
 - (i) as licensed Software, in which case the licensed Software will be treated as Supplier Material and licensed in accordance with clause 36.2 and any licensing metrics contained in the relevant SOW including Schedule 2 (Pricing Terms) to the SOW;
 - (ii) as Created IP, in which case the Created IP will be licensed in accordance with clause 36.3; and/or
 - (iii) on an “as a Service” basis, in which case the relevant component will be supplied in accordance with Module 6D (X as a Service) and any subscription metrics contained in the relevant SOW including Schedule 2 (Pricing Terms) to the SOW.

36.2 Supplier Material

- (a) The Supplier Material remains the property of the Supplier, or any licensor or supplier to the Supplier, as the case may be.

- (b) Subject to clause 36.2(c), if the Supplier incorporates Supplier Material into any Product or Service or otherwise provides any Supplier Material to TfNSW or an Eligible Customer in connection with the Services, the Supplier grants to TfNSW and the Eligible Customers a non-exclusive, perpetual, irrevocable, royalty-free, assignable licence (including the right to sublicense) to use, reproduce, adapt, develop, modify (subject to paragraph (c)), distribute and exploit (either directly or through Representatives of TfNSW or the Eligible Customer) Supplier Material for the purposes of or in connection with the exercise, exploitation and full enjoyment of TfNSW's rights in the System provided that TfNSW and the Eligible Customers may not commercialise the Supplier Material.
- (c) If the Supplier Material is Software:
 - (i) the licence in clause 36.2(b) is for the Object Code version of the Software only, and the Supplier must deliver to TfNSW a copy of the Object Code for that Software, but (subject to clause 36.7 (Escrow)) is not required to deliver any Source Code for that Supplier Material; and
 - (ii) notwithstanding clause 36.2(b), TfNSW and its Eligible Customers may not modify such Software.
- (d) The licence granted to TfNSW and the Eligible Customers to use the Supplier Material is limited to use in connection with a system that monitors and manages transport, congestion and the movement of people and things, as contemplated by this Agreement, physically located:
 - (i) in New South Wales; and
 - (ii) within 20 km of New South Wales, where the transport, congestion or the movement of people and things in those areas outside of New South Wales have an effect within New South Wales,

and for clarity:

 - (iii) this clause does not limit or restrict any use of the Supplier Material by TfNSW, the Eligible Customers or its sublicensees outside of New South Wales provided such use relates to the monitoring and management of transport, congestion and the movement of people and things, as contemplated by this Agreement, in the areas referred to in paragraphs (i) and (ii); and
 - (iv) the references to the areas referred to in paragraphs (i) and (ii), include:
 - (A) the air space above those areas;
 - (B) locations beneath the ground in those areas; and
 - (C) the coastal area of New South Wales, extending to 200 nautical miles out to sea (including the air space above and locations beneath the surface, of this area).
- (e) For clarity, the restriction against commercialisation under paragraph (b) does not prevent TfNSW and the Eligible Customers from:
 - (i) permitting third parties to use or access TfNSW's instance of the Solution; or

- (ii) providing any TfNSW Data (including providing access to any TfNSW Data) to any third parties,

and charging fees and/or entering into commercial arrangements in connection with the above.

36.3 Created IP

- (a) In respect of the Initial SOW:
 - (i) the Supplier will own and, to the extent necessary, TfNSW hereby assigns to the Supplier, all Intellectual Property Rights in the Created IP created under the Initial SOW; and
 - (ii) the Supplier grants to TfNSW and the Eligible Customers a non-exclusive, perpetual, irrevocable, royalty-free, assignable licence (including the right to sublicense) to use, reproduce, adapt, develop, modify (subject to paragraph (C)), distribute and exploit (either directly or through Representatives of TfNSW or the Eligible Customer) the Created IP for the purposes of or in connection with the exercise, exploitation and full enjoyment of TfNSW's rights in the System, provided that:
 - (A) TfNSW and the Eligible Customers may not commercialise the relevant Created IP created under the Initial SOW;
 - (B) the Supplier must deliver to TfNSW a copy of the Object Code for any Created IP that is Software, but is not required to deliver any Source Code for that Created IP; and
 - (C) notwithstanding paragraph (ii), TfNSW and its Eligible Customers may not modify any Created IP that is Software.
- (b) The licence granted to TfNSW and the Eligible Customers to use the Created IP is limited to use in connection with a system that monitors and manages transport, congestion and the movement of people and things, as contemplated by this Agreement, physically located:
 - (i) in New South Wales; and
 - (ii) within 20 km of New South Wales, where the transport, congestion or the movement of people and things in those areas have an effect within New South Wales,and for clarity:
 - (iii) this clause does not limit or restrict any use of the Created IP by TfNSW, the Eligible Customers or its sublicensees outside of New South Wales provided such use relates to the monitoring and management of transport, congestion and the movement of people and things, as contemplated by this Agreement, in the areas referred to in paragraphs (i) and (ii); and
 - (iv) the references to the areas referred to in paragraphs (i) and (ii), include:
 - (A) the air space above those areas;

- (B) locations beneath the ground in those areas; and
 - (C) the coastal area of New South Wales, extending to 200 nautical miles out to sea (including the air space above and locations beneath the surface, of this area).
- (c) For clarity, the restriction against commercialisation under paragraph (a)(ii) does not prevent TfNSW and the Eligible Customers from:
 - (i) permitting third parties to use TfNSW's instance of the Solution; or
 - (ii) providing any TfNSW Data (including providing access to any TfNSW Data) to any third parties,and charging fees and/or entering into commercial arrangements in connection with the above.
- (d) In respect of any other Statements of Work, unless otherwise agreed in that Statement of Work:
 - (i) TfNSW will own and, to the extent necessary, the Supplier hereby assigns to TfNSW, all Intellectual Property in the Created IP;
 - (ii) TfNSW grants to the Supplier (and its Subcontractors) a non-exclusive licence during the Term to use the Created IP solely for the purpose of performing its obligations under this Agreement; and
 - (iii) where Created IP consists of Software, the Supplier must deliver to TfNSW:
 - (A) the Object Code for that Software; and
 - (B) the Source Code for that Software.

36.4 Third Party Material

- (a) Third Party Material may be supplied:
 - (i) from a Subcontractor;
 - (ii) as contemplated in clause 8.5; and
 - (iii) in accordance with any Statement of Work.
- (b) If the Supplier incorporates Third Party Material into any Product or Service or otherwise provides any Third Party Material to TfNSW or an Eligible Customer in connection with the Services, and:
 - (i) the Third Party Material is procured under an existing agreement between the third party and another Eligible Customer in accordance with clause 8.5, then the terms of that agreement will apply to the licensing of that Third Party Material; or
 - (ii) the Third Party Material is not procured under an existing agreement between the third party and another Eligible Customer in accordance with clause 8.5, the Supplier must procure for TfNSW and the Eligible Customers

(by no later than the date on which the Product or Service is provided to TfNSW):

- (A) rights in respect of the Third Party Material that are no less extensive than the rights granted to TfNSW and the Eligible Customers under clause 36.2(b); or
 - (B) with TfNSW's prior written consent, such other licence rights in respect of the Third Party Material as are agreed in writing by the parties.
- (c) Third Party Material must be directly licensed to TfNSW or sub-licensed to TfNSW by the Supplier, unless TfNSW agrees otherwise in writing.
- (d) As at the Commencement Date, the parties agree that, for the purposes of paragraph (b)(ii)(B), TfNSW has consented to the Supplier procuring licence rights for the Initial SOW Third Party Software, on the relevant third party licensor's standard licence terms, excluding:
- (i) WSP PREP Software; and
 - (ii) Mentz EMS Software.

For clarity, paragraph (b)(ii)(A) applies to WSP PREP Software and Mentz EMS Software.

- (e) Notwithstanding any provision in third party licensor's standard license terms as referred to in paragraph (d), the parties agree that:
- (i) TfNSW and each NSW Transport Cluster entity may use such Third Party Material, as incorporated in the System, in the manner described in clauses 36.2(d) and 36.2(e), subject to (ii) below;
 - (ii) TfNSW acknowledges that it and each NSW Transport Cluster entity may not transfer (including sub-license, except to Other Suppliers in connection with the provision of goods or services by those Other Suppliers to TfNSW or a NSW Transport Cluster entity), assign, reproduce, adapt, develop, modify, distribute or exploit such Third Party Material. If TfNSW requests the Supplier to obtain any of these rights from the relevant third party licensor, or to permit another Eligible Customer to use such Third Party Materials, the Supplier will use reasonable efforts to procure such rights (and the parties acknowledge that the relevant third party licensor may seek to charge additional amounts for granting such rights, which will be the subject of the Change Control Procedure);
 - (iii) no contractual relationship is created between TfNSW or any Eligible Customer and the third party licensors referred to in paragraph (d), and TfNSW will not be liable to such third parties;
 - (iv) nothing in a third party licensor's standard license terms as referred to in paragraph (d) relieves the Supplier of its obligation under this Agreement (excluding paragraph (b)(ii)(A));
 - (v) clause 33.1 will apply in respect of any TfNSW Data created or stored in any Third Party Materials, including:

- (A) transport models created from the use of the PTV Visum and Optima software; and
- (B) any reports or data created from the use of the Microsoft Power BI software.

36.5 TfNSW Material

- (a) TfNSW Material remains the property of TfNSW, or any licensor or supplier to TfNSW, as the case may be.
- (b) TfNSW grants to the Supplier (and its Subcontractors) a non-exclusive licence during the Term to use the TfNSW Material solely for the purpose of performing its obligations under this Agreement.
- (c) The Supplier must not contest the title to, or in any way take any action which detrimentally affects the title to, any Intellectual Property Rights owned or used by TfNSW.

36.6 Moral Rights

The Supplier must procure from each of the Supplier Personnel who are authors of any copyright material assigned, licensed or otherwise supplied to TfNSW under this Agreement, a grant of consent and waiver of any Moral Rights in favour of the Supplier to the extent required to enable TfNSW to fully exercise, exploit and enjoy its ownership or licence rights (as the case may be) granted to it under this Agreement.

36.7 Escrow

- (a) The Supplier must arrange for itself, TfNSW and an escrow agent approved by TfNSW to enter into an escrow agreement substantially in the form contained in Schedule 13 (Escrow Deed) or such other form of agreement or such other terms acceptable to TfNSW in relation to the System.
- (b) The Supplier must ensure that the escrow agreement:
 - (i) is with an escrow agent located in Australia;
 - (ii) endures for at least the Term; and
 - (iii) requires the materials in escrow to be tested at least once every 2 Years in order to ensure that those materials are sufficient to enable TfNSW to use, operate and maintain the System if necessary.
- (c) Any costs under the escrow agreement will be paid by TfNSW, unless the testing demonstrates that the materials in escrow are not sufficient to enable TfNSW to use, operate and maintain the System, in which case the Supplier must pay the costs of any rectification that is required, including additional testing or additional deposits of the escrow materials that may be required.
- (d) The Supplier must consult with and comply with the reasonable directions of TfNSW in any negotiations with the escrow agent arising under paragraph (a).
- (e) The Supplier must ensure that the materials deposited with the escrow agent at any time include:

- (i) the Object Code of the most current version of the System, including any configuration;
 - (ii) the Source Code of the most current version of the System, including any configuration;
 - (iii) any Created IP; and
 - (iv) all tools and documentation (written in English) which a Software developer would reasonably require in order to operate, manage and modify the System.
- (f) Unless otherwise agreed by the parties, the Supplier is not required to include any Third Party Material in the materials to be deposited with the escrow agent under this clause 36.7 in respect of any of the Initial SOW Third Party Software except for:
 - (i) WSP PREP Software ; and
 - (ii) Mentz EMS Software.

36.8 Supplier indemnity

- (a) The Supplier indemnifies TfNSW and its Representatives against any Loss suffered or incurred by them in connection with any Supplier Infringement Claim. This indemnity does not apply to the extent that the Supplier Infringement Claim directly results from:
 - (i) TfNSW or its Representatives' use of the Supplier Material, Created IP, Third Party Material or the Products or Services contrary to this Agreement (unless such use was authorised by the Supplier); or
 - (ii) any modification of the Supplier Material, Created IP, Third Party Material or the Products or Services made by TfNSW or its Representatives (unless such modification is envisaged by this Agreement or is otherwise authorised by the Supplier).
- (b) The indemnity referred to in paragraph (a) will be granted whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- (c) The Supplier must immediately notify TfNSW when the Supplier becomes aware of any Supplier Infringement Claim made or likely to be made against TfNSW or its Representatives, including any details of the alleged infringement.

36.9 Conduct of Supplier Infringement Claims

- (a) Subject to clause 36.9(b), the Supplier must:
 - (i) promptly and diligently defend the Supplier Infringement Claim;
 - (ii) keep TfNSW regularly informed of its progress and strategy for defending the Supplier Infringement Claim;

- (iii) observe all reasonable directions given by TfNSW in relation to the defence or to negotiations for settlement of that Supplier Infringement Claim and must not settle such a claim without TfNSW's prior written consent which will not be unreasonably withheld;
 - (iv) refrain from using TfNSW or its Representatives' name in the defence or settlement of the Supplier Infringement Claim without obtaining TfNSW's prior written consent; and
 - (v) not take any action or fail to take any action in that defence that would damage the reputation of TfNSW or its Representatives.
- (b) Notwithstanding paragraph (a), TfNSW may itself respond, defend, oppose and resolve any Supplier Infringement Claim at the Supplier's expense if:
 - (i) the Supplier fails, for whatever reason, to respond to, defend, oppose and resolve any Supplier Infringement Claim in a manner acceptable to TfNSW; or
 - (ii) where litigation is commenced against TfNSW and leave of the court is not granted to TfNSW to withdraw from the litigation and for the Supplier to conduct the litigation in its own name.
- (c) Where the Supplier defends, settles or otherwise conducts a Supplier Infringement Claim, TfNSW will provide reasonable assistance to the Supplier, at the expense of the Supplier.

