

TFNSW CONTRACT DOCUMENT C41
MINOR PHYSICAL WORKS AND SERVICES
TERMS FOR CONTRACTED WORK

REVISION REGISTER

Revision Date	Description of Revision	Authorised
Aug 1999	GST Clauses	Manager, Contracts Strategy, Infrastructure Contracts Branch
Feb 2000	Industrial Relations Management Clause	Manager, Contracts Strategy, Infrastructure Contracts Branch
Mar 2000	Provision for the Security of Payment Act and minor formatting changes	Manager, Contracts Strategy, Infrastructure Contracts Branch
May 2000	additional sentence added on subcontractors etc re media releases	Manager, Contracts Strategy, Infrastructure Contracts Branch
Jul 2000	GST provisions changed CI 22A deleted	Manager, Contracts Strategy, Infrastructure Contracts Branch
May 2001 Ed 1/Rev 6	Clause 22.6 for bitumen cost adjustment added	Manager, Contracts Strategy, Infrastructure Contracts Branch
Nov 2001 Ed 1/Rev 7	Clause 3.1.2 additional requirement for Principal Arranged Clause 10, new paragraph 2 registration requirement Clause 19.1, amended definition of approved insurers Clause 19.2, Principal Arranged Insurance – new clause Clause 23.5 Time for Payment, additional requirement for Principal Arranged Insurance Clause 36 and 37 Definitions and Interpretation incorporated into the Contract	Manager, Projects & OH&S, Legal Branch Manager, Projects & OH&S, Legal Branch Manager, Projects & OH&S, Legal Branch Manager, Projects & OH&S, Legal Branch Manager, Projects & OH&S, Legal Branch Manager, Projects & OH&S, Legal Branch
Jan 2002 Ed 1/Rev 8	Clause 7.1, principal contractor under OHS regulations included	Manager, Contracts Strategy, Infrastructure Contracts Branch
Ed 1/Rev 9	Bitumen Cost adjustment	Manager, Contracts Strategy, Infrastructure Contracts Branch

Revision Date	Description of Revision	Authorised
Ed 1/Rev 10	Changes to clauses for amended Security of Payment Legislation New Statutory Declaration for changes to Pay-roll Tax and Workers Compensation Legislation	Manager, Contracts Strategy, Infrastructure Contracts Branch
Ed 1/Rev 11	New Statutory Declaration for changes to Pay-roll Tax and Workers Compensation Legislation incorporating 'subcontractor statement'	Manager, Contracts Strategy, Infrastructure Contracts Branch
Ed 1/Rev 12	Revised 'extract of Principal Arranged Insurance '	Manager, Contracts Strategy, Infrastructure Contracts Branch
Ed 1/Rev 13	Revised Certificate of Currency for insurance	Manager, Contracts Strategy, Infrastructure Contracts Branch
Ed 1/Rev 14	Revised 'extract of Principal Arranged Insurance '	Manager, Contracts Strategy, Infrastructure Contracts Branch
Ed 1/Rev 15	Clause 23.1.3.4 removed	Manager, Contracts Strategy, Infrastructure Contracts Branch
Ed 1/Rev 16	Page breaks to document changed.	Manager, Contracts Strategy, Infrastructure Contracts Branch
Ed 1/Rev 17	Clause 10. RMS Statement of Business Ethics added Amended Schedule 4	Manager, Contracts Strategy, Infrastructure Contracts Branch
Ed 1/Rev 18	CI22.7 Provisional Quantities	Manager, Contracts Strategy, Infrastructure Contracts Branch
Ed 1/Rev 19	Clause 21.2 added for Related body corporate disclosure Clause 36 definitions for Day and Business Day added	Manager, Contracts Strategy, Infrastructure Contracts Branch
Ed 1/Rev 20	Reference to Payroll Tax Act 2007 (instead of 1971)	Manager, Contracts Strategy, Infrastructure Contracts Branch
Ed1/Rev 21	RMS PO Box and Fax numbers updated. Schedule 3 Insurances revised	Manager, Contracts Strategy, Infrastructure Contracts Branch

Revision Date	Description of Revision	Authorised
May 2010 Ed 1/Rev 22	New Clause 7.16 National Code of Practice added. Clause 17.2.1 excepted risk expanded to include consultants of RMS. New clause 18A limitation of liability added.	Manager, Contracts Strategy, Infrastructure Contracts Branch
Oct 2011 Ed 1/Rev 23	New Clause Schedule 3 Insurance and Schedule 4 PAI	Manager, Contracts Strategy, Infrastructure Contracts Branch
Nov 2011 Ed 1/Rev 24	Reference to RMS changed to RMS	Manager, Contracts Strategy, Infrastructure Contracts Branch
Nov 2011 Ed 1/Rev 25	Definition of RTA and Roads and Traffic Authority added. RMS's Representative changed to RMS Representative.	Manager, Contracts Strategy, Infrastructure Contracts Branch
Feb 2012 Ed 1/Rev 26	Requirement of Statutory Declaration removed. New Contractor Statement.	Manager, Contracts Strategy, Infrastructure Contracts Branch
Apr 2012 Ed 1/Rev 27	Reference to National Code of Practice for the new Construction Industry Implementation Guidelines May 2012	Manager, Contracts Strategy, Infrastructure Contracts Branch
Nov 2012 Ed 1/Rev 28	Schedule 4 Links to new PAI Terms	Manager, Contracts Strategy, Infrastructure Contracts Branch
Dec 2012 Ed 1/Rev 29	Reference to WHS instead of OHS	Manager, Contracts Strategy, Infrastructure Contracts Branch
Mar 2013 Ed 1/Rev 30	Reference to National Code of Practice changed to Building Code 2013	Manager, Contracts Strategy, Infrastructure Contracts Branch
July 2013 Ed 1/Rev 31	NSW Codes of Practice for Procurement and Implementation Guidelines added	Manager, Contracts Strategy, Infrastructure Contracts Branch
April 2014 Ed 1/Rev 32	CI 23.2, 23.3,23.5 & Schedule 2. Changes related to Building and Construction Industry Security of Payment Act	Manager, Contracts Strategy, Contracts and Project Strategy Branch, Infrastructure Development

Revision Date	Description of Revision	Authorised
Nov 2015 Ed 1/Rev 33	<p>Cl 3.3 – additional requirement re payment of Long Service Levy.</p> <p>Cls 7.1 & 36 – updates re WHS Laws.</p> <p>Cl 7.15 – Australian Government WHS Accreditation Scheme.</p> <p>Cl 7.18 NSW Government Policy on Aboriginal Participation in Construction.</p> <p>Cls 6.7.2 & 10.2 – Chain of responsibility requirements of the Heavy Vehicle National Law.</p> <p>Cl 22.4 Content deleted (Price adjustment for GST and GST-related tax changes); clause retained as “Not Used”</p> <p>Cl 36 – definition of “WHS Laws” inserted</p> <p>Schedule 1 – amended to make it consistent with undertakings in GC21</p>	Contracts Strategy Manager, Commercial Branch, Infrastructure Development
Jun 2016 Ed 1/Rev 34	Cl 7.18 and 36; Schedule 5 - inserted requirements re mandatory implementation of the NSW Government <i>Policy on Aboriginal Participation in Construction</i>	GM Commercial Branch, Infrastructure Development
Aug 2017 Ed 1/Rev 35	Cls 7.15, 7.16 and 36 - updated as a result of the enactment of the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> (Cth) and the <i>Code for the Tendering and Performance of Building Work 2016</i>	Director Commercial Services
29 Sep 2017 Ed 1/Rev 36	<p>Cl 3.1.2, 19.2, 19.3, 19.4 & Schedule 3 – updated to reflect change from Insurance Broker to Insurer</p> <p>Cl 7.16.1(d), 7.16.10(c) and 36 - Revised to reflect the introduction of the Work Health and Safety Regulation 2017, replacing the 2011 Regulation</p> <p>Cl 19.1.1.6 – Inclusion of Treasury Managed Fund insurance scheme with the NSW State Government as an approved insurer for contractor’s insurances</p> <p>Schedule 3 – Updated excesses to match new policies and thresholds</p> <p>Schedule 3 Note 1(d) – Inclusion of Self Insurance Corporation as an approved insurer</p>	Director Commercial Services
9 May 2018 Ed 1/Rev 37	<p>Cl 2.1, 2.2 and 3.2 – revised to clarify the precedence of Pricing Schedule and Letter of Award to clarify the acceptance of the Contract.</p> <p>Cl 4.4 and 4.5 – revised to clarify components and parts.</p>	Director Commercial Services