Part G Non-performance

37 Action Plans

37.1 Preparation

- (a) If requested to do so by TfNSW or if required by this Agreement including any Schedule, the Supplier must prepare an Action Plan and submit the Action Plan to TfNSW in accordance with this clause 37.
- (b) The draft Action Plan must specify (in detail satisfactory to TfNSW):
 - (i) the process for identifying, and where applicable must identify, the cause of the failure or the deficiency in the Products or Services (**Failure**) that the Action Plan is intended to remedy or prevent;
 - (ii) if remedy of the Failure is possible, the actions that will be implemented by the Supplier to effect that remedy;
 - (iii) the actions that will be implemented by the Supplier to prevent the same or a substantially similar Failure from occurring in the future;
 - (iv) the costs (if any) of implementing the Action Plan;
 - (v) a timeline for the implementation of the Action Plan; and
 - (vi) any other content that may reasonably be requested by TfNSW from time to time.

37.2 Approval

- (a) Within five Business Days after receiving the draft Action Plan, TfNSW must:
 - (i) give the Supplier notice that it approves the draft Action Plan, such approval not to be unreasonably withheld; or
 - (ii) comment on the draft Action Plan, setting out its reasons for not approving the draft Action Plan, in which case the Supplier must:
 - (A) at the request of TfNSW, meet to discuss TfNSW's comments; and
 - (B) within five Business Days after the meeting, or receipt of TfNSW's comments where no meeting is required by TfNSW, prepare a revised Action Plan addressing TfNSW's comments and submit it to TfNSW for its approval.
- (b) This clause 37.2 applies to any resubmitted draft Action Plan until the Action Plan is approved by TfNSW.

37.3 Implementation

- (a) Once an Action Plan is approved in accordance with clause 37.2, the Supplier must implement that Action Plan:

- (i) at no cost to TfNSW, unless otherwise agreed between the parties and set out in the Action Plan; and
 - (ii) in accordance with the timeframe and other terms specified in that Action Plan.
- (b) The provision by the Supplier, the approval by TfNSW and/or the implementation of an Action Plan does not waive, limit, prejudice or otherwise affect any other rights or remedies TfNSW may have under this Agreement or at Law, including TfNSW's:
 - (i) right to terminate this Agreement (wholly or in part) under clause 41.1; and/or
 - (ii) right to claim or recover Losses.
- (c) In addition to any other rights that TfNSW may have, TfNSW may immediately terminate one or more affected SOWs by giving the Supplier notice if:
 - (i) a draft Action Plan is submitted two or more times in relation to the same Failure and none of the versions of the Action Plan have been approved by TfNSW;
 - (ii) the Supplier fails to implement an Action Plan; or
 - (iii) the Supplier implements an Action Plan and:
 - (A) the Action Plan fails to remedy the Failure that gave rise to the development and implementation of the Action Plan; or
 - (B) the same, or a substantially similar Failure that gave rise to the development and implementation of the applicable Action Plan occurs,however, TfNSW may not exercise its right to terminate under this clause unless:
 - (iv) the Executive Relationship Forum has been convened within 10 Business Days of the relevant event described in paragraphs (i) to (iii), and the parties have not agreed how to resolve the matter at that Executive Relationship Forum; or
 - (v) the Executive Relationship Forum does not meet within such 10 Business Day period.

38 Suspension

- (a) TfNSW may at any time, by notice to the Supplier, suspend any or all aspects of this Agreement (including one or more SOWs) by such period as TfNSW considers necessary (**Suspension Notice**).
- (b) Subject to paragraph (c), if TfNSW serves a Suspension Notice then:
 - (i) both parties will be relieved from their obligations under this Agreement for the period specified in the Suspension Notice;

- (ii) if the suspension affects the Supplier's ability to perform an obligation under this Agreement by a particular time required under this Agreement, then such time will be extended by the period of suspension (however, the Term, any Initial SOW Term and any Extended SOW Term(s) (if relevant) will not be extended); and
 - (iii) the Supplier must recommence the affected supply of the Products and Services by the date specified in the Suspension Notice or as otherwise directed by TfNSW on at least 10 Business Days' notice.
- (c) If TfNSW indicates in its Suspension Notice that it is exercising its right to suspend as a result of performance issues relating to the Supplier, then:
 - (i) such Suspension Notice will not be effective until 10 Business Days after the date that TfNSW issues the Suspension Notice; and
 - (ii) if, within such 10 Business Day period, the Supplier remediates the relevant performance issues to TfNSW's reasonable satisfaction then TfNSW will revoke the Suspension Notice.
- (d) If TfNSW does not indicate in its Suspension Notice that it is exercising its right to suspend as a result of performance issues relating to the Supplier, then:
 - (i) the Supplier will be entitled to its reasonable holding costs (including for its Supplier Personnel that TfNSW does not wish the Supplier to reassign or that the Supplier is unable to reassign to other duties (including training and work on other projects)) during the period of the suspension, provided that the Supplier can substantiate its claim for reasonable holding costs and demonstrate how it has minimised such reasonable holding costs, to TfNSW's reasonable satisfaction;
 - (ii) the parties agree that they will document such reasonable holding costs payable by TfNSW in writing (either in the form of a SOW or in accordance with the Change Control Procedure) and unless otherwise agreed between the parties, such reasonable holding costs will be calculated in accordance with the rate card set out at Schedule 2 (**Pricing Terms**).

39 Step in

39.1 TfNSW's right to take action

- (a) If:
 - (i) an Event of Default occurs;
 - (ii) TfNSW is reasonably of the view that an Event of Default is likely to occur and the Supplier fails to demonstrate, to TfNSW's reasonable satisfaction, that such Event of Default will not occur within 5 Business Days of TfNSW notifying the Supplier of such Event of Default; or
 - (iii) the Supplier fails, or TfNSW is reasonably of the view that the Supplier is about to fail, to perform an obligation under this Agreement, and such failure has or is likely to have (in TfNSW's reasonable opinion) an adverse effect on the System or TfNSW, and either:

- (A) the default or non-performance is incapable of being remedied; or
- (B) the Supplier fails to remedy the default or non-performance within 2 Business Days of TfNSW notifying the Supplier to do so (or such longer period as notified by TfNSW (acting reasonably)),

TfNSW or its nominee may, at its option, take control of all or part of the Services and, in doing so, may take such other action as is reasonably necessary to restore the affected TfNSW function.

- (b) TfNSW will return control of the Services to the Supplier once the default or non-performance by the Supplier has been remediated and has been fully restored.

39.2 Supplier must co-operate

- (a) The Supplier must co-operate fully with TfNSW or its nominee and their agents and provide all reasonable assistance at no charge to restore the affected Services as soon as possible, including giving TfNSW and its nominees reasonable access to Supplier Personnel and resources that are used in the provision of the Services.
- (b) Without limiting 39.2(a), the Supplier must obtain all consents, approval and licences from third parties required for TfNSW to exercise its rights under clause 39.1 (TfNSW's right to take action).

39.3 Payment of fees

The Supplier is not entitled to receive fees for that portion of the Services performed by TfNSW or its agent under clause 39.1 (TfNSW's right to take action).

39.4 Supplier liability

Nothing in clause 39.1 (TfNSW's right to take action) limits or increases the Supplier's liability to TfNSW with respect to any default or non-performance by the Supplier under this Agreement.

40 Force Majeure

40.1 Suspension of obligations

An obligation of a party under this Agreement will be suspended for the time and to the extent that it is prevented from or delayed in complying with that obligation by an event of Force Majeure.

40.2 No relief

The occurrence of an event of Force Majeure does not relieve a party from performing its obligations:

- (a) under any Business Continuity Plans required by this Agreement;
- (b) if the delay or failure by it in performance or the occurrence of the event of Force Majeure could have been prevented by reasonable precautions taken by it or can reasonably be circumvented through the use by it of work around plans or (without undue expense) alternative services or other means; or

- (c) if the event of Force Majeure results from any intentional act or omission on the part of that party, except to the extent such fault was itself caused by an event of Force Majeure.

40.3 Responsibilities of the affected party

A party affected by an event of Force Majeure must promptly:

- (a) notify the other party and describe in reasonable detail the nature of the event of Force Majeure and its likely effect on the ability of the affected party to perform its obligations;
- (b) use all reasonable endeavours to avoid or remove the cause and perform its obligations as soon as possible provided that it is not obliged to settle an industrial dispute except on terms acceptable to it; and
- (c) take all reasonable steps to mitigate any losses caused to the other party and itself.

40.4 Agents and Subcontractors

Any failure to perform by a Subcontractor or agent of the Supplier will not constitute an event of Force Majeure in respect of the Supplier unless the agent or Subcontractor was itself subject to an event of Force Majeure. The Supplier will not be entitled to any additional payment from TfNSW or for any additional costs it may incur as a result of the occurrence or the rectification of any Force Majeure event to which the Supplier, its Subcontractors or agents are subject.

40.5 No liability for failure to perform

A party is not liable to the other party for any loss of any kind whatsoever whether directly or indirectly caused or incurred by the other party by reason of any failure or delay in the performance of its obligations under this Agreement that is due to the occurrence of an event of Force Majeure.

40.6 Termination

TfNSW may terminate any affected SOWs with immediate effect by giving notice to the Supplier if the Supplier has been prevented by Force Majeure from performing any of its material obligations under this Agreement or a SOW for more than 30 days.

41 Termination and expiry

41.1 Termination by TfNSW for cause

- (a) Without limiting TfNSW's rights or remedies under this Agreement or at Law, TfNSW may terminate this Agreement (or one or more SOWs) as a whole or in part immediately by notice to the Supplier, if one or more of the following events occurs (each an **Event of Default**):
 - (i) where the Supplier commits a breach of this Agreement which is capable of remedy (including a failure to meet a Milestone Date or date set out in a Project Management Plan), and fails to remedy that breach within 14 days after TfNSW provides a notice to the Supplier specifying the breach;

- (ii) where the Supplier commits a material breach of this Agreement, or commits a number of breaches which collectively constitute a material breach of this Agreement which is not capable of being remedied;
 - (iii) where the Supplier regularly or persistently commits material breaches of this Agreement, whether or not they are remedied;
 - (iv) a SOW Termination Trigger occurs;
 - (v) a Conflict of Interest or Probity Event arises, provided that TfNSW may only exercise its right to terminate if it has provided the Supplier with at least 5 Business Days notice, specifying the relevant events giving rise to the Conflict of Interest or Probity Event;
 - (vi) an Insolvency Event occurs in respect of the Supplier or any of its Related Bodies Corporate;
 - (vii) there is a Change of Control of any entity in the ownership chain beginning with Supplier Parent and ending with the Supplier (other than where the Supplier has obtained TfNSW's prior consent, which must not be unreasonably withheld);
 - (viii) where the aggregate Loss suffered by TfNSW arising out of or in connection this Agreement is greater than the amount specified in clause 46.2 (Limitation of Liability);
 - (ix) the Supplier does anything that materially damages or is likely to materially damage the reputation of or any brand of TfNSW or the NSW Government;
 - (x) where TfNSW has a right under any other clause of this Agreement (other than clause 41.2) to terminate this Agreement including under clauses 3.6(a)(i), 37.3(c), 40.6 and 50.16(c); and/or
 - (xi) the Supplier has breached a material term of the RFP.
- (b) The Supplier must promptly notify TfNSW of the occurrence of any event that would entitle TfNSW to terminate under clause 41.1(a).

41.2 Termination by TfNSW for convenience

TfNSW may terminate this Agreement (or one or more SOWs) as a whole or in part, without liability, at any time by giving the Supplier at least 30 days' notice.

41.3 Termination by Supplier for cause

The Supplier may terminate:

- (a) this Agreement as a whole, immediately by notice to TfNSW, if an Insolvency Event occurs in respect of TfNSW; or
- (b) a SOW, as a whole, by notice to TfNSW, if:
 - (i) any Charges due and payable by TfNSW under this Agreement are more than 4 months overdue and there is no dispute between TfNSW and the Supplier in relation to such Charges;

- (ii) after the expiry of the 4 months referred to in clause 41.3(b)(i), the Supplier has issued a notice to TfNSW stating:
 - (A) it is a notice for the purposes of this clause 41.3(b);
 - (B) the Charges are more than 4 months overdue;
 - (C) the overdue Charges and the relevant SOW(s) and invoices(s) under which the Charges are due and payable; and
 - (D) the Supplier's intention to terminate if TfNSW does not pay the overdue amount within 30 Business Days after the date of the notice; and
- (iii) TfNSW fails to pay to the Supplier, within 30 Business Days after the date of the notice referred to in clause 41.3(b)(ii), the relevant Charges.

The parties acknowledge that the termination rights set out in this clause 41.3 are an exhaustive statement of the Supplier's rights to terminate this Agreement and each relevant SOW.

41.4 Partial Termination

- (a) A reference to termination of this Agreement or a SOW "*in part*" in this clause 41 (Termination and expiry) means termination of one or more Products or Services or termination of particular parts of one or more Products or Services as determined by the party exercising the termination right.
- (b) If TfNSW exercises a right to terminate this Agreement or one or more SOWs in part, TfNSW must specify:
 - (i) appropriate variations to the remaining portion of this Agreement; and
 - (ii) how the rights and obligations in clause 42 (Disengagement) will be implemented by the Supplier in respect of the terminated Product or Service.
- (c) TfNSW may at its sole discretion after giving notice to terminate any Services or Products, engage a third party to provide services which replace such terminated Services, or perform or provide such services or products itself.
- (d) If at any time TfNSW considers that any aspect of the termination of one or more Services or Products (or parts thereof) is not proceeding to its satisfaction, it may by notice to the Supplier terminate this Agreement in its entirety.