Revision Date	Description of Revision	Authorised
	<p>Cl 4.6.3, 23.2, 23.4 and 23.5.6 – Payment Claim to clarify payments.</p> <p>Cl 4.8 – inserted Contractor Management Plan, additional monitoring obligations if required.</p> <p>Cl 5.4.3 and 5.4.4 – Revised for introduction of deduction of service credits where liquidated damages are not applicable.</p> <p>Cl 23.1.2 – updated to electronic lodgement of Payment Claim.</p> <p>Cl 23.1.3.4 – revised to clarify the document requirements of Payment Claims.</p> <p>Cl 23.1.3.5 and 23.5.5 – introduction of Quantity Agreement Sheets.</p> <p>Cl 27 – revised to clarify the release of security.</p> <p>Cl 36 – Definitions of “Contractor Management Plan”, “Letter of Award”, “Payment Claim”, “Payment Schedule” and Quantity Agreement Sheets” inserted.</p> <p>Schedule 6 – introduced for Form of Contractor Management Plan.</p>	
5 December 2019 Ed 1/Rev 38	Reference to TfNSW instead of RMS.	Director Commercial Services

Minor Physical Works and Services

Terms for Contracted Work (under a Work-as-Ordered Contract, Project Contract or Term Services Contract)



Transport
for NSW

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TFNSW Minor Physical Works and Services

Terms for Contracted Work

Getting started

1. Summary of your role

In a Project Contract, you must carry out and complete the Project in accordance with the Contract by the Date for Completion.

In a Term Services Contract, you must carry out the Contracted Work for the whole of the Term in accordance with the Contract.

In a Work-as-Ordered Contract, you must carry out and complete Contracted Work when a Work Order requires you to do so. If a Work Order is issued, you must carry out and complete the required work or services in accordance with the Contract and the Work Order.

2. Forming the Contract

2.1. Project Contracts

Project Contracts come into existence when TfNSW issues the Letter of Award to you accepting your tender submission.

Until you sign the formal contract, the Contract is made up of the Tender Documents, the Tender Form, the Pricing Schedules, the Letter of Award and any documents incorporated into the Contract by the Letter of Award. In the event of an inconsistency, ambiguity or discrepancy between the documents comprising the Contract, the Tender Documents, the Tender Form and the Pricing Schedule shall have priority over other documents.

2.2. Term Services and Work-as-Ordered Contracts

Term Services and Work-as-Ordered Contracts are not binding on TfNSW until TfNSW receives from you the formal contract, as prepared by TfNSW, and signed by you.

3. Starting work

3.1. Things to do before starting

Before starting the Contracted Work, you must:

- .1 If security is required, lodge your security with TfNSW (*see clause 20 and Contract Schedule*).
- .2 Provide evidence of your insurances in the form of certificates of currency and the details necessary for Principal Arranged

Insurance to the TfNSW's Insurer in the Schedule (*see clause 19 and Contract Schedule*).

.3 If the Contract Sum is greater than \$25,000 and the Contracted Work is building and/or construction work to which the *Building and Construction Industry Long Service Payments Act 1986* applies:

- Pay to the Long Service Corporation or the Corporation's agent, the amount of the long service levy payable in respect of the Contracted Work,
- If the Long Service Corporation serves a notice under section 41 of the Long Service Payments Act, pay any required additional amount of long service levy, within the time specified in the notice; and
- Produce to TfNSW the document evidencing payment of the levy referred to above.

3.2. Start date

In a Project Contract, you must satisfy the conditions set out in clause 3.1 and start the Contracted Work within 14 days of the date of the Letter of Award, unless otherwise advised.

In a Term Services Contract, you must start the Contracted Work on the first day of the Term unless otherwise advised.

In a Work-as-Ordered Contract, you must start the Contracted Work within the time set out in the Specification or the Work Order. If no time is specified, you must start work as soon as possible and not later than 14 days from the date of the Work Order, unless otherwise advised.

Doing the Work: Quality

4. Quality of Contracted Work

4.1. Use skill and care

You must carry out the Contracted Work diligently and conscientiously and to a high standard of skill and care. TfNSW enters into the Contract relying on your skill and knowledge.

4.2. Comply with Contract

Everything you make, design or supply under the Contract must fully comply with the Contract and be reasonably suitable for its intended purposes.

4.3. Use new materials

You must use new materials unless the Contract clearly states that you can use materials which are not new.

4.4. Assign warranties

You must make sure that TfNSW obtains the benefit of warranties provided by manufacturers or suppliers of materials, components and parts used in the Contracted Work if ownership of those materials, components or parts will vest in TfNSW.

4.5. Permit inspection and testing and provide test results

This clause applies if a Quality System is not specified (see Contract Schedule).

4.5.1. Access for inspection and testing

You must give TfNSW access during working hours to inspect and test materials, components and parts proposed to be used in the Contracted Work.

4.5.2. Payment for inspections and tests

TfNSW bears its own costs of inspections and tests which it undertakes under this clause, unless the materials, components or parts tested are found not to be in accordance with the Contract. If materials, components or parts tested are found not to be in accordance with the Contract, you must reimburse TfNSW for all costs associated with the relevant inspection and testing.

4.5.3. Submission of test results

If the Specification requires you to provide test results for product verification, you must do so within the time required by the Specification. If no time is specified, you must provide the results promptly.

4.6. Manage work for quality according to a Quality System

This clause applies if a Quality System is specified (see Contract Schedule).

4.6.1. Your Quality System

You must set up and maintain a Quality System which complies with the Quality System Specification.

4.6.2. Control the work

You must control the Contracted Work in accordance with your Quality System. This includes doing all testing and other

things necessary to demonstrate that your Contracted Work fully complies with the Contract.

4.6.3. Submit summary of product quality records

You must submit a summary of product quality records with every Payment Claim. The summary must demonstrate that each relevant lot or component of the Contracted Work conforms with the Contract.

Your entitlement to payment under the Contract may be reduced if you do not provide complete records or records which show full conformance.

4.6.4. Retain quality records and produce them as required

You must retain quality records for at least 5 years after the end of the last warranty period under the Contract (*see clause 27 and the Contract Schedule*).

During this period, you must give TfNSW access to those records during working hours and you must deliver to TfNSW any or all of the records if requested to do so. After the end of the last warranty period, TfNSW must give you at least 14 days' notice if it requires access to, or delivery of, any quality records.

4.6.5. Testing

You must do your testing in accordance with the Contract and the Inspection and Test Plans submitted by you.

You must give reasonable notice to TfNSW of the time, date and place of any testing to which a Hold Point or Witness Point applies.

If you delay in doing a test which you are required to do, TfNSW may do the test itself at your cost after notifying you in writing.

You must provide test results for product verification within the time required by the Contract. If no specific time limit applies, provide the results promptly.

4.6.6. The TfNSW's powers

TfNSW may:

- .1 Conduct audits, surveillance and testing to verify that your Quality System is effective, or
- .2 Test materials or other components or parts of the Contracted Work (even if you are also doing the same tests), or

- .3 Direct you not to cover up Contracted Work or make it inaccessible without prior approval, or
- .4 Nominate any point in a work process as a Witness Point or Hold Point, or
- .5 As part of an audit, direct you to open up or pull down Contracted Work and to reinstate it later.

4.6.7. *QA costs*

TfNSW will reimburse you for all costs you incur in pulling down or opening up and then reinstating any part of the Contracted Work for the purposes of an audit - but only if the results of the audit indicate that the work was in compliance with the Contract. All other costs, losses, damages or expense which may be incurred or suffered by you in connection with anything done under this clause 4.6 are at your cost.

4.6.8. *Obligations not limited by Quality System compliance*

Your Quality System is a tool to demonstrate compliance with the Contract but does not in any way limit your obligation to ensure that the Contracted Work fully complies with the Contract.

4.7. Access to premises

You must make sure that TfNSW has access at all reasonable times to work sites or premises where Contracted Work is being carried out.

4.8. Contractor Management Plan

This clause applies if a Contractor Management Plan is specified (see Contract Schedule).

Where the Contract Schedule states that the Contractor must comply with a Contractor Management Plan, within 14 days of the Contract start date as determined by clause 3.2, TfNSW will issue to the Contractor the final form of the Contractor Management Plan. The Contractor must comply with the reporting and monitoring obligations in the Contractor Management Plan as issued by TfNSW.

Doing the Work: Time

5. Time for carrying out Contracted Work

5.1. Carry out work expeditiously

You must carry out the Contracted Work in a timely and expeditious manner and so as to comply with any time requirements set out in the Contract.

5.2. Follow program

If you are required to provide a program, you must perform the Contracted Work according to the program submitted to TfNSW. Changes to the program must be notified to TfNSW.

Nothing in a program limits your obligations to meet time requirements set out in the Contract.

5.3. Notify delays or likely delays

You must promptly notify TfNSW if you become aware of anything which may delay the progress of the Contracted Work. Your notice must be in writing and must set out details of the possible delay and its cause.

5.4. Date for Completion and extensions of time

This clause only applies where the Contract specifies a Date for Completion of the Contracted Work.

5.4.1. Complete by the Date for Completion

You must complete the Contracted Work by the Date for Completion.

5.4.2. Extensions of time

The TfNSW Representative will agree to an extension of time to the Date for Completion if:

- .1 you are delayed in meeting the Date for Completion, and
- .2 you have given a written notice to TfNSW advising of the delay within 28 days of the start of the delay, and
- .3 your notice advising of the delay sets out details of the delay, its causes and the amount of extra time claimed, and
- .4 the delay starts before the Date for Completion, and
- .5 the cause of the delay is beyond your reasonable control, and
- .6 the TfNSW Representative reasonably considers that an extension of time is justified.

The length of extension of time agreed to will be decided by the TfNSW Representative, acting reasonably and having regard to the circumstances.

The TfNSW Representative may also extend the Date for Completion at any time and for any reason.

5.4.3. Pay liquidated damages for delay

If you do not complete the Contracted Work by the Date for Completion, you must pay TfNSW the amount of liquidated damages set out or referred to in the Contract Schedule. That amount is payable each week during the period between the Date for Completion and the date that you actually complete the Contracted Work and pro-rata for each part of a week.

5.4.4 Deduction of service credits for services under Work-as-Ordered Contract

Where the Contracted Work comprises services to be performed under a Work-as-Ordered Contract or a Term Services Contract, instead of requiring you to pay liquidated damages, TfNSW may apply service credits set out or referred to in the Contract Schedule where a service key result area fails to meet the required weighting allocated to it. The amount of the deduction to be applied shall not exceed the percentage set out in the Contract Schedule.

5.5. Directions as to order and timing of Contracted Work

TfNSW may direct you as to the order and timing for performance of the Contracted Work.

5.6. Directions to suspend Contracted Work

TfNSW may direct you to suspend the whole or part of the Contracted Work for any reason for a period nominated by TfNSW.

If TfNSW directs a suspension because of a default or act or omission by you, your subcontractors, employees or agents, you are not entitled to make a claim against TfNSW for losses or damages you may incur or sustain in connection with the suspension.

Doing the Work: People and resources

6. People and resources

6.1. Warranty of capacity

You warrant to TfNSW that you have the materials, people and resources to properly perform the Contracted Work.

6.2. Use competent people

You must provide people who are competent, experienced and qualified to carry out the Contracted Work.

If you have nominated particular people to do the Contracted Work and TfNSW requires you to use those people, you must do so unless TfNSW gives its written permission to the use of other people.

6.3. TfNSW may direct removal of personnel

The TfNSW Representative may direct you to remove a person from the Contracted Work if the TfNSW Representative considers the person to be:

- .1 incompetent, negligent or guilty of misconduct; or
- .2 reckless or indifferent in relation to safety or the protection of the environment.

6.4. Subcontract only with approval

You may subcontract some of the Contracted Work but only with the TfNSW's prior written consent. Approval to subcontract does not relieve you of any liabilities or obligations under the Contract.

6.5. Wages and conditions of workers

You must ensure that all Workers are engaged on terms and conditions which are no worse (for the Worker) than those prescribed by relevant legislation, an award applicable to the worker or determination, judgment or a registered enterprise agreement concerning the Worker's minimum terms of employment. You must provide evidence of compliance with this clause if requested to do so by TfNSW.

6.6. Payments to Subcontractors and Workers

You must ensure that Subcontractors and Workers are fully paid money properly due and payable to them in connection with the Contracted Work under relevant awards, contracts and enterprise agreements.

6.7. Subcontract terms

6.7.1 Subcontracts with a value of \$25,000 or more

You must include the following terms in all of your Subcontracts with a value of \$25,000 or more at their commencement date:

- .1 A term equivalent to this clause.
- .2 A term allowing the Subcontractor (if it is required to provide security for its contractual obligations) to elect to provide an unconditional undertaking from a bank, financial institution or insurance company in lieu of a cash security or retention.

- .3 A term expressly acknowledging that cash securities and retentions belong in equity to the Subcontractor at all times (even though you may earn interest on them) unless and until you become contractually entitled to have recourse to them.
- .4 A term imposing an obligation on you to deposit all cash securities, retentions and cash proceeds of any converted securities (other than securities converted in the exercise of a contractual right of enforcement) into a trust account with a bank within 24 hours of the receipt, retention or conversion.
- .5 A term imposing an obligation on you to keep proper records of, and account to the Subcontractor with respect to, all securities and retentions and their proceeds.
- .6 A term imposing an obligation on you to pay interest on any money due to the Subcontractor and not paid on the date it is due. The rate of interest must not be less than the rate payable by TfNSW under the Contract on overdue payments.
- .7 Terms incorporating dispute resolution procedures similar to those in the Contract.
- .8 A term acknowledging that the Subcontractor is not required to comply with the dispute resolution procedures set out in the Subcontract if the only remedy sought by the Subcontractor is an order for payment of money which is not disputed to be due and payable under the Subcontract.
- .9 A term requiring you to provide the Subcontractor (before the Subcontractor starts work) with copies of this clause and clauses 6.5, 22 and 23.

6.7.2 All Subcontracts

You must ensure that every Subcontract, regardless of the subcontract value, includes provisions of clause 10.2 and a clause to the same effect as this clause 6.7.2 which is binding on the Subcontractor, and provide evidence of this to TfNSW when requested by the TfNSW Representative.

Doing the Work: Safety and environment

7. Protecting people, property and the environment

7.1. Comply with WHS requirements

You must comply with all work health and safety requirements of TfNSW relating to the Contracted Work or the use of TfNSW work sites or premises.

Unless the Contract Schedule states otherwise or the TfNSW Representative directs otherwise, you are appointed and deemed to be the principal contractor for the purposes of the WHS Laws and must discharge the responsibilities imposed on a principal contractor by the WHS Laws.

Where the Contract Schedule states that you are the principal contractor, you must:

- .1 ensure that the work site or premises where the Contracted Work is being carried out is clearly defined as a separate and distinct workplace at all times, including by installing physical boundaries if reasonably possible; and
- .2 not do or omit to do anything that causes TfNSW to breach the WHS Laws

7.2. Ensure safety and welfare of all people who may be affected

You must ensure the safety and welfare of all people including your employees and subcontractors, members of the public and road users who may be affected by your activities under the Contract or in relation to the Contracted Work.

7.3. Provide safety precautions

You must provide all safety devices, traffic control, barricades, signs and warnings required by TfNSW or which are necessary or desirable for the protection of people or property.

7.4. Comply with environmental requirements

You must comply with all environmental protection requirements of TfNSW relating to the Contracted Work or the use of TfNSW work sites or premises.

7.5. Properly supervise Contracted Work

You must be personally present or ensure that you have a competent representative present at any work site or premises where the Contracted Work is being carried out. Your representative must personally manage and supervise activities of your employees, subcontractors and agents at the worksite or premises. The representative must be a person acceptable to TfNSW.

7.6. Avoid damage to property and the environment

You must avoid damage to property and the environment while carrying out the Contracted Work.

7.7. Make good damage to property or the environment

You must, at your own cost, promptly make good any damage to property or the environment caused by you, your subcontractors, employees or agents while carrying out the Contracted Work.

7.8. Prevent nuisance or inconvenience

You must prevent nuisance or inconvenience to anyone who may be affected by the performance of the Contracted Work.

7.9. Clean up work sites and premises

You must clean up and keep clean and tidy all work sites and premises used for the Contracted Work. This includes ensuring that potential pollutants are prevented from being discharged from the site or premises.

7.10. Working times

Restricted working times may apply to work sites and premises made available to you by TfNSW. The permitted working times are set out or referred to in the Contract Schedule.

7.11. Use of TfNSW worksites and premises

You may only use TfNSW work sites or premises for the purposes of carrying out the Contracted Work. In particular, you may not use TfNSW worksites or premises for any residential purpose unless TfNSW has given you prior written authorisation to do so.

7.12. Take care of TfNSW things

You must take good care of things provided to you by TfNSW for the purposes of the Contract (unless the Contract states otherwise).

7.13. Do not interfere with TfNSW staff or contractors

You may not interfere with or disrupt the work of TfNSW staff or other contractors except to the minimum extent necessary for the proper performance of the Contracted Work.

7.14. TfNSW may instruct urgent work

The TfNSW Representative may instruct you to carry out any urgent work he or she considers necessary to:

- .1 prevent, avoid or minimise loss or damage to any property or harm to the environment or personal injury to any person arising in connection with the Contracted Work, or

- .2 ensure or protect the safety, health or welfare of any person connected with, or who may be affected by, the Contractor's performance of the Contracted Work.