41.5 Consequences of expiry or termination

- (a) Except as set out otherwise in this Agreement, the expiry or termination of this Agreement does not affect:
 - (i) either party's rights in respect of any breach of this Agreement occurring before expiry or termination;
 - (ii) the obligations of the parties to make a payment or perform any other act under this Agreement which was due before expiry or termination; and/or

- (iii) each perpetual licence granted by the Supplier under this Agreement (which to avoid doubt will continue in full force and effect).
- (b) If TfNSW terminates this Agreement, without limiting any other right under this Agreement or at Law:
 - (i) TfNSW may suspend making any payment due to the Supplier under this Agreement;
 - (ii) TfNSW may recover from the Supplier all money paid to it for Services not yet completed or provided;
 - (iii) TfNSW's sole liability to the Supplier in respect of the termination will be payment of amounts calculated in accordance with section 10 of Schedule 2 (Pricing Terms); and
 - (iv) TfNSW may require the Supplier to immediately assign to TfNSW all subcontracts in relation to the Products or Services.
- (c) The expiry of this master agreement will not affect any SOWs in existence at the date of expiry.

41.6 Survival

Clauses 30 (Dispute Resolution), 31 (Confidentiality), 33 (TfNSW Data), 41 (Termination and expiry), 42 (Disengagement), 44 (Representations and warranties), 45 (Indemnities), 46 (Liability), 47 (Insurance) and Schedule 5 (Disengagement), and any other provisions which are expressed to survive or by their nature impose continuing obligations on the relevant parties, separate and independent from the other obligations of the parties, will survive the termination or expiry of this Agreement.

42 Disengagement

42.1 Planning for Disengagement

- (a) No later than 90 days after the Commencement Date, the Supplier must:
 - (i) in consultation with TfNSW, prepare a draft detailed plan (**Disengagement Plan**) to achieve an orderly and staged transition of the Services and the System (in whole or in part) from the Supplier to TfNSW or one or more third parties nominated by TfNSW (together, **Replacement Supplier**);
 - (ii) ensure that the draft Disengagement Plan addresses each of the Disengagement Services listed in Schedule 5 (Disengagement), the matters described in section 3.1 of Schedule 5 (Disengagement) and any other Disengagement Services reasonably required by TfNSW; and
 - (iii) submit the draft Disengagement Plan to TfNSW for its review and approval.
- (b) Once the draft Disengagement Plan submitted by the Supplier is approved by TfNSW, it will be the Disengagement Plan for the purpose of this Agreement.

42.2 Updating the Disengagement Plan

- (a) The Supplier must ensure that the Disengagement Plan remains current throughout the Term.
- (b) Without limiting clause 42.2(a), the Supplier must (in consultation with TfNSW) review and update the Disengagement Plan:
 - (i) promptly when any of the following events occurs:
 - (A) any new SOW is executed under this Agreement;
 - (B) no less than 90 days before any SOW is due to expire; and
 - (C) a notice of termination is provided by either party under this Agreement.
- (c) If the Supplier proposes a change to the Disengagement Plan it must submit an updated draft of the Disengagement Plan to TfNSW for its review and approval.
- (d) Once the updated draft Disengagement Plan submitted by the Supplier is approved by TfNSW, it will be the Disengagement Plan for the purpose of this Agreement.

42.3 Disengagement Services

- (a) At TfNSW's direction, the Supplier must provide Disengagement Services and supply any Deliverables set out in a Disengagement Plan in accordance with the Disengagement Plan, including the timeframes set out in a Disengagement Plan (including any Milestones), if:
 - (i) one or more Services or any part of any Service expires or is terminated for any reason; and/or
 - (ii) this Agreement expires or is terminated as a whole for any reason,on and from the relevant Disengagement Commencement Date for the period nominated by TfNSW, acting reasonably, which may not exceed 3 years (**Disengagement Period**).
- (b) TfNSW may, by notice to the Supplier, elect to:
 - (i) begin the Disengagement Period prior to the expiry or termination of the Agreement or relevant Service; or
 - (ii) extend any Disengagement Period one or more times for such period(s) as TfNSW nominates, provided that the Disengagement Period in respect of any particular Disengagement Services does not exceed 3 years in total.

42.4 Fees for Disengagement Services

- (a) Subject to paragraph (b), where permitted under Schedule 2 (Pricing Terms) and Schedule 5 (Disengagement), the Supplier will be entitled to charge fees for Disengagement Services calculated in accordance with Schedule 2 (Pricing Terms) and Schedule 5 (Disengagement).

- (b) The Supplier may not charge fees for Disengagement Services if TfNSW terminated the Agreement or a SOW for an Event of Default under clause 41.1 (Termination by TfNSW for cause).

Part H Liability

43 Assessment of risk

43.1 Due diligence

- (a) The Supplier acknowledge and agrees that, prior to each SOW Commencement Date, it is responsible for conducting, has had the opportunity to conduct, and has conducted, reasonable due diligence investigations in respect of all information, documents and matters:
 - (i) that the Supplier considers necessary; or
 - (ii) which were requested with particularity by the Supplier,to enable the Supplier to:
 - (iii) form the decision to enter into the relevant SOW; and
 - (iv) satisfy itself that it is able to perform its obligations under this Agreement in respect of that SOW;
- (b) The Supplier will not be relieved of any of its obligations under this Agreement or any SOW as a result of:
 - (i) its failure to review any information or document provided to the Supplier by or on behalf of TfNSW;
 - (ii) its failure to request information or documents from TfNSW or inform itself of such matters; or
 - (iii) any inaccuracies, errors or omissions in the information or documents provided to the Supplier by or on behalf of TfNSW, to the extent that such inaccuracies, errors or omissions ought reasonably to have been identified by the Supplier on the face of the information or documents during its due diligence investigations.

43.2 Reviews by TfNSW

- (a) Any review or approval of, comment upon or input into, by TfNSW of any Products or Deliverables (including documents) prepared or provided by the Supplier under this Agreement will not relieve the Supplier of its responsibility for such Products or Deliverables or of its obligations under this Agreement.
- (b) A failure by TfNSW to notify the Supplier of any Defect in any such Products or Deliverables will not relieve the Supplier of its liabilities, or constitute a waiver by the Supplier of any rights, under this Agreement.

44 Representations and warranties

44.1 Standard representations and warranties

Each party represents and warrants to the other party during the Term that:

- (a) it has full power and authority to enter into, perform and observe its obligations under this Agreement;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms;
- (c) the execution, delivery and performance by it of this Agreement does not and will not violate:
 - (i) any Law, authorisation, ruling, consent, judgment, order, official directive or decree of any Government Authority;
 - (ii) its constitution or other constituent documents; or
 - (iii) any encumbrance, undertaking or document which is binding upon it or on any of its assets; and
- (d) this Agreement constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms subject to any necessary stamping and registration requirements and to equitable principles and Laws generally affecting creditors' rights.

44.2 Supplier's representations and warranties

The Supplier represents and warrants to TfNSW on a continuing basis that:

- (a) it complies with all Laws applicable to it in performing its obligations under this Agreement;
- (b) it will not enter into any arrangement or contract which impedes or is likely to hinder its ability to perform its obligations as required under this Agreement;
- (c) its Representatives have the authority to act for and on behalf of it in relation to the matters within their authority under this Agreement;
- (d) it is responsible for the acts and omissions of the Supplier Personnel as if they were its own acts and omissions;
- (e) it, and each of the Supplier Personnel, has the level of skill, knowledge, experience and ability which may be expected of a professional organisation or individual, as applicable, experienced in providing products and services of the type and complexity of the Products and Services;
- (f) no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending or threatened which, if adversely decided, could have a material adverse effect on its ability to perform its obligations under this Agreement;
- (g) no additional authorisation, consent, approval, filing or registration with any court or Government Authority is or will be necessary or required for it to enter into and give effect to this Agreement;
- (h) in the conduct of its business including the supply of services to TfNSW or any other customer, the Supplier will not engage in conduct that is unlawful or

dishonest or otherwise inconsistent with the standards expected of a good corporate citizen;

- (i) the Supplier has not granted to any other person rights inconsistent with the rights granted by this Agreement;
- (j) there is nothing that would prevent the Supplier from successfully claiming under the Insurance including any non-compliance with conditions precedent to the operation of that Insurance;
- (k) as at the Execution Date, the information provided to TfNSW in terms of the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Supplier and its Supplier Personnel, was to the best of the Supplier's knowledge and belief correct when it was provided to the TfNSW;
- (l) during the Term, it (and its Supplier Personnel) will have all the necessary licences, certifications, approvals, credentials, expertise and consents necessary to perform its obligations under the Agreement;
- (m) it will not maliciously or negligently introduce any Disabling Code into TfNSW systems during the Term;
- (n) no Conflict of Interest exists;
- (o) the System, including the Enhanced Core Transport Management System, when delivered:
 - (i) will meet and continue to meet the requirements for the System referred to in this Agreement;
 - (ii) is fit for the purposes of use as a multi-modal intelligent transport incident management system for transport for Greater Sydney as contemplated in this Agreement;
 - (iii) will meet the Business Objectives, Customer Requirements, System and Services Description and Specifications;
 - (iv) is compatible, interoperable, and capable of integration with TfNSW Systems;
 - (v) is maintainable, flexible, extensible and upgradeable in accordance with this Agreement; and
 - (vi) will have scalable processing and communications capacity that is capable of efficiently and effectively meeting increased operational needs over time;
- (p) the Services:
 - (i) will be performed with due care and skill, in a proper and professional manner and in any case in accordance with World's Best Practice;
 - (ii) will be of a suitable quality to operate and support a multi-modal intelligent transport incident management system for transport for Greater Sydney as contemplated in this Agreement and otherwise; and

- (iii) otherwise will meet the requirements for the Services referred to in this Agreement;
- (q) the Products and Deliverables will not infringe the Intellectual Property Rights of any person; and
- (r) each Product and Deliverable will:
 - (i) be properly installed if installed by the Supplier;
 - (ii) comply with all relevant Laws;
 - (iii) be of merchantable quality and free from Defects; and
 - (iv) be interoperable with each other Product and Deliverable.

44.3 Defects during the Warranty Period

- (a) Subject to paragraph (b), if the Supplier is notified of a Defect which has occurred or been detected during the Warranty Period by no later than 10 Business Days after the end of the Warranty Period, the Supplier must, as soon as reasonably practicable (and at no additional cost to TfNSW), remedy that Defect.
- (b) To the extent that a Defect results from:
 - (i) TfNSW's, an Eligible Customer's, Other Supplier's or third party's (excluding Subcontractors) use of the Deliverable in a manner contrary to or not contemplated by the relevant SOW; or
 - (ii) third party Material (including Equipment or Software), not supplied by the Supplier (except where caused by the Supplier),

then the Supplier will be entitled to its reasonable costs in remedying the Defect, provided that the Supplier can substantiate its claim for costs to TfNSW's reasonable satisfaction. However, if a Resource Unit or other pricing mechanism has been agreed by the parties to apply in this situation, such Resource Unit or other pricing mechanism will apply.

44.4 Implied Warranties

- (a) Unless expressly stated otherwise in this Agreement, all guarantees, warranties or other terms and conditions implied or imposed by any legislation are excluded from this Agreement to the maximum extent permitted by Law.
- (b) Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by any legislation which cannot lawfully be excluded or limited.

45 Indemnities

The Supplier indemnifies TfNSW and its Representatives (**Indemnified Persons**) against any Loss suffered or incurred by the Indemnified Persons in connection with:

- (a) any breach of Law arising out of any breach of this Agreement by the Supplier or any of the Supplier's Representatives;
- (b) any fraud, or wilful breach or repudiation of this Agreement, by the Supplier or any of the Supplier's Representatives;
- (c) any negligent or otherwise wrongful act or omission of the Supplier or any of the Supplier's Representatives;
- (d) breach of any warranty by, or any misrepresentation of, the Supplier or any of the Supplier Representatives;
- (e) any claim by a third party that is caused or contributed to by a breach of this Agreement by the Supplier or the Supplier Representatives;
- (f) a breach of clause 31 (Confidentiality) or clause 32 (Privacy) by the Supplier or any of the Supplier Representatives;
- (g) and loss of or damage to property, including TfNSW Data, caused by any act or omission of the Supplier or any of the Supplier Representatives; or
- (h) any personal injury (including sickness or death) caused by any act or omission of the Supplier or any of the Supplier Representatives.

46 Liability

46.1 Exclusion of consequential loss

- (a) Subject to clauses 46.1(b) and 46.3(a), neither party will be liable to the other party under this Agreement or a SOW for any Consequential Loss suffered or incurred by the other party arising out of or in connection with this Agreement.
- (b) Direct TfNSW Loss is not Consequential Loss for the purpose of this Agreement.

46.2 Limitation of Liability

- (a) Subject to clauses 46.1(a) and 46.3(a), the liability of each party to the other under or in connection with this Agreement (whether arising in contract, tort (including negligence), statute, equity or otherwise) is limited to:
 - (i) in respect of each Claim, the total Charges paid and payable under this Agreement; and
 - (ii) in the aggregate for all Claims, the total Charges paid and payable under this Agreement.
- (b) In calculating the liability cap under paragraph 46.2(a), "**paid and payable**" includes Charges:
 - (i) paid by TfNSW to the Supplier under this Agreement;
 - (ii) that have not been paid but which are payable by TfNSW to the Supplier under this Agreement; or

- (iii) that have not been paid but which would be payable by TfNSW to the Supplier if the Supplier were to fully perform its obligations under this Agreement.