You must comply with instructions issued by the TfNSW Representative under this clause immediately and, unless the TfNSW Representative determines otherwise, at your own cost.

7.15. The Australian Government WHS Accreditation Scheme

Where required in the Contract Schedule, you must maintain accreditation under the Australian Government Work Health and Safety Accreditation Scheme (**the Scheme**) established by section 43 of the BCIIIP Act while Building Work (as defined in the BCIIIP Act) is carried out. You must comply with all conditions of the Scheme accreditation.

7.16. Building Code

Where the Contract Schedule specifies that the Building Code applies because Commonwealth funding (above the minimum thresholds specified in Schedule 1 of the Building Code) has been obtained for the Contracted Work or for the project which the Contracted Work forms part of:

- .1 You must comply, and ensure that each other Building Code Entity complies, in the performance of the Contract, with the requirements of the Building Code and the BCIIIP Act, including by ensuring that no Subcontractor:
 - (a) is subject to an 'enterprise agreement' (as that term is defined in the *Fair Work Act 2009* (Cth)) that does not meet the requirements of section 11 of the Building Code;
 - (b) is subject to an 'exclusion sanction' (as that term is defined in section 3(3) of the Building Code) or is excluded from undertaking work funded by a state or territory government, unless approval to engage that Building Code Entity has been obtained from the ABC Commissioner; and
 - (c) without limiting any other obligation on the Contractor under the Contract, uses any Materials in the performance of the Contracted Work that do not, at a minimum, comply with the relevant Australian standards published by, or on behalf of, Standards Australia Limited (ABN 85 087 326 690); or
 - (d) has failed to fully comply with any adverse decision, direction or order made by a court or tribunal for a breach of the BCIIIP Act, a Designated Building Law, a work health and safety law (including, but not limited to, the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW)) or competition and consumer law (including, but not limited to, the *Competition and Consumer Act 2010* (Cth)).

- .2 Compliance with the Building Code will not relieve you from your responsibility to perform the Contract, or from liability for any defect in the Contracted Work arising from compliance with the Building Code.
- .3 You must maintain adequate records of the compliance with the Building Code by each Building Code Entity.
- .4 You must notify the ABCC of any breach or suspected breach of the Building Code as soon as practicable but no later than 2 working days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
- .5 You acknowledge the powers and functions of the ABC Commissioner and the ABCC under the BCIIIP Act and the Building Code and you will ensure that each Building Code Entity complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the BCIIIP Act, requests to interview any person under section 74 of the BCIIIP Act, requests to produce records or documents under sections 74 and 77 of the BCIIIP Act and requests for information concerning matters relating to the Building Code under section 7(c) of the Building Code.
- .6 If you do not comply with the requirements of the Building Code or the BCIIIP Act in the performance of the Contract such that a sanction is applied by the ABC Commissioner, the ABCC or the Minister for Employment, without prejudice to any rights that would otherwise accrue, those parties will be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by you or a related entity in respect of work funded by the Commonwealth or its agencies.
- .7 You agree that you and each other Building Code Entity will agree to a request from TfNSW, the Commonwealth (or any person authorised by the Commonwealth) or any person contemplated by the BCIIIP Act or the Building Code as having a right to obtain information from a Building Code Entity, to provide such information as is relevant to confirming whether a Building Code Entity has complied with the Building Code within a specified period, in person, by fax, by post or other means.
- .8 Without limiting your obligations under the Contract, prior to allowing a Building Code Entity to obtain access to the site, you must obtain, and must require each other Building Code Entity to obtain, a completed 'collection notice' (as required by privacy legislation) from all employees, independent contractors, consultants or agents which they engage to carry out the Contracted Work. Each 'collection notice' must contain a consent to the collection, use and disclosure of the individuals' personal information for the purposes of monitoring compliance with the Building Code.

- .9 Where the Contract Schedule specifies that Commonwealth funding (above the minimum thresholds specified in Schedule 1 of the Building Code) has been obtained for the Contracted Work or for the project which the Contracted Work forms part of, you must, prior to engaging any Subcontractor, obtain and retain from each proposed Subcontractor a copy of a 'Declaration of Compliance', substantially in the form set out in the document titled 'Code for the Tendering and Performance of Building Work 2016 – Model Clauses Type B: Model Clauses for Tender and Contract Documentation for Contractors and Subcontractors'.
- .10 You must require each of your Subcontractors to:
- (a) prior to entering into a Subcontract with that person; and
 - (b) every six months during the term of the relevant Subcontract, provide you with confirmation that the Subcontractor has not, within the preceding three year period:
 - (c) had an adverse decision, direction or order made by a court or tribunal for a breach of a Designated Building Law, work health and safety law (including, but not limited to, the *Work Health and Safety Act 2011* (NSW) and the Work Health and Safety Regulation 2017 (NSW)) or the *Migration Act 1958* (Cth); or
 - (d) been required to pay any amounts under an adjudication certificate (provided in accordance with a law relating to the security of payment legislation (including, but not limited to, the *Building and Construction Industry Security of Payment Act 1999* (NSW)), that are due to persons in respect of Building Work) or owed any unsatisfied judgement debts (including by any related entity (as contemplated by section 3(2) of the Building Code)) to a Building Contractor or a Building Industry Participant.
- .11 Without limiting any other obligation on a Building Code Entity under the Building Code, you must ensure that all Subcontracts impose obligations on Subcontractors equivalent to the requirements of this clause 7.16.

7.17. NSW Government Code of Practice for Procurement and NSW Industrial Relations Guidelines: Building and Construction Procurement

Terminology

- .1 In addition to terms defined in this document, terms used in this clause have the same meaning as is attributed to them in the New South Wales Government's Industrial Relations Guidelines: Building and Construction Procurement (**NSW Guidelines**) (as published by the NSW Treasury July 2013). The NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

Primary Obligation

- .2 You must comply with and meet any obligations imposed by the NSW Government Code of Practice for Procurement (**NSW Code**) and the NSW Guidelines.
- .3 You must notify the Construction Compliance Unit (CCU) and TfNSW of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- .4 Where you engage a subcontractor or consultant, you must ensure that that contract imposes on the subcontractor or consultant equivalent obligations to those in this section 2 (under the heading NSW Code and NSW Guidelines), including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- .5 You must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

Access and information

- .6 You must maintain adequate records of compliance with the NSW Code and NSW Guidelines by you, your subcontractors, consultants and related entities.
- .7 You must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - .1 enter and have access to sites and premises controlled by you, including but not limited to the project site;
 - .2 inspect any work, material, machinery, appliance, article or facility;
 - .3 access information and documents;
 - .4 inspect and copy any record relevant to the project;
 - .5 have access to personnel; and
 - .6 interview any person;as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by you, your subcontractors, consultants, and related entities.
- .8 you, and your related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the

CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

Sanctions

- .9 You warrant that at the time of entering into the Contract, neither you, nor any of your related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded you from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- .10 If you do not comply with, or fail to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against you in connection with the NSW Code or NSW Guidelines.
- .11 Where a sanction is imposed:
 - .1 it is without prejudice to any rights that would otherwise accrue to the parties; and
 - .2 the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - .1 record and disclose details of noncompliance with the NSW Code or NSW Guidelines and the sanction; and
 - .2 take them into account in the evaluation of future procurement processes and responses that may be submitted by you, or your related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

Compliance

- .12 You bear the cost of ensuring your compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps you are obliged to take to meet your obligations under the NSW Guidelines. You are not entitled to make a claim for reimbursement or an extension of time from TfNSW or the State of NSW for such costs.
- .13 Compliance with the NSW Code and NSW Guidelines does not relieve you from responsibility to perform the works and any other obligation under the contract, or from liability for any defect in the works or from any other legal liability, whether or not arising from your compliance with the NSW Code and NSW Guidelines.
- .14 Where a change in the contract or works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines:

- .1 you must immediately notify TfNSW of the change, or likely change and specify:
 - .1 the circumstances of the proposed change;
 - .2 the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
 - .3 what steps you propose to take to mitigate any adverse impact of the change (including any amendments you propose to a Workplace Relations Management Plan (State) or Work Health and Safety Management Plan);and
- .2 TfNSW will direct you as to the course you must adopt within 10 Business Days of receiving notice.

7.18. NSW Government *Policy on Aboriginal Participation in Construction*

Where required in the Contract Schedule you must comply with the NSW Government *Policy on Aboriginal Participation in Construction*. Where applicable, the Minimum Aboriginal Participation Spend (MAPS) on Aboriginal participation is as stated in the Contract Schedule.

Where required in the Contract Schedule, you must prepare and submit the following:

- .1 to the TfNSW Representative:
 - (a) Aboriginal Participation Plan by the Start Date of the Contracted Work defined in clause 3.2 or 30 days before Date of Completion, whichever occurs first, and
 - (b) quarterly (at the end of March, June, September and December), its Aboriginal Participation Report in the form set out in Schedule 5, providing details of the implementation of the Policy and achievement of targets; and
 - (c) Aboriginal Participation report at completion of the Contracted Work, which explains how the Aboriginal Participation Plan has been implemented and what outcomes have been achieved.
- .3 For Term Services Contract, the Contractor must provide an annual Aboriginal Participation Plan. The annual Aboriginal Participation Plan is to detail the initiatives that will likely apply for the next 12 months. 30 days prior to the Term Services Contract award anniversary date, the Contractor must provide an

Aboriginal Participation Plan covering the next 12 month period of the Term Services.

The Aboriginal Participation Plans and the Aboriginal Participation Reports must be prepared in accordance with the NSW Government *Policy on Aboriginal Participation in Construction* and in the format prescribed by the TfNSW Representative. Templates are available at: (<https://www.procurepoint.nsw.gov.au/aboriginal-participation-construction-information-contractors>).

Doing the Work: Directions and variations

8. Directions

8.1. Comply with directions

You must comply with all directions of the TfNSW Representative in carrying out the Contracted Work and performing any of your other obligations under the Contract.

8.2. Directions to be confirmed in writing

The TfNSW Representative may issue directions verbally or in writing. Unless the TfNSW Representative informs you that urgent compliance is required, you need not comply with a verbal direction until it is confirmed in writing.

8.3. Payment for directions

Unless you have a specific entitlement to payment for a particular direction, you must comply with a direction at your own cost.

9. Variations

9.1. TfNSW may vary the Contracted Work

The TfNSW Representative may direct you to:

- .1 Increase, decrease or omit part of the Contracted Work, or
- .2 Change the character or quality of material or work used in the Contracted Work, or
- .3 Change the levels, lines, positions or dimensions of part of the Contracted Work, or
- .4 Do additional work.

You may not vary the Contracted Work without a written direction from the TfNSW Representative stating that it is a variation direction.

9.2. Your right to claim that a direction is a variation

If the TfNSW Representative issues a direction which you consider to be a variation direction but which does not state that it is a variation direction, you must promptly write to the TfNSW Representative setting out the reasons why you consider the direction to be a variation direction.

Whenever possible, your written notice must be given to the TfNSW Representative before you start to comply with the direction. If you do not give the notice within 7 days of the date of the direction, you cannot later claim that the direction was a variation.

9.3. Effect of variations

No variation invalidates the Contract.

9.4. Valuation of variations

The TfNSW Representative will determine the value of variation after taking into account applicable contract rates and prices, your views on the value of the variation, relevant pricing information submitted by you at the time of tender and objective available evidence of relevant market prices.

Doing the Work: Miscellaneous

10. Comply with legal requirements, codes and standards

You must comply with:

- .1 all legal requirements relating to performance of the Contracted Work and the conduct of your business.
- .2 Legal requirements include, without limitation, all taxation legislation, workers' compensation, environmental laws and regulations, work, health and safety laws, all applicable codes of practice and regulations, vehicle registration legislation and requirements of governmental or semi-governmental authorities.
- .3 If you consider there is a conflict between any legal requirement and an obligation imposed by the Contract, you must write to the TfNSW Representative advising of the perceived conflict and seeking a direction.
- .4 chain of responsibility provisions of the Heavy Vehicle National Law (NSW) (2013).
- .5 the Principal's *Statement of Business Ethics* available from the Principal's website.
- .6 the Principal's *Customer Charter* available from the Principal's website

11. Keep information confidential

If, because of the Contract, you or your employees, subcontractors or agents have access to information of TfNSW or another person which is not publicly available, you must:

- .1 Keep the information confidential.
- .2 Not disclose or allow the information to be disclosed to an unauthorised person.
- .3 Take all steps and do all things necessary, prudent or desirable to safeguard the confidentiality of the information including things specifically required by TfNSW
- .4 Not remove or copy the information and only make use of it if expressly authorised to do so, and then only for the purposes expressly authorised by the Contract.
- .5 Ensure that your employees, subcontractors and agents are aware of this clause and do not do anything which would cause the information to become public without the express written consent of TfNSW or the owner of the information.

12. Media releases and enquiries

You must seek the TfNSW's prior written approval to:

- .1 any press release or advertisement concerning the Contract, TfNSW or the Contracted Work, or
- .2 the release for publication in any media of any information, publication, document or article concerning the Contract, TfNSW or the Contracted Work.

You must refer any media enquiries concerning TfNSW, the Contract or the Contracted Work to the TfNSW Representative.

You must ensure that all consultants, subcontractors and suppliers engaged by you for the performance of the Contract or the Contracted Work, comply with the requirements of this clause.

13. Intellectual property warranty

You warrant that you will not infringe intellectual property rights in performing the Contracted Work. You indemnify TfNSW against any claim or action which may be brought or made against TfNSW, its employees or agents as a result of an infringement of intellectual property rights by you, your employees or agents.

14. Ownership of things found

TfNSW owns anything of value or interest which is found on an TfNSW work site or premises unless the Contract states otherwise. If you discover anything of possible archaeological, environmental or cultural significance on an TfNSW site while carrying out the Contracted Work, you must not disturb or destroy the thing found unless directed to do so in writing. Nothing in this

clause limits any legal obligations relating to the protection or preservation of the thing found.

15. TfNSW's right to do things not done by you

If you don't do something you are required to do or don't do it as well as you are required to do it under the Contract, TfNSW may do it at your cost (using either its own or contract resources). Money owing by you under this clause may be deducted from future payments under the Contract. Any shortfall may be recovered as a debt due and payable.

Unless the TfNSW Representative considers that urgent action is required, TfNSW will give you prior written notice of its intention to take action under this clause.

Relationships and representation

16. Relationship and representation

16.1. Your relationship with TfNSW

You may not act outside the scope of the authority conferred on you by the Contract, and may not bind TfNSW in any way or hold yourself out as having authority to do so.

16.2. TfNSW Representative

16.2.1. Role and identity

TfNSW will appoint a representative to act for it in all matters under or relating to the Contract.

The TfNSW Representative acts as the agent of TfNSW and not with the exercise of independent judgment or as an independent certifier, assessor or valuer. If you disagree with any valuation, assessment or other decision of the TfNSW Representative, you may dispute it in accordance with clause 28.

The TfNSW Representative is described in the Contract Schedule. TfNSW may change its representative by written notice to you.

16.2.2. Site Representatives

The TfNSW Representative may appoint one or more others to assist in administration of the Contract and to exercise any of the powers, duties, functions and discretions of the TfNSW Representative under the Contract. A person appointed under this clause is known as a 'Site Representative'.

The TfNSW Representative must notify you in writing of the appointment of a Site Representative, and of the specific powers and functions exercisable by that person.

16.3. Your representative

You need to nominate a person with authority to represent you for the purposes of the Contract. You must notify TfNSW in writing of the name and contact details for your representative and keep TfNSW advised in writing of any changes to those details.

Matters within the knowledge of your representative are taken to be within your knowledge.

Liabilities, insurances and securities

17. Liability for Project Works

This clause applies if you are required to undertake Project Works and a work site has been made available to you for that purpose.

17.1. Care of the Project Works

From the time you are given access to the work site or sites until the Date of Completion, you are solely liable for the care of:

- .1 The Project Works.
- .2 Materials, equipment and things brought onto the work site by you or by your subcontractors, employees or agents for the purpose of carrying out the Project Works.
- .3 Materials, equipment and things given to you by TfNSW for the purpose of carrying out the Project Works.

Subject to clause 17.2, you must make good loss or damage which occurs to any of the above while you are liable for their care.

17.2. Payment for loss or damage to Project Works and other property

You do not need to make good loss or damage under clause 17.1 unless TfNSW directs you to do so as a variation to the Project Works if the loss or damage is caused by one or more of the following:

- .1 A negligent act or omission of TfNSW, its employees, consultants or agents.
- .2 War or other hostilities or confiscation by order of a public authority.
- .3 Contamination by radioactivity which is not caused by you, your employees, subcontractors or agents.

18. Indemnity for property damage or personal injury

You indemnify TfNSW against loss or damage to TfNSW property and against any claim or action which may be brought or made against TfNSW, its employees or agents in respect of personal injury or death or loss of or damage to property caused by your act or omission or the act or omission of your employees, subcontractors or agents.