46.3 Exclusions From Liability Limitations

- (a) The limitations of liability in clauses 46.1(a) and 46.2 (Limitation of Liability) do not apply:
 - (i) to the indemnities in clauses 36.8(a), or 45 (Indemnities) (excluding clauses 45(c), 45(d) and 45(e));
 - (ii) to a breach by the Supplier of clauses 31 (Confidentiality), 32 (Privacy) and 33 (TfNSW Data); or
 - (iii) if any insurance referred to in clause 47.1 (Insurance Policies) is cancelled or for any reason the liable party's rights in respect of such insurance are adversely affected.

46.4 Civil Liability Act

- (a) The Supplier and TfNSW agree to exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) from this Agreement. For clarity, each party's liability to the other will be reduced to the extent that the other party caused or contributed to that liability.
- (b) To the extent permitted by law:
 - (i) the Supplier must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by TfNSW against the Supplier (whether in contract, tort or otherwise) which relates to loss or liability caused or contributed to by an act or omission of the Supplier's Personnel; and
 - (ii) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by TfNSW against the Supplier (whether in contract, tort or otherwise) which relates to loss or liability caused or contributed to by an act or omission of the Supplier's Personnel, the Supplier must indemnify TfNSW against any loss, damage, cost or expense that forms part of a claim by TfNSW against the Supplier which TfNSW cannot recover from the Supplier because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW) to the extent that such loss, damage, cost or expense would have otherwise been recoverable under this Agreement or at Law.

46.5 Liability to Eligible Customers and the State of New South Wales

- (a) The Supplier acknowledges and agrees that TfNSW holds the benefit of the Supplier's obligations, TfNSW's rights and any indemnity under this Agreement as principal and on trust for any Eligible Customer as if the obligation, right or indemnity had been expressed to be for the benefit of them directly.
- (b) If a Eligible Customer or the State of New South Wales suffers Losses as a result of one or more acts or omissions of Supplier or any Supplier Personnel relating to the performance, non-performance or termination of this Agreement, TfNSW will be able to recover those Losses from the Supplier:

- (i) as if the losses were suffered or incurred by TfNSW itself;
- (ii) to the extent that Losses would have been capable of being recovered by TfNSW had TfNSW suffered those Losses; and
- (iii) subject to the limitations and exclusions set out in this Agreement.

47 Insurance

47.1 Insurance Policies

The Supplier must at its cost take out and maintain during the Term:

- (a) and for 3 years after the end of the Term, professional indemnity insurance with a minimum cover of \$20 million per claim and in the annual aggregate;
- (b) public liability insurance with a minimum cover of \$20 million per claim;
- (c) products liability insurance with a minimum cover of \$20 million in the annual aggregate; and
- (d) insurance in respect of all claims and liabilities arising whether at common law or under statute relating to workers' compensation or employer's liability from any accident or injury to any person employed by the Supplier in connection with this Agreement and the Supplier must ensure that all of its Subcontractors are similarly insured in respect of their employees. The insurance must comply with the Laws of the relevant jurisdiction in which the obligations of this Agreement are carried out.

47.2 Insurance requirements

The Supplier must ensure that each insurance policy required under this Agreement:

- (a) is taken out with Standard & Poor's rating of A – or equivalent rating with other recognised agencies;
- (b) in respect of clause 47.1(b):
 - (i) includes TfNSW as a principal under the policy, but only to the extent of the Supplier's acts or omissions; and
 - (ii) includes a cross liability clause.

47.3 Certificate of currency

The Supplier must, upon request from TfNSW, provide to TfNSW a certificate from its insurer or insurance broker confirming that the insurance requirements referred to in clause 47.1 (**Insurance Policies**) have been satisfied and are in effect.

48 Security

48.1 Financial Security

- (a) The Financial Security will be held as security for the due and proper performance and completion of the obligations of the Supplier under this Agreement.
- (b) If the Supplier fails to properly perform and complete its obligations under the Agreement, and TfNSW suffers Loss arising from or in connection with such failure by the Supplier, TfNSW may deduct its Loss from the Financial Security to the extent that that Loss would be recoverable from the Supplier under this Agreement.
- (c) The Supplier agrees that TfNSW will have no liability for any Loss suffered or incurred by the Supplier where TfNSW exercises its rights in accordance with clause 48.1(b) in good faith.

48.2 PPSA

- (a) In this clause 48.2, PPSA means the *Personal Property Securities Act 2009* (Cth). If a term which is used in this clause 48.2 has a particular meaning in the PPSA, it has the same meaning in this clause 48.2.
- (b) If TfNSW acquires any Equipment from the Supplier pursuant to Module 6F (Equipment Acquisition and Installation Services) of this Agreement and a SOW, or otherwise pursuant to this Agreement, and if requested by TfNSW, the Supplier agrees to grant TfNSW a security interest in and over any rights it has in each item of such acquired Equipment which has not yet been delivered or installed (as applicable), from the time TfNSW pays the relevant Charges for such Equipment until such time as that Equipment is delivered or installed (as applicable) (the **Secured Equipment**). TfNSW may request the Supplier, and the Supplier agrees if so requested, to enter into a security deed to govern the Supplier's obligations in respect of the Secured Equipment.
- (c) TfNSW is not obliged to make any payment to the Supplier in respect of the Secured Equipment unless the Contractor has complied with its obligations under clause 48.2(b).
- (d) Without limiting any of the Supplier's other obligations under this Agreement, the Supplier must:
 - (i) keep the Secured Equipment in its possession and control at all times;
 - (ii) store the Secured Equipment in a manner that clearly shows it is the property of TfNSW (separate from any of the Supplier's other goods at the same location), and not do or omit to do anything to the Secured Equipment to suggest it is the property of the Supplier or any third party;
 - (iii) secure the Secured Equipment from risk, damage and theft, and ensure that the Secured Equipment is kept in a good and serviceable condition; and
 - (iv) provide TfNSW at any time with the right to access, inspect and take possession of the Secured Equipment for any reason.

- (e) TfNSW and the Contractor agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b) to (e) of the PPSA.

Part I Legal

49 Notices

49.1 Notice requirements

- (a) A notice must be in legible writing and in English and will be deemed to have been given and received if:
 - (i) left at the address of the addressee;
 - (ii) sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee; or
 - (iii) emailed to the email address of the addressee,in each case as set out in paragraph (b), as updated from time to time by a party under paragraph (c).
- (b) For the purposes of this clause 49, the relevant address and email address of each party is:
 - (i) for TfNSW:

Attn: Program Director, Intelligent Congestion Management
Operational Systems
Infrastructure and Services
Transport for NSW
44-70 Rosehill Street,

Redfern NSW 2016

Email: icmp@transport.nsw.gov.au
 - (ii) for the Supplier:

Attn: VP Program Management, APAC

Cubic Transportation Systems (Australia) Pty Limited

Level 23, 477 Pitt Street, Sydney NSW 2000

Email: icmp@cubic.com
- (c) Where a party notifies the other party of an updated address or email address, the other party must use those updated contact details for the purpose of giving notices under this Agreement.

- (d) The following notices must not be given by email (but a courtesy copy of that notice must be sent by email):
 - (i) a Dispute Notice;
 - (ii) a notice of breach given under of this Agreement; and
 - (iii) a notice terminating this Agreement.

49.2 Notice takes effect

A notice takes effect from the time it is received unless a later time is specified in it, but if the delivery or receipt is on a day which is not a Business Day in the location where it is received or is after 5.00 pm (addressee's time) it is deemed to be received at 9.00 am on the following Business Day in such location.

49.3 Deemed receipt

- (a) In the case of a letter sent by post, unless there is evidence to the contrary, the letter is taken to be received on the third (or seventh, if posted to or from a place outside Australia) Business Day after posting.
- (b) In the case of an email:
 - (i) production of a delivery notification statement from the computer from which the email was sent which indicates that the email was sent in its entirety to the email address of the recipient will be prima facie evidence that the email has been received;
 - (ii) where there is no delivery notification statement from the computer from which the email was sent, the date and the time of dispatch of the email will be prima facie evidence of the date and time that the email was received; and
 - (iii) where an "out of office" reply, delivery error or similar response is returned in response to that email, the email will not be taken to be received and the sender will use the alternative methods of sending the notice in accordance with this clause.

50 General

50.1 Definitions in the Glossary

A term or expression starting with a capital letter:

- (a) which is defined in the Glossary in Schedule 1 (Definitions and Interpretation) has the meaning given to it in the Glossary;
- (b) which is defined in the Corporations Act, but is not defined in the Glossary, has the meaning given to it in the Corporations Act; and
- (c) which is defined in the GST Law, but is not defined in the Glossary or the Corporations Act, has the meaning given to it in the GST Law.

50.2 Interpretation

The interpretation clause in Schedule 1 (Definitions and Interpretation), sets out rules of interpretation for this Agreement.

50.3 No partnership or employment relationship

Nothing in this Agreement:

- (a) may be deemed to constitute a partnership, joint venture, agency or other legal relationship between TfNSW and the Supplier other than that of supplier and purchaser and/or service supplier and recipient; and
- (b) authorises either party to waive any obligation for which the other party may be responsible or to incur any liability on behalf of the other party.

50.4 Further assurances

Each party must promptly execute all documents and do all things that the other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Agreement or any SOW and any transaction contemplated by them.

50.5 Prohibition and enforceability

Any provision of, or the application of any provision of, this Agreement or any SOW and any transaction contemplated by them which is:

- (a) prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition; and
- (b) void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

50.6 Severability

- (a) If a provision of this Agreement or any SOW is void, unenforceable or illegal in a jurisdiction:
 - (i) it is severed from the remainder for the purposes of enforcement in that jurisdiction; and
 - (ii) the remainder has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.
- (b) Clause 50.6(a) has no effect if the severance:
 - (i) alters the basic nature of this Agreement or the relevant SOW; or
 - (ii) is contrary to public policy.

50.7 Amendment

A term or provision of, or a right under, this Agreement may not be varied, supplemented or replaced except in writing executed by the parties.

50.8 Waivers

- (a) A provision of, or a right created under, this Agreement or any SOW may not be waived except in writing executed by the party granting the waiver.
- (b) A failure by a party to insist upon a strict performance of any of the terms and conditions of this Agreement or a SOW is not deemed to be a waiver of any subsequent breach or default of the terms and conditions of this Agreement or any SOW.

50.9 Rights cumulative

The rights, powers and remedies of TfNSW provided in this Agreement or any SOW are cumulative with and not exclusive of any right, power or remedy provided by Law.

50.10 Exercise of rights

- (a) Except as expressly provided to the contrary in this Agreement or any SOW, a party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.
- (b) A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that, or of any other, right, power or remedy.
- (c) Failure by a party to exercise, or a delay in exercising, a right, power or remedy, does not prevent its exercise.

50.11 Indemnities

- (a) Each indemnity in this Agreement or any SOW is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement or the relevant SOW.
- (b) It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement or any SOW.
- (c) An indemnified party must take all reasonable steps to minimise the loss it has suffered or is likely to suffer as a result of an event giving rise to an indemnity under this Agreement or any SOW. If the indemnified party does not take reasonable steps to minimise such loss then the amount payable by the indemnifying party will be reduced proportionately in each case.

50.12 Entire agreement

This Agreement, and each and every SOW under this Agreement, constitutes the entire agreement between the parties concerning the transactions contemplated by them and supersedes all previous negotiations and agreements concerning this transaction.

50.13 Governing law and submission to jurisdiction

- (a) This Agreement and each SOW will be interpreted under and governed by the Laws of the State of New South Wales, Australia.

- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, Australia and the courts of the Commonwealth of Australia, and the courts of appeal from them.

50.14 Costs and expenses

- (a) Damages incurred, and liability suffered, by a party covered by indemnification by another party under this Agreement or any SOW includes all related costs and other expenses (including reasonable legal fees and expenses).
- (b) Each party must pay its own costs and expenses in relation to the negotiation, preparation, execution, delivery, stamping, registration, completion, variation and discharge of this Agreement including any SOWs.

50.15 Antecedent Breaches And Obligations

The expiry or termination of this Agreement or any SOW does not affect:

- (a) either party's rights in respect of any breach occurring before termination; or
- (b) the obligations of the parties to make a payment under this Agreement or any SOW due before termination.

50.16 Assignment

- (a) TfNSW may assign its rights, or novate its rights and obligations, under this Agreement without the consent of the Supplier. The Supplier must execute any document reasonably requested by TfNSW to give effect to the assignment or novation.
- (b) The Supplier may not assign any of its rights, or novate its rights and obligations, under this Agreement without the prior written consent of TfNSW.
- (c) A breach of clause 50.16(b) by the Supplier entitles TfNSW to terminate this Agreement.

50.17 Discontinuance of TfNSW or any Eligible Customer

Subject to any contrary legislative intention:

- (a) if TfNSW or any Eligible Customer is reconstituted, renamed or replaced, or if its powers or functions are transferred to another entity, this Agreement is deemed to refer to that new entity;
- (b) if TfNSW or any Eligible Customer ceases to exist, this Agreement is deemed to refer to that entity which serves substantially the same purpose or object as the former entity; and
- (c) notwithstanding any other provision of this Agreement, TfNSW may transfer this Agreement and any rights under this Agreement to any new or substitute entity referred to in paragraphs (a) and (b).

50.18 To extent not excluded by Law

The rights, duties and remedies granted or imposed under the provisions of this Agreement and each SOW operate to the extent not excluded by Law.

50.19 Time of essence

Time is of the essence in relation to clause 41 (Termination and expiry) of this Agreement.

50.20 Counterparts

This Agreement may be executed in any number of counterparts which, when taken together, will constitute one instrument.

50.21 Attorneys

Each attorney executing this Agreement states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

Schedule 1 Definitions and Interpretation

1 Definitions

The following definitions apply in this Agreement:

Accept/Accepted/Acceptance means that a Product or Service meets the Acceptance Criteria.

Acceptance Certificate means a written certification issued by TfNSW that TfNSW is satisfied that a Product or Service meets the Acceptance requirements set out in a SOW.

Acceptance Criteria means criteria necessary to establish that a Product, Service or Milestone satisfies this Agreement, including the Customer Requirements and Specifications.

Acceptance Date means the date on which TfNSW issues an Acceptance Certificate in respect of the relevant Products or Services in accordance with the acceptance testing process set out in clause 10 (Acceptance) of this Agreement.

Acceptance Tests mean the tests described in Module 6E (Testing Services) to this Agreement and as specified in a SOW, or if none are specified, such tests and other reviews as TfNSW considers necessary to determine whether a Product or Service is fully operational and functional and fully complies with the Customer Requirements, Specifications and/or the requirements of this Agreement.

Accepted Innovation Initiative Proposals means a document that evidences the deployment of an innovation 'problem', initiative or proposal into the Solution, which may be an approved Change Request, executed Statement of Work, contract variation, Accepted final 'go live' Milestone, or other such contractual document.

Action Plan means a plan in a form reasonably satisfactory to TfNSW containing the information required by clause 37.1(b) of this Agreement.

Agreement has the meaning given in clause 2.1 of this Agreement.

Application a logical set of COTS and/or bespoke Software (including the supporting documentation, media, on-line help facilities, and tutorials) that performs user-related or business-related information processing functions (Application does not include the tools, utilities, or operating system Software used to deliver it)..

Application Change means any development, configuration or change to any aspect of an Application including the changes made for the Application change categories set out in section 3 (Applications Development, Enhancement and Maintenance Categories) of Module 6B (Application Services) to this Agreement.

Application Currency Services has the meaning given to that term in section 9.4.1 (Application Currency Services) of Module 6B (Application Services) to this Agreement.

Application Design means all conceptual architectures, high-level designs, detailed designs and detailed architectures (including any updates or variations to any of the foregoing) in connection with any Application.

Application Maintenance Services has the meaning given to that term in section 9.1 (Overview) of Module 6B (Application Services) to this Agreement.

Application Services means the 'Application Services' set out in Module 6B (Application Services) to this Agreement and all obligations of the Supplier that Module.

Availability or Available means the state of being present, accessible and usable for a specific purpose at a specific place and time by an end user, and free of Defect. It is the ability of a Service or other Configuration Item to perform its specified or agreed function in accordance with the Customer Requirements and the Specifications to a reasonable level of service (as agreed by TfNSW), as determined by reliability, maintainability, serviceability, performance and security.

Availability Management has the meaning given to that term in ITIL.

Billable Period means the monthly period over which Charges are billed (and invoiced).

Billable Volume is the volume of each applicable Resource Unit that is chargeable by the Supplier in the applicable Billing Period.

Build Services has the meaning given to that term in section 5.1.1 (Build Services) of Module 6A (Delivery Services) to this Agreement.

Business Change means:

- (a) any Divestiture; or
- (b) any restructure, dissolution, merger, transfer of any or all of its assets, staff, and liabilities in respect of all or any part of TfNSW's or an Eligible Customer's business or operations, or any consolidation, reconstitution, renaming, replacement (including the performance of common functions) of TfNSW or any Eligible Customer, or any part of TfNSW or any Eligible Customer, with any other entity or the transfer of any of TfNSW's or any Eligible Customer's powers or functions to any other entity.

Business Continuity Plan means a plan providing for the continuous operation of critical business functions under predefined circumstances.

Business Day means a day that is not a Saturday, Sunday or a public holiday in Sydney, Australia.

Business Hours means on any given Business Day, the hours between 7am and 7pm.

Business Objectives means together the business capabilities, user stories and Non-Functional Requirements and functional requirements set out in Appendix 3 (Requirements) of Schedule 1 (System and Services Description) of a relevant SOW, as updated and amended from time to time as part of the design activities and Delivery Services to be provided by the Supplier in relation to a Project.

Cap has the meaning given to that term in section 2.5 (Capped Time and Materials Charges) in Schedule 2 (Pricing Terms) to this Agreement.

Capacity means the maximum load or throughput that a Service and/or System can deliver while meeting the Outcomes.

Capacity Management means the process responsible for ensuring the Capacity is reliably and consistently Available to deliver the Outcomes. Capacity Management considers all resources required to deliver the Service and/or System, and plans for short, medium and long term Capacity needs.

Change has the meaning given to that term in ITIL.

Change Advisory Board has the meaning given to that term in ITIL.

Change Control Procedure means the change control procedure set out in Schedule 8 (Change Control) to this Agreement.

Change in Law means a change to, or the coming into effect, or implementation, after the Commencement Date, of an existing Law or a new Law.

Change Management has the meaning given to that term in ITIL.

Change Proposal has the meaning given to that term in section 3 (Progression of Changes) of Schedule 8 (Change Control) to this Agreement.

Change Request is a request for a Change.

Charges mean the fees for the provision of Products and Services, as set out in a SOW calculated in accordance with Schedule 2 (Pricing Terms) to this Agreement.

Claim means any allegation, claim, proceeding, suit or demand of any nature whether present or future, fixed or unascertained, actual or contingent, at Law, in equity, under statute or otherwise.

Commencement Date means the date on which TfNSW notifies the Supplier under clause 3.5 of this Agreement that the Conditions Precedent have been satisfied or waived.

Comparable Supply means the supply of products and/or services to another customer of the Supplier (or a customer of a Subcontractor or a Related Body Corporate of the Supplier) that are the same or similar to the Products and/or Services.

Conditions Precedent has the meaning given in clause 3.2 of this Agreement.

Confidential Information, in relation to a Disclosing Party, means:

(a) all information relating to the business or affairs of the Disclosing Party disclosed, communicated or delivered to, learnt by, developed by or which otherwise comes to the knowledge of or into the possession of, the Recipient under or in connection with a SOW; and

(b) the terms of this Agreement including any SOW,

but excludes any such information which the Recipient can establish:

(a) is or became generally available in the public domain otherwise than through a breach of confidence;

(b) was independently developed by the Recipient; or

- (c) was rightfully received by the Recipient from a third party who is under no obligation of confidentiality in respect of that information and who has not obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the Disclosing Party.

For the avoidance of doubt, information developed by the Supplier specifically for TfNSW under this Agreement is Confidential Information of TfNSW and not of the Supplier.

Configuration Item or CI has the meaning given to that term in ITIL.

Configuration Management Database or CMDB means the database used to manage configuration records throughout their lifecycle. The CMDB records the attributes of each Configuration Item, and relationships with other CIs. A CMDB may also contain other information linked to CIs, for example Incident, Problem or Change records. The CMDB is maintained by configuration management and is used by all IT service management processes.

Conflict of Interest means any conflict of interest of any nature including:

- (a) any actual or threatened litigation, proceeding or claim or allegation by the Supplier, its Related Bodies Corporate or any of its Representatives against or in any way involving TfNSW;
- (b) any actual or threatened litigation, proceeding, claim or allegation against or in any way involving the Supplier, its Related Bodies Corporate or any of its Representatives, which materially adversely affect the delivery of the Services;
- (c) any proven or alleged breach or default by the Supplier of any Law, agreement, order or award binding on the Supplier, whether admitted or contested, which may materially affect in an adverse manner the ability of TfNSW to obtain the Services from the Supplier;
- (d) any Insolvency Event in relation to the Supplier; or
- (e) the supply or proposed supply of goods or services to or from a person in a manner or to an extent that may:
 - (i) adversely affect the ability of TfNSW to obtain the Services from the Supplier;
 - (ii) adversely affect TfNSW's ability to compete in the market; or
 - (iii) prejudice or be likely to prejudice the confidentiality or privacy of any Confidential Information of TfNSW.

Consequential Loss means any Loss suffered or incurred by a party as a result of a breach of this Agreement by the other party which is a loss of profits, loss of business opportunity or loss of goodwill.

Core System means the core transport management system as described in the Initial SOW, excluding the Enhanced System.

Corrective Action has the meaning given to that term in section 4.3.2 (Performance Drill Down and Corrective Actions) of Schedule 3 (Performance Framework) to this Agreement.

COTS means an Application that is available commercially off the shelf.

Created IP means any Materials created, written or otherwise brought into existence by or on behalf of the Supplier in the course of performing the Services, providing the Deliverables or otherwise performing its obligations under this Agreement in which subsists newly created Intellectual Property Rights, but excluding any TfNSW Data, WSP PREP Software, Mentz EMS Software and PTV Optima and Visum Software.

Critical Milestone Date means a Milestone Date designated as such in the relevant SOW. The Critical Milestone Date for the Initial SOW is set out in Schedule 4 (Implementation) to the Initial SOW.

Customer Environment means TfNSW's technology environment as specified in a SOW.

Customer Requirements means, in relation to Products and Services which are the subject of a SOW, the requirements:

- (a) a copy of which is contained or referred to in the SOW, or such replacement, amended or other document issued by TfNSW and agreed between the parties from time to time; or
- (b) delivered to TfNSW, including as a Deliverable under a SOW,

and which describes TfNSW's requirements for the Products and Services to be provided under the relevant SOW.

Customer Specific Change in Law means a Change in Law that relates specifically to TfNSW and has a direct effect on the Supplier performing its obligations under this Agreement, but which would not affect a Comparable Supply.

Cut Off Date means the date that is one month after the Execution Date.

Data Migration Services has the meaning given to that term in section 7.2 (Data Migration Services) of Module 6A (Delivery Services) to this Agreement.

Demand Management is the process responsible for understanding, anticipating and influencing demand for Services. Demand Management works with Capacity Management to ensure that the Supplier has sufficient capacity to meet the required demand. At a strategic level, Demand Management can involve analysis of patterns of business activity and user profiles, while at a tactical level, it can involve the use of differential charging to encourage the use of IT services at less busy times, or require short-term activities to respond to unexpected demand or failure of a CI.

Defect means any defect, fault, error or omission in the Products or Services or any aspect of the Products or Services, which is not in accordance with this Agreement or a Statement of Work, including:

- (a) any failure of the Products or Services to meet the Customer Requirements or Specifications;
- (b) any defect, fault, error or omission in the Products or Services that:
 - (i) causes a service-affecting error message to be displayed by the Products or Services or any system (where the system is operating in an environment

agreed by the parties) that the Products or Services are being run on, interoperating with or are being accessed from;

- (ii) results in the Products or Services doing something that they were not designed to do; or
 - (iii) results in the Products or Services not doing something that they were designed to do; or
- (c) any failure of the Products or Services to pass the Acceptance Tests.

Delay Notice has the meaning given in clause 11.3 of this Agreement.

Deliverable means any items to be produced by the Supplier under this Agreement or any SOW as part of the Services, including the Documentation.

Delivery Services has the meaning given to that term in section 1.1 (Overview) of Module 6A (Delivery Services) to this Agreement.

Direct TfNSW Loss means loss, damage, costs or expenses (including overhead, staff costs and professional service provider fees) incurred by TfNSW in relation to:

- (a) remedying or assessing a Defect or a breach of this Agreement by the Supplier, where the Supplier has failed to do so in whole or part as required by this Agreement;
- (b) undertaking workarounds (including manual workarounds) or taking other steps to mitigate the effects of a defect or breach of this Agreement by the Supplier;
- (c) procuring replacement goods or services or undertaking replacement works for goods, services or works that the Supplier has failed to supply in whole or part in accordance with this Agreement (including the costs of re-tendering and costs associated with transferring responsibility for the provision of the Services from the Supplier to a new service provider);
- (d) recovering or recreating data or records from the last back-up maintained by TfNSW, its Representatives, or the Supplier (as applicable) which have been lost, destroyed, deleted or corrupted as a result of a Defect or breach of this Agreement by the Supplier;
- (e) any third party claim resulting from a Defect or breach of this Agreement by the Supplier;
- (f) any fines or penalties resulting from any breach of Law as a result of a breach of this Agreement by the Supplier; or
- (g) intentional wrongful acts or omissions or wilful default by the Supplier or the Supplier Personnel.

Direction to Proceed has the meaning given to that term in section 9 (Direction to Proceed) of Schedule 8 (Change Control) to this Agreement.

Disabling Code means any computer virus or other code which is intended to or would have the effect of intercepting, accessing, copying, disrupting, impairing, denying or otherwise adversely affecting security, performance, integrity, reliability, access to or use

of any information technology, data, equipment, network, including worms, spyware, adware, key loggers, trojans and any new types of programmed threats that may be classified.

Disaster means an event (which may include a Force Majeure) that:

- (a) causes, or is likely to cause, a material adverse effect on the performance of the Supplier's obligations under this Agreement; or
- (b) has, or is likely to have, a material adverse effect on TfNSW's (or any Eligible Customer's) ability to receive and/or obtain the benefit of the Services under this Agreement,

that cannot be managed within the context of normal operating procedures including interruption, destruction or other loss of operational capacity.

Disclosing Party means a party which discloses or gives access to its Confidential Information to the other party or whose business or affairs are the subject matter of the Confidential Information.

Disengagement means the process of transferring responsibility for the provision of the Services (or part of a Service) from the Supplier to a Replacement Supplier.

Disengagement Charges has the meaning given to that term in section 10.4 (Disengagement Charges) of Schedule 2 (Pricing Terms) to this Agreement.

Disengagement Commencement Date means the date that TfNSW requests the Supplier to commence providing Disengagement Services in respect of some or all Services as notified pursuant to clause 42.3(a) of this Agreement.

Disengagement Period has the meaning given to that term in clause 42.3(a) of this Agreement.

Disengagement Plan means a written plan for Disengagement developed in accordance with Schedule 5 (Disengagement) to this Agreement and approved by TfNSW.