18A Limitation of liability

18A.1 Limitation

Subject to clauses 18A.2 and 18A.3, your total liability to TfNSW under the Contract in respect of any event that occurs or a liability that arises for which insurance is required by clause 19 (**Risk Event**) is limited to the sum of the total aggregate limits of liability or sums insured (**Policy Limits**) of all insurances applicable to the Risk Event. The amount which represents your total liability is determined by reference to the Policy Limits of the insurances, whether or not the insurance actually provides cover for the Risk Event.

18A.2 Liability that is not limited

Clauses 18A.1 and 18A.3 do not limit your liability:

- .1 in respect of liability which:
 - (a) cannot be limited at law;
 - (b) arises under clauses 5.4.3 (liquidated damages) or 13 (intellectual property warranty);
 - (c) is due to your wilful or reckless misconduct, gross negligence, fraud or criminal conduct; or
 - (d) arises in connection with your abandonment of your obligations under the Contract;
- .2 to the extent that any insurer under a policy referred to in clause 19 seeks to exercise a right of subrogation against you;
- .3 to the extent that (ignoring the application of clauses 18A.1 and 18A.3), you are entitled to recover that liability from any third party (including any of your subcontractors), or would have been entitled to recover that liability but for any act or omission on your part;
- .4 to pay interest or other amounts which the Contract expressly treats as recoverable debts;
- .5 for unliquidated damages in lieu of unenforceable liquidated damages;

.6 for personal injury (including death) or illness to any person.

and those liabilities will not be included in any calculation of your total liability under clause 18A.1.

18A.3 Losses and costs for which you are not liable to TfNSW

You are not liable to TfNSW for:

- .1 loss of business opportunity;
- .2 loss of goodwill;
- .3 loss of contracts;
- .4 loss arising from business interruption;
- .5 loss of or corruption of data;
- .6 loss of anticipated savings; or
- .7 the cost of capital or other financing costs,

which loss or cost arises due to the performance of the Contracted Work.

18A.4 Losses and costs for which TfNSW is not liable to you

TfNSW is not liable to you for:

- .1 loss of business opportunity;
- .2 loss of goodwill;
- .3 loss of contracts;
- .4 loss arising from business interruption;
- .5 loss of or corruption of data;
- .6 loss of anticipated savings; or
- .7 the cost of capital or other financing costs,

arising out of or in connection with the performance of the Contracted Work or the Contract.

19. Insurances

19.1. The insurances you must have

You must hold the insurances set out in the Contract Schedule whenever you are performing Contracted Work and until the end of the last warranty period relating to the Contracted Work.

19.1.1. Policies must be with approved insurers

To be acceptable for the purposes of the Contract, an insurance policy must be issued by:

- .1 an Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia;
or
- .2 Lloyds Underwriters; or
- .3 if there is any placement of the risk overseas, a related general insurance company in Australia which is approved by the APRA and who has accepted the insurance transfer;
or
- .4 if there is any placement of the risk overseas, and does not apply to items 2 and 3 above, the following actions/documentation need to take place and be provided to TfNSW:
 - (a) The Contractor's Finance Committee or appropriate finance personnel of the Contractor, must undertake a full financial risk assessment of the insurer/s being proposed for insurance where the following points must be achieved:
 - (i) the financial rating of the insurer by independent financial advisers must have credit rating of at least "A" Standard & Poors (S & P) or the equivalent rating by the Moody's Investment Service or A M Best;
 - (ii) the Contractor's Insurance Brokers' Financial Committee or appropriate financial personnel of the Insurance Broker, must have its own report and approve the dealing with the Approved Insurer in addition to point (i) above; or
- .5 the Comcover insurance scheme for the Australian Federal Government; or
- .6 in respect of NSW workers compensation insurance, an insurance company which has been granted the licence of the NSW Work Cover Authority to undertake workers compensation insurance in NSW.

19.1.2. Requirements for policies generally

All insurance policies (not including workers compensation unless the Contract states otherwise) must:

- .1 include TfNSW and your subcontractors (if any) as additional named insureds, and
- .2 indemnify TfNSW, and
- .3 include a Cross Liability and Waiver of Subrogation Clause:

Cross Liability and Waiver of Subrogation clause means the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured and for the purpose of which the insurer accepts the term “insured” as applying to each of the persons comprising the insured as if a separate policy of insurance has been issued to each of them (subject always to the overall insured sum).

19.1.3. Evidence of your insurance

You must provide evidence of insurances, in the form of certificates of currency, prior to starting the Contracted Work and whenever requested to do so. You must ensure that each certificate of currency that is provided by you to TfNSW is no more than six months old.

19.2. Principal Arranged Insurance

TfNSW has arranged contract works insurance and third party liability insurance for the Contracted Work. This insurance covers your liabilities to TfNSW and to third parties for the limits of liability as stated in the Contract Schedule. This Principal Arranged Insurance is in the TfNSW's name, your name and the name of your subcontractors employed in relation to the Contracted Work.

- .1 TfNSW will maintain the Principal Arranged Insurance for the Warranty on Completion period as set out in the Contract Schedule.
- .2 Before commencing Contracted Work and no later than 14 days after the formation of the Contract in clause 2, you must contact the Principal's Insurer to:
 - (a) provide various details including contract, subcontractor/s and insurance information necessary for the Principal Arranged Insurance; and
 - (b) confirm the Principal Arranged Insurance excess amount which you are required to pay for each and every loss.

- .3 You must provide any further details, necessary for the Principal Arranged Insurance, to the Principal's Insurer whenever requested to do so.
- .4 An extract of the terms of the Principal Arranged Insurance is set out in Schedule 4 and you may inspect the terms of the Principal Arranged Insurance at the address of the Principal's Insurer.
- .5 You acknowledge that TfNSW has obtained the Principal Arranged Insurance at its own cost and that your tendered rates and prices (including any lump sum price) do not include any allowance for the cost of contracts works insurance or third party liability insurance for the Contracted Work.

19.2.1. Excess

You are responsible for meeting the amount of excess payable under the Principal Arranged Insurance as set out in the Contract Schedule. You may effect your own insurance to cover the amount of that excess.

20. Security for performance

If the Contract Schedule states that security is required, you must provide security for your performance of the Contract.

You must lodge the security with TfNSW within 14 days of the date of the TfNSW's letter accepting your tender or offer for the Contracted Work.

The security must be for the amount described in the Contract Schedule and must be in cash or an unconditional undertaking in the form set out in Schedule 1. The security provider must be a bank, financial institution or insurance company which is subject to the prudential supervision of the Australian Prudential Regulation Authority.

TfNSW may call on the security whenever:

- .1 the Contract states that TfNSW may do so, or
- .2 you owe TfNSW money, or
- .3 TfNSW is entitled to recover money or damages from you, or
- .4 TfNSW does something at your cost under the Contract, or
- .5 TfNSW is entitled to deduct money from a payment and the amount of the payment is insufficient to cover the amount which TfNSW is entitled to deduct.

21. Related company guarantees and related body corporate

21.1 Related company guarantees

You must provide guarantees from related companies or from your directors as security for your performance of the Contract if requested to do so by TfNSW. A guarantee provided under this clause must be in terms acceptable to TfNSW. TfNSW may request a guarantee under this clause even if the Contract Schedule indicates that security is not required.

21.2 Related body corporate

To enable TfNSW to comply with Division 5 of Part 3 of the *Government Information (Public Access) Act 2009* (GIPA), you must promptly advise TfNSW of;

- (a) particulars of any related body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth) in respect of your company, or;
- (b) any other private sector entity in which you have an interest, that will be involved in carrying out any of your obligations under the contract, or will receive a benefit under the contract;

not previously advised during the tender period.

Getting paid

22. Price

22.1. Your price covers everything required

You warrant that your tendered rates and prices (including any lump sum price) for the Contracted Work include the cost of everything associated with or necessary for the proper performance of the Contracted Work.

22.2. Calculation of amount payable by TfNSW

The amount payable by TfNSW for your performance of the Contracted Work is as follows:

- .1 To the extent that your tender was for a lump sum price, TfNSW must pay the lump sum price (as adjusted by any additions or deductions made in accordance with the Contract).
- .2 To the extent that your tender was based on a schedule of rates, TfNSW must pay you the amount calculated by multiplying the measured quantity of each section or item of work actually carried out under the Contract by the rate set out in your tender for that section or item (as adjusted by any additions or deductions made in accordance with the Contract).

22.3. Estimates of quantities

If the Contract includes a Schedule of Rates, the quantities stated in the Schedule were prepared by TfNSW purely for the purpose of comparing tenders. They are not to be regarded as indicating the quantity of work which may be required or paid for under the Contract.