Disengagement Services means the Services described in Schedule 5 (Disengagement) to this Agreement.

Dispute means any dispute which arises out of or relates to this Agreement or any SOW.

Dispute Notice has the meaning given in clause 30.1(b) of this Agreement.

Divestiture means any sale or divestiture of all or part of TfNSW, its business or other assets, in whatever form (including by way of an initial public offering of shares).

Documentation means:

- (a) the documents specified in a SOW and/or in a Module to be provided by the Supplier as a Deliverable;
- (b) the Project Documentation; and
- (c) such other documents as are necessary to enable TfNSW to use, operate and maintain the Solution in the manner contemplated by this Agreement.

Eligible Customer has the meaning given to that term in the Procure IT v 3.2 Dictionary. Procure IT is the NSW Government's standard contracting framework for the procurement of ICT and is available at https://www.procurepoint.nsw.gov.au/system/files/documents/procure_it_v.3.2_dictionary.pdf.

Enhanced Core Transport Management System or **ECTMS** means the solution to be delivered under the Initial SOW incorporating all the required capability of the Core System and the Enhanced System, as described in the Initial SOW.

Enhanced System means the simulation modelling and decision support capabilities that support the Core System, as described in the Initial SOW, subject to the parties agreeing a Change Proposal in respect of the Enhanced System as further described in SOW # 1, Schedule 1, section 2.2.7.

Enhancement has the meaning given to that term in section 3 (Applications Development, Enhancement and Maintenance Categories) of Module 6B (Applications Services) to this Agreement.

Equipment means any hardware, servers, peripherals, tools, network or communications infrastructure, or other physical equipment.

Event means a Change of state that has significance for the management of an IT service or other CI. The term is also used to mean an alert or notification created by any IT service, CI or monitoring tool.

Event of Default has the meaning given to that term in clause 41.1 of this Agreement.

Exception means the reasons that excuse the Supplier from being in breach of Module 6F (Equipment Acquisition and Installation Services) to this Agreement in respect of the Services provided under that Module, as stated in section 6 of that Module.

Excusable Event has the meaning given to that term in section 7.1.1 (Failure or Delay Outside Reasonable Control) of Schedule 3 (Performance Framework) to this Agreement.

Execution Date means the date on which this Agreement is signed by the last party to execute it.

Executive Relationship Forum means the forum of that name described in Table 2 of Schedule 4 (Governance and Management) to this Agreement.

Expiry Date means the date that is 5 years after the Go Live Date.

Extended SOW Terms has the meaning given in the relevant SOW (where applicable).

Financial Security means a security:

- (a) issued by an Issuer; and
- (b) substantially in the form of Schedule 12 (Financial Security) to this Agreement or in the standard form that is usually provided by the issuing entity.

Firmware means fixed software code and/or data structures that internally control elements within the Equipment.

First Further Term has the meaning given in clause 4.2(a)(i) of this Agreement.

Force Majeure means:

- (a) riot, war, invasion or act of foreign enemies, acts of terrorism, or hostilities;
- (b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive assembly or nuclear component; and
- (c) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity.

Further Term means the First Further Term and the Second Further Term.

General Change in Law means a Change in Law which is not a Government Change in Law or a Customer Specific Change in Law.

Go Live Date means the date that the Enhanced Core Transport Management System operates in a live production environment following the issuance of an Acceptance Certificate by TfNSW, and is tied to the "Enhanced Core Transport Management System Cutover (Go Live Date) and Operational Service Commencement" Milestone.

Government Authority includes any governmental or semi-governmental or local government authority, administrative or judicial board, tribunal or court, department, commission, public authority, minister, statutory corporation, authority or instrumentality.

Government Change in Law means a Change in Law that relates specifically to Government Authorities and has a direct effect on the Supplier (or a Subcontractor or a Related Body Corporate of the Supplier) performing obligations under an agreement or arrangement entered into with a Government Authority.

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

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

Hardware Warranty Period has the meaning given in Module 6F (Equipment Acquisition and Installation Services) of this Agreement.

High Availability means, with respect to servers, any redundant pair of such devices for which automatic fail over, load balancing, or clustering has been configured such that when one of the devices fails, Availability is provided by the other device with no loss of Availability to the end-user.

ICMP has the meaning given in Recital B.

Implementation Plan means the implementation plan set out in Schedule 4 (Implementation) to a SOW.

Incident means an unplanned interruption or reduction in the quality performance of an IT service. Failure of a CI that has not yet affected a Service is also an Incident.

Incident Management means the process responsible for managing the lifecycle of all Incidents. Incident management ensures that normal service operation is restored as quickly as possible and the business impact is minimized.

Industry Best Practice means the degree of skill and practice required to achieve a high overall standard for the Products and Services and which could reasonably be considered as necessary for a highly skilled and experienced expert (engaged in a similar undertaking to the Supplier under similar circumstances) to support the successful overall achievement of the Outcomes.

Information Technology/IT means technology for the storage, communication or processing of information. The technology typically includes computers, telecommunications, applications and other Software. The information may include business data, voice, images, video etc. Information technology is often used to support business processes through IT services.

Infrastructure means computing hardware, products and Software, as required for the delivery of computing, network and telecommunications environments for the delivery of the Services.

Infrastructure as a Service or IaaS has the meaning given to that term in section 2.2 (Infrastructure as a Service (IaaS)) of Module 6D (X as a Service) to this Agreement.

Infrastructure Services means the Services specified in Module 6C (Infrastructure Services) to this Agreement.

Initial SOW means Statement of Work Number 1 dated on or about the date of this Agreement.

Initial SOW Term has the meaning given in each SOW.

Initial SOW Third Party Software means the following third party licensors and their respective Third Party Materials:

- (a) Microsoft, Azure Cloud Hosting;
- (b) Microsoft, Azure Traffic Manager;
- (c) Microsoft, Azure WAF Application Gateway;
- (d) Microsoft, Azure API Manager;
- (e) Microsoft, Azure Web Apps UI service;
- (f) Microsoft, Azure Key Vault;
- (g) Microsoft, Azure Service Fabric;
- (h) Microsoft, Azure Service Bus;
- (i) Microsoft, Azure Blobfile Storage;

- (j) Microsoft, Azure Application Insights;
- (k) Microsoft, Azure Log Analyser;
- (l) Microsoft, Azure SQL;
- (m) Microsoft, Azure Backup;
- (n) OGC, Geoserver;
- (o) RedHat, Redhat Decision Manager;
- (p) ServiceNow, Service Now (up to 5 nominated users in total);
- (q) Microsoft, Power BI (up to 5 nominated users in total);
- (r) ESRI, ArcGIS Server Enterprise (up to 2 nominated users in total);
- (s) Amazon, Amazon Web Services (EC2);
- (t) Amazon, AWS S3 Storage;
- (u) Amazon, AWS Cloudwatch;
- (v) Apache, Apache;
- (w) Wordpress, WordPress;
- (x) Leaflet, Leaflet;
- (y) Amazon, AWS Elastic Load Balancer;
- (z) Amazon, AWS Simple Email Service,
- (aa) Amazon, AWS NAT Gateway;
- (bb) MongoDB, MongoDB;
- (cc) PTV, Visum;
- (dd) PTV, Optima;
- (ee) PostgreSQL, PostgreSQL;
- (ff) MENTZ, EMS; and
- (gg) WSP, PREP.

Innovation Initiative Proposal is a proposed approach for executing a Problem Statement or other innovation idea.

Insolvency Event in relation to a party (**insolvent party**) means the happening of any one or more of the following events:

- (a) the insolvent party ceases or takes steps to cease to conduct its business in the normal manner;
- (b) the insolvent party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them;
- (c) the insolvent party is unable to pay its debts when they are due or is deemed under the *Corporations Act 2001* (Cth) to be insolvent;
- (d) a liquidator or provisional liquidator is appointed to the insolvent party or jurisdiction a receiver, receiver and manager, official manager, trustee or similar official is appointed over any of the assets or undertakings of the insolvent party;
- (e) an application or order is made or a resolution is passed for the winding up of the insolvent party; or
- (f) any act or event analogous or having a substantially similar effect to any of the events specified in paragraphs (a) to (e) inclusive of this definition.

Insurance means the insurance the Supplier is required to maintain under clause 47.1 (Insurance Policies) of this Agreement.

Integration or Integrate in respect of the Equipment means the implementation and setting to work of the Equipment with or within the Customer Environment so that it is ready for use by TfNSW and complies with the Specifications and other requirements under this Agreement.

Intellectual Property Rights includes any and all industrial and intellectual property rights of any nature both in Australia and throughout the world, and includes any patents, registered designs and domain names, copyright (including future copyright), trade or service marks (whether registered or unregistered), trade secrets, know-how, rights in relation to circuit layouts, or other proprietary right or right to registration of such rights.

Interface and Connectivity Services has the meaning given to that term in section 8.8 (Interface and Connectivity Services) of Module 6B (Application Services) to this Agreement.

Issuer means an Australian domiciled bank, insurance company or other financial institution reasonably acceptable to TfNSW.

IT Service Management Services or ITSM Services means all Services necessary or desirable to provide ITIL-aligned service management Services to achieve the requirements of a Statement of Work in accordance with TfNSW Policies and processes.

ITIL means the Information Technology Infrastructure Library v3.

Key Personnel means the persons identified as key personnel in a SOW and includes any additional persons or replacement persons approved by TfNSW.

Labour Rates means the agreed rate card Charges for the labour component of the Services as set out in a Statement of Work (in respect of the Initial SOW at Appendix B: Labour Rates of Schedule 2 (Pricing Terms) of this Agreement).

Law means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in any relevant jurisdiction relating to the performance of the party's obligations under this Agreement, and includes industry codes of conduct.

Level 2 and 3 Support means the second and third level in a hierarchy of support groups involved in the investigation and resolution of Incidents and Problems.

Load and Performance Requirements means, where applicable, that part of the Specifications detailing the performance levels required and the anticipated memory requirements of the software application(s) that will be installed on the Equipment.

Loss means all liability, loss, damage, cost, and expense, charge, outgoing or payment including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties, for which a party is liable, whether or not yet paid or met by that party.

Machine Code includes any microcode, basic input/output system code (called BIOS), utility programs, device drivers, diagnostics, Firmware and any other code (all subject to any exclusions in the licence provided with it), delivered with the Equipment for the purpose of enabling the Equipment to function as specified in the Specifications. The term Machine Code excludes the operating system and any Applications.

Maintenance Modifications has the meaning given to that term in section 3.1.1 (Applications Development, Enhancement and Maintenance Categories) of Module 6B (Application Services) to this Agreement.

Maintenance Releases has the meaning given to that term in section 3.1.1 (Applications, Development Enhancement and Maintenance Categories) of Module 6B (Application Services) to this Agreement.

Major Enhancements has the meaning given to that term in section 3.1.1 (Applications Development, Enhancement and Maintenance Categories) of Module 6B (Application Services) to this Agreement.

Major Upgrades has the meaning given to that term in section 3.1.1 (Applications Development, Enhancement and Maintenance Categories) of Module 6B (Application Services) to this Agreement.

Master Test Plan means a plan that describes overall test planning and test management for all Test Categories as described in section 3.3 (Master Test Plan) of Module 6A (Delivery Services) to this Agreement.

Material means material in any form, including documents, reports, Products, Equipment, information, data, Software, Software tools and Software development methodologies.

Maximum Service Credit means the maximum amount of the Total Service Credit that may be applied by TfNSW if the Supplier fails to achieve an Outcome or Performance Measure (as set out in a Statement of Work).

Measurement Period has the meaning given to that term in section 2.3.1 (Performance Measure Definition) in Schedule 3 (Performance Framework) to this Agreement.

Milestone means any milestone set out in a SOW or a Project Management Plan.

Milestone Date means the date by which a Milestone must be achieved, as specified in a SOW or a Project Management Plan.

Minimum Commitment Period means the minimum amount of time a specified person is committed by the Supplier to be retained for work on a SOW.

Minimum Performance Levels is the minimum performance level which TfNSW expects to be achieved by the Supplier during the Measurement Period.

Minor Enhancements has the meaning given to that term in section 3.1.1 (Applications Development, Enhancement and Maintenance Categories) of Module 6B (Application Services) to this Agreement.

Modification means an alteration, adaptation, enhancement or development of a work.

Modules means the modules set out in Schedule 6 (Service Modules) to this Agreement.

Moral Rights means the rights conferred by Part IX of the *Copyright Act 1968* (Cth).

Net Book Value has the meaning given to that term in section 12.1.1 (Net Book Value) in Schedule 2 (Pricing Terms) to this Agreement.

New Applications has the meaning given to that term in section 3.1.1 (Applications Development, Enhancement and Maintenance Categories) of Module 6B (Application Services) to this Agreement.

New Release has the meaning given to that term in section 3.1.1 (Applications Development, Enhancement and Maintenance Categories) of Module 6B (Application Services) to this Agreement.

Non-Billable Volumes has the meaning given to that term in section 2.1.1 (Overview) in Schedule 2 (Pricing Terms) to this Agreement.

Non-Competitive means the Charges for any Products and Services are above those paid by comparable organisations for the same or similar products or services.

Non-Functional Requirement(s) the requirements, as specified in a Statement of Work, that pertain to the operational and performance-related functions of the System, rather than its specific functional behaviours or outcomes (as updated and amended from time to time as part of the design activities and Delivery Services to be provided by the Supplier in relation to the Project).

Novation has the meaning given to that term in clause 18.3(a) of this Agreement.

NSW Transport Cluster means any entity that is:

- (a) a “public transport agency” as defined in section 3 of the *Transport Administration Act 1988* (NSW);
- (b) a “transport authority” as that term is defined in section 55A of the *Transport Administration Act 1988* (NSW);
- (c) the “Transport Service” as that term is defined in section 68B of the *Transport Administration Act 1988* (NSW); or

- (d) an entity otherwise falling within the scope of the responsibility of the Department of Transport,

from time to time.