If the Contract includes a Schedule of Prices, the quantities stated in the Schedule were prepared by TfNSW for the purpose of comparing tenders and valuing variations. They are not to be regarded as indicating the quantity of work which may be required under the Contract.

22.4 Not Used

22.5 Price adjustments for rise and fall

The Contract rates and prices will not be adjusted for rise and fall unless the Contract Schedule states that rise and fall applies.

If cost adjustment for rise and fall applies, your rates and prices (excluding any rates or prices subject to adjustment under clause 22.6) will be adjusted annually to take account of movements in the Consumer Price Index. The adjustment will apply to all payments after the date of the adjustment and will be made by reference to the CPI (All Groups) published for Sydney.

The base date for calculation of the CPI is the last day of the quarter preceding the date of your offer or tender for the Contracted Work.

If the Contract is one where TfNSW accepted a lump sum price, the adjustment will be made only for that part of the lump sum price as relates to the remaining term of the Contract.

22.6 Price adjustment for the supply of bitumen

The Contract rates and prices for the supply of bitumen will not be adjusted for rise and fall unless the Contract Schedule states that rise and fall for the supply of bitumen applies.

If cost adjustment for bitumen applies the Contract Sum shall be subject to adjustments for variations in the cost of bitumen supplied by you. The adjustment shall be effected in the Payment Claims submitted by you in accordance with clause 23.

Any cost adjustment under this clause shall be calculated from the formula -

$$D = (C - B) \times A$$

where -

A = the quantity of bitumen derived from:

- 1) The calculation of residual bitumen at 15 degrees Centigrade where the product is sprayed bituminous surfacing or a tack coat.
- 2) The approved design binder content where the product is asphalt.
- 3) The approved residual binder content where the product is a bituminous slurry surfacing

B = the Price of Class 170 bitumen applicable on the last day of the month immediately preceding the month during which the tenders closed;

C = the Price of Class 170 bitumen on the last day of the month immediately preceding the month during which the work is performed; and

D = the applicable cost adjustment for this Payment Claim.

The Price of Class 170 bitumen shall be the average of the prices for the suppliers contracted to supply TfNSW on its panel contract for the Supply of Bitumen and Related Products.

22.7 Provisional Quantities

If, in respect of any work for which a provisional quantity is included in the Contract, the TfNSW Representative directs that a greater or lesser quantity than the provisional quantity shall be carried out, or that no work shall be carried out, the value of the difference between the provisional quantity and the quantity carried out pursuant to that direction, calculated at the rate for that work stated in the Contract, shall be certified by the TfNSW Representative and shall be taken into account in determining the final Contract Sum.

23. Payment

23.1. Your payment claims

23.1.1 Time for submission of Payment Claims

Payment Claims may only be submitted on the day of the month specified in the Contract Schedule (**'Payment Claim Day'**) for each month in which you are carrying out Contracted Work. At the sole discretion of TfNSW, Payment Claims received on a day of the month after the Payment Claim Day, will either be returned to you, or held over until the next Payment Claim Day. A Payment Claim that is submitted prior to the Payment Claim Day will be deemed as having been served on the Payment Claim Day.

23.1.2 Place for lodgement of claims

Payment Claims must be lodged with TfNSW electronically at the address set out in the Contract Schedule as the address for service of Payment Claims.

A Payment Claim lodged with TfNSW in accordance with this clause is deemed to have been properly served on the TfNSW for the purposes of section 13(1) of the Building and Construction Industry Security of Payment Act 1999 (NSW).

23.1.3 Contents of claims

A Payment Claim must:

- .1 identify the Contracted Work to which the claim relates, and
- .2 indicate the amount which you consider to be due under the Contract for the Contracted Work done within the period covered by the claim, and
- .3 include any details (such as conformance records) required by the Contract or reasonably requested by the TfNSW Representative for the purposes of assessing your claim.
- .4 be accompanied by the documents specified in, and duly completed in accordance with, clause 23.2.
- .5 where the Contract Schedule requires, be accompanied by the daily Quantity Agreement Sheets duly completed and signed by both your representative and the Site Representative.

If a Payment Claim includes a claim for reimbursement or payment of, or contribution towards, an expense, loss or outgoing, your claim must be limited to the sum of:

- the amount of the expense, loss or outgoing net of any related input tax credits to which you are entitled; and
- if the expense, loss or outgoing is a taxable supply by you to TfNSW, any GST payable in respect of that supply.

23.2 Contractor Statements

All Payment Claims must be accompanied by both a Contractor Statement and a Supporting Statement in the form set out in Schedule 2 made by you or by a person who is in a position to know the facts, attested to in the presence of a solicitor, Justice of the Peace or another person who is authorised to administer oaths in the jurisdiction where the Contractor Statement and Supporting Statement are made.

23.3 Payment Schedule

The TfNSW Representative will assess each Payment Claim and issue a Payment Schedule to you within 10 Business Days of receipt of the claim.

The Payment Schedule will:

- .1 identify the Payment Claim to which it relates, and
- .2 indicate the amount of the payment (if any) that TfNSW proposes to make, and
- .3 include reasons for any difference between the amount claimed and the amount assessed to be payable on the claim, and
- .4 if applicable, be in the form of a Recipient Created Tax Invoice.

TfNSW confirms, for the purposes of section 14(1) of the Building and Construction Industry Security of Payment Act 1999 (NSW), that a Payment Schedule issued by the TfNSW Representative is made and issued with the full authority of and on behalf of TfNSW and is the payment schedule under the Act.

23.4 Time for payment

TfNSW must pay you the amount due on any Payment Schedule within fifteen (15) Business Days of the Payment Claim Date.

23.5 Valuation and assessment of Payment Claims

Payment Claims will be valued and assessed by the TfNSW Representative as follows:

.1 *Where a lump sum price applies*

For Contracted Work covered by a lump sum price, the TfNSW Representative will assess the quality and quantity of work done within the period of the claim.

If the Contract includes a Schedule of Prices, claims will generally be valued by multiplying the measured quantity of each section or item of work actually done in accordance with the Contract by the rate set out in the Schedule of Prices for that section or item. However, once the total price for any section or item has been reached, no additional payment for that section or item will be made.

If the Contract does not include a Schedule of Prices, the TfNSW Representative will determine the value of the work

done either on a pro-rata basis against the total lump sum price or on another basis set out in the Contract.

Nothing in this clause limits your entitlement to the whole of the lump sum price for completion of the whole of the work covered by that lump sum price.

.2 Where Schedule of Rates applies

For Contracted Work covered by a Schedule of Rates, the TfNSW Representative will multiply the measured quantity of each section or item of work actually done in accordance with the Contract by the rate set out in the Schedule of Rates for that section or item.

.3 Where the Contract contains other specific valuation provisions

If the Contract contains specific valuation provisions different from the above, the TfNSW Representative must apply those provisions to determine the value of the Payment Claim.

.4 Defective or non-conforming work

If any of the work covered by a Payment Claim is defective or non-conforming, if conformance records are required and have not been provided or service credits are to be applied in accordance with clause 5.4.4 the TfNSW Representative in valuing the claim may, at his/her sole discretion but without limiting any other specific provisions of the Contract:

- disregard the defective or non-conforming work or the work for which conformance records have not been provided;
- reduce the amount of the claim by an amount equal to the estimated cost of rectifying the defective or non-conforming work; or
- reduce the amount of the claim by amount equal to the value of a service credit deduction.

.5 Quantity Agreement Sheets

Subject to any right to withhold, deduct or set-off moneys set out elsewhere in the Contract, where:

- the calculation of the amounts in a Payment Claim match the amounts in the corresponding Quantity Agreement Sheets, the Payment Claim will be accepted by TfNSW; and
- the calculation of the amounts in a Payment Claim do not match with the amounts in the corresponding

Quantity Agreement Sheets, the amount showing in the Quantity Agreement Sheets will be accepted as representing the amount to be included as owing in the Payment Schedule.

.6 Variations approved by TfNSW

Where Payment Claims include amounts for variations approved by TfNSW, such variations will be valued in accordance with the above provisions, based on the determination of the value of the variation made under clause 9.4.

.7 Set-off

If TfNSW is entitled to make a deduction under clause 23.7, the TfNSW Representative must also include the amount of the deduction in the valuation of the claim.

.7 Withholdings

If clauses 23.8 or 23.10.1 apply, the TfNSW Representative must also include the amount to be withheld in the valuation of the claim.

Where you fail to supply the Contractor Statement and Supporting Statement in accordance with clause 23.2, details for Principal Arranged Insurance in accordance with clause 19.2 or proof of insurances in accordance with clause 19.1.3 you will be in default under the Contract entitling TfNSW, in its absolutely discretion, to exercise a right under clause 29.