Object Code means computer programs expressed in an object language or form which can be executed by a computer as commands.

Objectives has the meaning given to that term in clause 1.1 of this Agreement.

On-Premise Cloud are the Services described in section 6.3 (On-Premise Cloud Services) of Module 6C (Infrastructure Services) to this Agreement.

Other Supplier means a third party that provides goods or services to TfNSW, but excludes the Supplier, Supplier Personnel and Subcontractors.

Outage means the period of time a particular Service is not Available for use by end users due to an Incident or Event.

Outcome means the outcomes listed in section 2.2 (Solution Outcomes) of Schedule 3 (Performance Framework) to this Agreement.

Parent Company Guarantee means a guarantee by the parent company substantially in the form set out in Schedule 11 (Parent Company Guarantee) to this Agreement.

Partial Termination has the meaning given to that term in section 10.5 (Partial Termination) of Schedule 2 (Pricing Terms) to this Agreement.

Pass Through Charge has the meaning given to that term in section 6.1 (Pass Through Charges) of Schedule 2 (Pricing Terms) to this Agreement.

Performance Measure means a specific measure of the Supplier's performance used, singularly or in conjunction with other Performance Measures, in determining the Supplier's overall achievement of an Outcome.

Performance Report means any and all performance reports that are required to be prepared by the Supplier under this Agreement and/or any Statement of Work, including all reports in connection with the performance of the Supplier's obligations under this Agreement and/or any Statement of Work which are required under Schedule 3 (Performance Framework) and Schedule 7 (Reporting Requirements) to this Agreement.

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion, or any combination of them.

Phase means a period of work, as defined in a SOW.

Planned Useful Life means the planned lifespan of a depreciable fixed asset, during which it can be expected to contribute to company operations.

Platform as a Service/PaaS has the meaning given to that term in section 2.3 (Platform as a Service (PaaS)) of Module 6D (X as a Service) to this Agreement.

Priority Level has the meaning given to that term in section 6.1 (Priority Levels) of Schedule 3 (Performance Framework) to this Agreement.

Priority Level 1 or P1 means has the meaning given to that term in Appendix A (Priority Classification Scheme) of Schedule 3 (Performance Framework) to this Agreement, or as updated from TfNSW from time to time.

Priority Level 2 or P2 means has the meaning given to that term in Appendix A (Priority Classification Scheme) of Schedule 3 (Performance Framework) to this Agreement, or as updated from TfNSW from time to time.

Priority Level 3 or P3 means has the meaning given to that term in Appendix A (Priority Classification Scheme) of Schedule 3 (Performance Framework) to this Agreement, or as updated from TfNSW from time to time.

Priority Level 4 or P4 means has the meaning given to that term in Appendix A (Priority Classification Scheme) of Schedule 3 (Performance Framework) to this Agreement, or as updated from TfNSW from time to time.

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Laws means:

- (a) the Privacy Act;
- (b) the *Privacy and Personal Information Protection Act 1998* (NSW);
- (c) the *Health Records and Information Privacy Act 2002* (NSW);
- (d) any legislation (to the extent that such legislation applies to TfNSW or the Supplier or any other recipient of Personal Information) from time to time in force in:
 - (i) any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
 - (ii) any other jurisdiction (to the extent that TfNSW or any Personal Information of the Supplier is subject to the laws of that jurisdiction),

affecting privacy or Personal Information, provided that the Supplier ensures that it complies at all times with the Privacy Laws applicable in New South Wales; and

- (e) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraphs (a), (b), (c) and (d), as amended from time to time.

Private Cloud are the Services described in section 6.2 (Private Cloud Services) of Module 6C (Infrastructure Services) to this Agreement.

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

- (a) has a material adverse effect on the honesty or integrity of the Supplier, a Related Body Corporate of the Supplier, or any of the Supplier's Personnel;
- (b) relates to the Supplier, a Related Body Corporate of the Supplier or the Supplier's Personnel and has a material adverse effect on:

- (i) the public interest; or
 - (ii) the reputation of or public confidence in TfNSW or the NSW Government; or
- (c) involves a material failure by the Supplier to achieve or maintain:
 - (i) reasonable standards of ethical behaviour; or
 - (ii) standards of behaviour expected of a party engaged on a Government project.

Problem is the cause of one or more Incidents.

Problem Management is the process responsible for managing the lifecycle of all Problems. Problem Management proactively prevents Incidents from happening and minimises the impact of Incidents that cannot be prevented.

Problem Statement means a document that clearly identifies a problem within TfNSW's transportation environment for which an innovation initiative may be proposed to resolve. The Problem Statement may be either developed by the Supplier or submitted by TfNSW for the Supplier's proposed resolution.

Procedures Manual has the meaning given in clause 9.2 of this Agreement.

Production Deployment means the activities set out in section 7.5 (Production Deployment Services) of Module 6A (Delivery Services) to this Agreement that result in the subject operating in the Customer Environment.

Production Familiarisation means the activities described in section 4.2 (Product Familiarisation Services) of Module 6A (Delivery Services) to this Agreement.

Products means any Software, Equipment or Deliverable to be provided by or on behalf of the Supplier to TfNSW as specified in a SOW, including the System.

Project means the delivery of the System or Solution, as contemplated by this Agreement.

Project Documentation means all business, functional, non-functional and technical documentation, information and requirements developed, refined or varied in connection with the System and/or as part of the Services, which shall include all Customer Requirements, Documentation, Specifications, System and Services Description, Acceptance Criteria and Acceptance Tests, Application Designs and Application architecture documentation.

Project Documentation Approval Process means the approval process and procedure set out in clause 10.6 of this Agreement which details the process pursuant to which TfNSW will provide its written approval in respect of an item of Project Documentation or other document to be provided by the Supplier under this Agreement (where TfNSW's approval is required in respect of such items).

Project Establishment Services means the Services and activities set out in section 3.1.1 (Overview) of Module 6A (Delivery Services) to this Agreement.

Project Management means the Services and activities described in section 9 (Project Management Services) of Module 6A (Delivery Services) to this Agreement.

Project Management Plan has the meaning given to that term in section 9.2 (Project Management Plan (PMP) Services) of Module 6A (Delivery Services) to this Agreement, and may also be referred to in this Agreement as the PMP. The Project Management Plan includes the Implementation Plan.

Project Plan means a project plan included in, or developed and agreed in accordance with, a SOW and includes the Implementation Plan.

Public Cloud means computers and storage resources provided as a service which are available for access by anyone who wishes to subscribe to them. They may be accessed either via the internet or a direct connection. Examples of public clouds include Amazon Web Services and Azure. As a cloud service that is publically available, a public cloud has the following five essential characteristics:

- (a) on-demand self-service. A consumer can unilaterally provision computing capabilities, such as server time and network storage, as needed automatically without requiring human interaction with each supplier;
- (b) broad network access. Capabilities are available over the network and accessed through standard mechanisms that promote use by heterogeneous thin or thick client platforms (e.g., mobile phones, tablets, laptops, and workstations);
- (c) resource pooling. The supplier's computing resources are pooled to serve multiple consumers using a multi-tenant model, with different physical and virtual resources dynamically assigned and reassigned according to consumer demand;
- (d) rapid elasticity. Capabilities can be elastically provisioned and released, in some cases automatically, to scale rapidly outward and inward commensurate with demand. To the consumer, the capabilities available for provisioning often appear unlimited and can be appropriated in any quantity at any time; and
- (e) measured service. Cloud systems automatically control and optimize resource use by leveraging a metering capability at some level of abstraction appropriate to the type of service (e.g., storage, processing, bandwidth, and active user accounts). Resource usage can be monitored, controlled, and reported, providing transparency for both the supplier and the consumer of the utilized service.

Quality Assurance Plans is a plan development to execute Quality Management on a project.

Quality Management has the meaning set out in section 10 (Quality Management Services) of Module 6A (Delivery Services) to this Agreement.

Quality Management Plan means the quality management plan governing the provision of the Services, the initial version of which is attached to the Initial SOW.

Reasonable Holding Costs has the meaning given in clause 12(c).

Recipient means the party which receives, possesses or is given access to Confidential Information from the Disclosing Party.

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

Release is one or more Changes to an IT service that are built, tested and deployed together. A single release may include changes to Equipment, Software, Documentation, processes and other components.

Release and Deployment Management is the process responsible for planning, scheduling and controlling the build, test and deployment of Releases, and for delivering the new functionality required by the business while protecting the integrity of existing Services.

Removed Services has the meaning given to that term in section 1.3 (Objectives) of Schedule 5 (Disengagement) to this Agreement.

Replacement Supplier has the meaning given to that term in clause 42.1(a) of this Agreement.

Representative means, in respect of a party, any person acting for or on behalf of the party and includes any director, officer, employee, contractor or professional adviser of that party, and in the case of TfNSW, includes the Eligible Customers (and their directors, officers, employees, contractors and professional advisers).

Requirements Traceability Matrix means the activities and outputs described in section 4.8 (Requirements Traceability Matrix Services) of Module 6A (Delivery Services) to this Agreement.

Reseller means any entity which provides Products or Services but is not:

- (a) the original Equipment manufacturer or owner of the Intellectual Property Rights in the Product or Service; or
- (b) a Related Company of the original Equipment manufacturer or owner of the Intellectual Property Rights in the Product or Service.

Resolution Institute means the Resolution Institute of 13-15 Bridge Street, Sydney NSW 2000.

Resolution or **Resolve** means the action taken to repair the root cause of an Incident or Problem, or to implement a sustainable workaround.

Resource Plan means the plan described in section 4.2 (Resource Plan) of Schedule 4 (Governance and Management) to this Agreement.

Resource Unit means a measurable device, unit of consumption, staffing level, or other resource that is associated with the Services and is utilised as a volume measure and for pricing purposes.

Response means that the Supplier acknowledges the Service Request, Incident or other ticket, and, in the case of Priority 1 and Priority 2 Incidents, commences work on the resolution of the Incident, respectively.

Retained Applications means TfNSW's pre-existing the Applications that will continue to be used in the System.

Request for Proposal or **RFP** has the meaning given in Recital C of this Agreement.

Second Further Term has the meaning given in clause 4.2(a)(ii) of this Agreement.

Security Audit means an audit conducted by TfNSW, or the Supplier or a third party in accordance with TfNSW's directions, in accordance with clause 33 (TfNSW Data) of this Agreement, to examine the controls, integrity and protection of TfNSW Data and other TfNSW Confidential Information, privacy and security standards and procedures used by the Supplier, and to verify the Supplier's compliance with its obligations under clause 33 (TfNSW Data) of this Agreement.

Service Coverage Hours means the hours during which the Service is to be provided by the Supplier, as detailed in the Statement of Work and this Agreement.

Service Credit means the adjustment to the Charges to which TfNSW is entitled in the event of the Supplier's failure to meet a Service Level, as set out in Schedule 3 (Performance Measures) to a SOW (as applicable).

Service Desk means the single point of contact between the IT service organisation and the users of IT services.

Service Level means the committed service levels or performance measures set out in Schedule 3 (Performance Framework) to this Agreement or Schedule 3 (Performance Measures) to a SOW (as applicable), including Critical Service Levels and Key Service Levels, and any service levels or performance measures set out in any Change Proposals.

Service Level Default means a failure to meet the relevant Service Level Target for a Service Level.

Service Level Target means the required level of performance for a Service Level as set out in Schedule 3 (Performance Framework) to this Agreement or Schedule 3 (Performance Measures) to a SOW (as applicable).

Service Request means a request from an authorised user for information, or advice, or for a standard Application Change or for access to an Application or System.

Services means the services, functions and responsibilities described in this Agreement and the SOWs. For clarity, references in this Agreement to the "Services" includes any Deliverables created by the Supplier in providing such Services.

Site means TfNSW's offices or other TfNSW-controlled locations agreed between the parties to which a Deliverable is to be delivered and/or at which a Deliverable is to be installed.

Software is any computer program or programming (including source code and object code) and includes, without limitation, Modifications, any software, tools or object libraries embedded in that Software and all Materials relating to that Software and/or its design, development, Modification, operation, support or maintenance.

Software as a Service or **SaaS** has the meaning given to that term in section 2.4 (Software as a Service (SaaS)) of Module 6D (X as a Service) to this Agreement.

Solution means the intelligent transport management solution (ITMS) described in Recital B which includes:

- (a) the System;

- (b) any products or services that are provided by the Supplier from time to time for purposes of inclusion in the ITMS under an agreement or arrangement between the Supplier and TfNSW (but which are not the subject of any SOW entered into pursuant to this Agreement); and
- (c) such other products and services procured by TfNSW from Other Suppliers from time to time for purposes of inclusion in the ITMS.

Source Code means:

- (a) computer programs expressed in a source language or form which can be interpreted or compiled and then executed by a computer as commands; and
- (b) all documentation and tools reasonably required to enable a person familiar with computer programming to read, understand and modify such computer programs.

SOW or **Statement of Work** means a document executed by the parties which describes the Products and Services to be supplied by the Supplier.

SOW Changes has the meaning given to that term in Schedule 8 (Change Control) to this Agreement.

SOW Commencement Date means the date specified as such in a SOW.

SOW Termination Trigger means an event specified in a SOW the occurrence of which will give rise to a right of termination under clause 41.1 of this Agreement.

Spares Availability Period means a period of three years from the Acceptance Date of the relevant Equipment, or such other period agreed by the parties in a SOW.

Specification means, in relation to Products and Services which are the subject of a SOW, the specification or design documents:

- (a) a copy of which is contained or referred to in the SOW, or such replaced, amended or other document that:
 - (i) the parties may agree from time to time; or
 - (ii) is referred to in a SOW; or
- (b) delivered to TfNSW including as a Deliverable under a Statement of Work, or such replaced, amended or other document delivered to TfNSW from time to time.

Specified Operating Environment has the meaning given in clause 6.5(a) of this Agreement.

Stabilisation Period means:

- (a) in respect of the Enhanced Core Transport Management System, the period commencing on the Release 1 Go Live Date, and continuing until 3 months after Release 1.1 "Go Live" (Deployment Complete); and
- (b) in respect of any other Release as part of the Solution, the period specified in the relevant Statement of Work.

State Record has the meaning given in section 3 of the *State Records Act 1988* (NSW).

Subcontractor Deed means the subcontractor deed substantially in the form contained in Schedule 14 (Subcontractor Deed) to this Agreement, on terms satisfactory to TfNSW.

Subcontractors means any persons engaged by the Supplier to perform or supply, or to assist the Supplier with the performance or supply of, Services or Products, as approved by TfNSW under clause 18.1 of this Agreement.

Supplier Infringement Claim means any Claim alleging that the Supplier Material, Created IP, Third Party Material or the Products or Services, or their exploitation or possession by TfNSW or its Representatives, infringe the Intellectual Property Rights of any person.

Supplier Material means any Material existing prior to the commencement of the relevant Services, or developed outside the scope of the Services, that is proprietary to the Supplier, together with any New Releases, Modifications and Enhancements (including those made under this Agreement) but excluding Created IP and Third Party Material.

Supplier Personnel means any individuals engaged in the performance of the Supplier's obligations under this Agreement, including the employees, agents and subcontractors of the Supplier or its Subcontractors, and the Key Personnel.

Supplier Representative means the relevant Supplier contact or their delegate, or such other replacement contact as is notified by the Supplier to TfNSW from time to time.

Supported Environments has the meaning given to that term in section 12.1.2 (Overview) of Module 6B (Application Services) to this Agreement.

System means:

- (a) the Enhanced Core Transport Management System; and
- (b) any other Products or Services agreed in any SOW entered into pursuant to this Agreement from time to time,

and includes any Enhancement, New Release, Major Upgrade, Maintenance Modification or Maintenance Release.

System and Services Description means the description of the System and the Services as set out in Schedule 1 (System and Services Description) of the Initial SOW and Schedule 1 (System and Services Description) of each subsequent SOWs (as updated and amended from time to time as part of the design activities and Delivery Services to be provided by the Supplier in relation to the Project).

Systems Integration Services means the Services and activities described in section 5.2 (Systems Integration Services) of Module 6A (Delivery Services) to this Agreement.

Tax Deduction means a deduction or withholding for or on account of Taxes from a payment.

Taxes means a tax, levy, duty, charge, deduction or withholding, however described, imposed by Law or a Government Authority, together with any related interest, penalty, fine or other charge, other than a tax on net income and Australian GST.

Technology Evolution means any improvement, upgrade, supplement, modification, replacement, enhancement or other change to any part of the System, Solution or Services, including:

- (a) new versions of the Software (including the operating Software and system management Software), new processes and new types of Equipment, that will enable TfNSW to use the System or Solution more efficiently and effectively; and
- (b) any change to the Equipment, Software or methodologies used to provide the Services that is necessary to bring that Equipment, Software or methodology in line with World's Best Practice.

Term means:

- (a) the initial term of this Agreement as set out in clause 4.1 (Initial Term) of this Agreement;
- (b) if the term of this Agreement is extended by TfNSW in accordance with clause 4.2 (Further terms) of this Agreement, includes any Further Term by which this Agreement is so extended; and
- (c) includes any Disengagement Period.

Test Execution means the execution and performance of Acceptance Tests in accordance with the requirements for Acceptance Tests set out in this Agreement, a SOW, Test Strategy, Master Test Plan and each Test Plan.

Test Plan means a plan that described overall test planning and test management for each Test Category as described in section 3.4 (Test Plan Services) of Module 6A (Delivery Services) to this Agreement.

Test Strategy the overall strategy for the conduct of the Testing Services and all testing activities across all Testing Categories as described in section 3.2 (Test Strategy Services) of Module 6A (Delivery Services) to this Agreement.

Testing Categories means the testing categories applicable at each test level as set out in section 2 (Scope of Services) of Module 6E (Testing Services) to this Agreement and as may be set out in TfNSW's IT Testing Methodology.

Testing Services has the meaning given to that term in section 1.1.2 (Overview) of Module 6E (Testing Services) to this Agreement.

TfNSW Data means all data, documents or records of whatever nature and in whatever form relating to the business and operations of TfNSW, including data in relation to the customers, employees or suppliers of TfNSW whether subsisting before or after the date of this Agreement and whether created, generated or processed by the Supplier as part of, or in connection with, the Services or its other obligations under this Agreement or provided by TfNSW in connection with this Agreement, and includes data that:

- (a) may cause TfNSW reputational or brand damage or may cause TfNSW to become subject to fines or other action by applicable governmental or regulatory authorities if the subject of unauthorised information disclosure, loss or corruption;
- (b) is Personal Information; or

- (c) is corporate proprietary or financial information such as may be subject to the *Corporations Act 2001* (Cth) or would be the subject of Intellectual Property Rights owned by TfNSW.

TfNSW Input means any task or activity (which may include the provision of particular Software, Equipment or Materials) expressly identified as a 'TfNSW Input' in any SOW.

TfNSW IT Testing Methodology means TfNSW's IT testing methodology that sets out the tools, methods, policies and procedures required by TfNSW for testing Solutions Products, Applications, Services and other Deliverables (as varied from time to time by TfNSW).

TfNSW Material means:

- (a) all Material provided by TfNSW to the Supplier for the purposes of this Agreement or a SOW; and
- (b) the TfNSW Data.

TfNSW Personnel means the officers, employees, consultants, agents and contractors of TfNSW.

TfNSW Policies means all of TfNSW's policies, guidelines, procedures, standards, operating principles, technology strategies, technical data and application architectures and Incident, Problem and Change Management processes as notified by TfNSW to the Supplier from time to time including through any TfNSW vendor portal or publicly available website.

TfNSW Representative means the relevant TfNSW contact or delegate, or such other replacement contact as notified by TfNSW to the Supplier from time to time.

TfNSW Systems means any system which is in any way physically or functionally attached to, associated with, or required to be attached, associated or interfaced with the System.

Third Party Material means Software or any other work the Intellectual Property Rights in which is owned by a third party (including open source Software).

Tier 3 Data Centre means a data centre with the attributes set out in the ANSI/TIA-942 for a tier 3 data centre.

Total Base Charge means the 'Total Base Charges' payable by TfNSW to the Supplier for Services provided during the Measurement Period as calculated in accordance with section 2 of Schedule 3 (Performance Measures) to a SOW.

Total Service Credit has the meaning given to that term in section 2.7.1 (Service Credit) of Schedule 3 (Performance Framework) to this Agreement.

Training Services has the meaning set out in section 12 (Training Strategy and Plan Services) of Module 6A (Delivery Services) to this Agreement.

Training Strategy and Plan means the output of activities described in section 12.2 (Training Strategy and Plan Services) of Module 6A (Delivery Services) to this Agreement.

Unavoidable Losses has the meaning given to that term described in section 10.2 (Unavoidable Losses) of Schedule 2 (Pricing Terms) to this Agreement.

Unit Rate means the rate applicable to each Resource Unit consumed by TfNSW, as set out in Appendix B: Labour Rates of Schedule 2 (Pricing Terms) of this Agreement).

Unit Rate Charge has the meaning given to that term in section 2.4 (Unit Rate Charges) in Schedule 2 (Pricing Terms) to this Agreement.

Unit Rate Inflation Sensitivity has the meaning given to that term in section 8.1 (Cost of Living Adjustment (COLA)) in Schedule 2 (Pricing Terms) to this Agreement.

Urgent Maintenance Modifications means a Maintenance Modification that is required to restore Services as soon as possible to minimise the impact of an Incident, delivered in accordance with section 9.2 (Emergency Maintenance Services) of Module 6B (Application Services) to this Agreement.

User Acceptance Testing means the phase where Software users test the Software to ensure it can handle required tasks in real-world scenarios according to the Specifications.

User Documentation means the Supplier's standard off the shelf documents that describe the features and functions of a Product or Service, in hard copy, electronic or online format that are provided by the Supplier to TfNSW. User Documentation excludes any document that is designed by the Supplier to be training materials.

Warranty Period means:

- (a) in relation to any Products that comprise, or form part of, the Enhanced Core Transport Management System, 180 days commencing on the Go Live Date in respect of such Product;
- (b) in relation to any Product that comprises Equipment or Software (that is not covered by paragraph (a) of this definition), the period specified in the relevant SOW, or, if not stated, 90 days commencing on the date of successful release into production; or
- (c) in relation to any other Product or Service (that is not covered by paragraphs (a) or (b) of this definition), 90 days commencing on the Acceptance Date for that Product or Service.

The Warranty Period does not apply to any Equipment or any related Machine Code acquired by TfNSW pursuant to Module 6F (Equipment Acquisition and Installation Services) of this Agreement, in which case the Hardware Warranty Period will apply.

WHS Act means the *Work Health and Safety Act 2011* (NSW) and equivalent legislation in other jurisdictions.

WHS Regulation means the *Work Health and Safety Regulation 2017* (NSW) and equivalent legislation in other jurisdictions.

World's Best Practice has the same meaning as Industry Best Practice in Schedule 1 (Definitions and Interpretation).

XaaS Services means the 'As A Service Services' set out in Module 6D (X as a Service) to this Agreement and all of the obligations of the Supplier under that Module.

Year means each period of 12 months commencing from the Go Live Date.

12 x 5 means 7:00a.m. and 7:00p.m. Monday to Friday (excluding NSW public holidays).

24 x 7 means 24 hours per day and 7 days per week, each and every day of the Year.

2 Interpretation

In this Agreement, except to the extent that the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) a reference to a document includes any variation or replacement of the document;
- (d) a reference to a party includes a reference to that party's successors and permitted assigns;
- (e) a reference to a part, clause, party, Schedule or Attachment is a reference to a part and clause of, and a party, Schedule or Attachment to, this Agreement and a reference to this Agreement includes any Schedule and Attachment;
- (f) an expression importing a natural person includes any company or other body corporate, partnership, joint venture or association, and any Government Authority;
- (g) a reference to a position, body, or authority of or within TfNSW includes a reference to any position, body or authority which replaces or supersedes it or takes over its duties;
- (h) a reference to a statute, regulation, proclamation, ordinance, by-law, code or other law includes all statutes, regulations, proclamations, ordinances, by-laws, codes or other laws amending, consolidating or replacing it, whether passed by the same or another Government Authority with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (i) an agreement, representation or warranty on the part of two or more persons binds, or is for the benefit of, them jointly and severally;
- (j) headings and boldings are inserted for convenience and do not affect interpretation;
- (k) where a word or phrase is specifically defined other parts of speech or grammatical forms of that word or phrase have a corresponding meaning;
- (l) a reference to anything (including any right) includes a part of that thing but nothing in this clause 2 (**Interpretation**) implies that performance of part of an obligation constitutes performance of the obligation;

- (m) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision;
- (n) the meaning of general words is not limited by specific examples introduced by “including”, or “for example” or similar expressions;
- (o) terms used that are defined in the GST Act have the meaning given in that Act, unless the context makes it clear that a different meaning is intended;
- (p) consideration includes non monetary consideration, in respect of which the parties must agree on a market value, acting reasonably;
- (q) a reference to TfNSW standards, operating principles, or company policies includes any variations, amendments, updates, or replacements of them;
- (r) a reference to an organisational role or position includes any replacement or substitute position as notified from time to time; and
- (s) in addition to the meaning given in the GST Act, the term “GST” includes a notional liability for GST.

Schedule 2 Pricing Terms

See attached Schedule 2 (Pricing Terms).

Schedule 3 Performance Framework

See attached Schedule 3 (Performance Framework).

Schedule 4 Governance and Management

See attached Schedule 4 (Governance and Management).

Schedule 5 Disengagement

See attached Schedule 5 (Disengagement).

Schedule 6 Service Modules

See attached Modules 6A (Delivery Services), 6B (Application Services), 6C (Infrastructure Services), 6D (X as a Service), 6E (Testing Services) and 6F (Equipment Acquisition and Installation Services).

Schedule 7 Reporting Requirements

See attached Schedule 7 (Reporting Requirements).

Schedule 8 Change Control

See attached Schedule 8 (Change Control).

Schedule 9 Templates

1 Templates

The SOW template will be completed at a later date.

Schedule 10 TfNSW Policies

See attached Schedule 10 (TfNSW Policies).

Schedule 11 Parent Company Guarantee

See attached Schedule 11 (Parent Company Guarantee).

Schedule 12 Financial Security

See attached Schedule 12 (Financial Security).

Schedule 13 Escrow Deed

See attached Schedule 13 (Escrow Deed).

Schedule 14 Subcontractor Deed

See attached Schedule 14 (Subcontractor Deed).

Execution page

Executed as an agreement.

Signed by Transport for NSW.

Transport for NSW (ABN 18 804 239 602)

By [insert name of TfNSW's representative] as
authorised signatory

In the presence of: [insert name of witness not a party to this agreement]

Signature of TfNSW's representative

Print Name

Date

Signature of TfNSW's witness

Print Name

Date

Signed by [insert Supplier's name and ACN/ABN]

Cubic Transportation Systems (Australia) Pty
Limited (ABN 82 003 617 561)

in accordance with s127 of the Corporations Act 2001 (Cth) by:

Signature Director

Print name

Date

Signature of Director/Secretary

Print name

Date