23.6 GST provisions and Recipient Created Tax Invoices

You must be registered for GST before submitting any Payment Claim.

You must notify TfNSW if you cease to be registered for GST at any time.

TfNSW must notify you if it ceases to be registered for GST or if it ceases to be eligible to issue Recipient Created Tax Invoices at any time.

The following provisions apply unless TfNSW gives you notice that it is no longer eligible to issue Recipient Created Tax Invoices:

- TfNSW will be responsible for issuing Recipient Created Tax Invoices and Adjustment Notes in respect of adjustment events known to TfNSW and relating to the Contract.

- You must notify TfNSW of details of any adjustment event not otherwise known to TfNSW.
- All progress or payment certificates or schedules issued under the Contract will be issued in the form of Recipient Created Tax Invoices on behalf of TfNSW.

This clause does not apply if you have notified TfNSW that you are not registered for GST or if you have entered into a Voluntary Agreement with TfNSW for the withholding of Pay as You Go taxation.

Terms used in this clause have the meanings given to them in the GST Legislation.

23.7. Set-off

TfNSW may deduct from an amount payable to you under the Contract any amount which is, or in the opinion of TfNSW is likely to become, payable by you to TfNSW.

23.8 Withholdings under PAYG

If you do not quote your ABN in your tender or on your Payment Claims or otherwise advise TfNSW of your ABN, TfNSW will withhold tax from payments in accordance with the *A New Tax System (Pay As You Go) Act 1999*.

23.9. Effect of payment

Payments by TfNSW are on account only and do not evidence the TfNSW's acceptance of the Contracted Work done by you.

23.10 Non-payment of Workers and Subcontractors

23.10.1. *TfNSW may withhold payment to you*

If a Contractor Statement lodged by you indicates that money due and payable to a Worker is unpaid, TfNSW may withhold payment to you of an amount equal to the unpaid money.

23.10.2. *TfNSW may make direct payments on request*

At your written request and out of money due and payable to you, TfNSW may pay money on your behalf to Workers or Subcontractors.

23.10.3. *TfNSW may pay on court order*

TfNSW may pay money direct to a Worker or Subcontractor and recover the amount paid from you as a debt due if TfNSW is presented with:

- .1 a court order in respect of money payable to the Worker or Subcontractor under an award, enterprise agreement or

Subcontract for work, services, materials, plant, equipment or advice supplied for the work under the Contract, and

- .2 a statutory declaration that the money has not been paid under the court order.

23.11. Concurrence of external administrator required

If an external administrator is appointed to you within the meaning of Part 5 of the Corporations Law, TfNSW will not make any payment to a Worker or Subcontractor without the concurrence of the external administrator.

Completing Contracted Work

24. Your hand over obligations

At the completion of the Contracted Work or the end of the Term or on earlier termination of the Contract, promptly:

- .1 Deliver or hand over the Project Works (if applicable) and all materials, documentation and things produced as part of the Contracted Work, and
- .2 Return materials, documentation and other things provided to you by TfNSW for the purposes of the Contract (unless those materials or things have been used up in the process of performing the Contract), and
- .3 Obtain and provide to TfNSW releases from persons who may have been affected by the performance of the Contracted Work if requested to do so by TfNSW. Releases must be in the form required by TfNSW.
In a Term Services Contract, these obligations apply at the end of the Term.

This clause does not reduce any obligation you may have to hand over or deliver materials, documentation or things progressively.

Materials and documents to be handed over under this clause must be in electronic format if the TfNSW Representative so requires.

25. Time of completion

If a Date for Completion applies to the Contracted Work, the date of completion is determined by the TfNSW Representative issuing a certificate of completion.

26. Warranty on completion

You warrant that the Contracted Work as completed will be free from defects in workmanship and materials for the period set out in the Contract Schedule after completion of the Contracted Work.

In a Term Services Contract, your warranty applies to each item of Contracted Work done on and from the time you complete that item.

If you need to fix, replace or rework something during the warranty period because it does not comply with the warranty, the warranty applies again from the time when the thing is fixed, replaced or reworked – but only with respect to the thing fixed, replaced or reworked.

27. Release of security

After the end of the last warranty period (or in the case of services under a Work-as-Ordered Contract, after completion of the Contract Term), you may request that TfNSW release your security (or the balance remaining at that time). TfNSW will do so within 14 days of your request if TfNSW is satisfied that:

- .1 the last warranty period has expired, and
- .2 you have fulfilled all your obligations under the Contract, and
- .3 you have no outstanding claims against TfNSW in connection with the Contract, and
- .4 there are no outstanding claims by third parties in connection with the Contract or the Contracted Work.

Disputes and termination

28. Resolving disputes

The parties will attempt to resolve disputes speedily by negotiation in good faith.

If a dispute cannot be resolved by negotiation between our respective representatives within 2 months of commencement of negotiations, the dispute will be referred for further discussion and negotiation to an appropriate senior executive nominated by each party. If the senior executives are unable to resolve the dispute within 14 days of commencement of discussion (or such longer time as is agreed between them), either party may commence formal dispute resolution proceedings by expert determination.

The expert determination will be conducted in accordance with the Principal's Rules for the Conduct of Expert Determination and the Principal's Code of

Conduct for an Expert. A copy of the Rules and Code of Conduct are available on request.

The parties must continue to perform their obligations under the Contract in spite of a dispute.

29. If you default

If you breach or default under the Contract, TfNSW may suspend payment to you until the breach or default is rectified to the TfNSW's satisfaction.

TfNSW may also issue you with a notice requiring you to show cause why the Contract should not be terminated. If you do not respond showing cause to the satisfaction of TfNSW within 14 days, TfNSW may terminate the Contract by written notice which takes effect immediately.

Termination under this clause is not effective to terminate a Work As Ordered Contract. If TfNSW wishes to terminate a Standing Offer, it must do so in accordance with the Conditions of Standing Offer.

30. If you are insolvent

TfNSW may terminate the Contract immediately by written notice to you if you are unable to pay your debts as and when they fall due, or if you become subject to external administration within the meaning of chapter 5 of the Corporations Law.

General

31. Joint and several liability

If you comprise 2 or more persons, each of you is jointly and severally liable for obligations and liabilities under the Contract.

32. Notices

32.1. Notices to you

A formal notice given to you under the Contract must be addressed to the address set out in the Form of Agreement or to the address last notified by you to TfNSW.

32.2. Notices to TfNSW and the TfNSW Representative

A notice to TfNSW must be addressed to the address shown in the Contract Schedule for TfNSW, or the address last notified by TfNSW to you as the TfNSW's address for the purposes of the Contract.

A notice to the TfNSW Representative must be addressed to the address shown in the Contract Schedule for the TfNSW Representative or the address last notified by TfNSW or the TfNSW Representative as the TfNSW Representative's address.

32.3. Notices generally

Notices must be in writing signed by an authorised officer of the sender.

Notices are taken to have been given or made (in the case of delivery in person or by fax, post or e-mail) when delivered, received or left in the care of a person at the specified address.

33. No assignment

You may not assign or encumber a right or interest under the Contract without the prior written consent of TfNSW.

34. No waiver

Just because TfNSW does not insist on you performing a term of the Contract, that does not mean that TfNSW cannot later insist on you performing that term or another term.

If TfNSW waives a breach of contract by you, the waiver only applies to the particular breach and TfNSW can continue to insist on you performing the same obligation when it falls to be performed again. A waiver by TfNSW is only effective if it is stated to be a waiver and is made in writing signed by the TfNSW Representative.

35. Governing law

The Contract is governed by New South Wales law.

36. Definitions

Words used in the Contract have the meanings set out below, unless the context otherwise requires. Words defined in this document can be identified in this and other documents because they commence with a capital letter.

Defined term	Meaning
ABC Commissioner	Has the meaning given in the BCIP Act.
ABCC	Has the meaning given in the Building Code.
BCIP Act	The Building and Construction Industry (Improving Productivity) Act 2016 (Cth).

Defined term	Meaning
Building Code	The Building Code issued under subsection 34(1) of the BCIP Act, being the document titled 'Code for the Tendering and Performance of Building Work 2016'.
Building Code Entity	Each of: <ul style="list-style-type: none"> (a) the Contractor; (b) the Contractor's Subcontractors; and (c) the Contractor's related entities (as contemplated by section 3(2) of the Building Code).
Building Contractor	Has the meaning given in the BCIP Act.
Building Industry Participant	Has the meaning given in the BCIP Act.
Building Work	For the purposes of: <ul style="list-style-type: none"> (a) clause 7.15, has the meaning given in the BCIP Act; and (b) clause 7.16, has the meaning given in the Building Code.
Business Day	Any day other than a Saturday, Sunday, public holiday in NSW, or 27, 28, 29, 30 or 31 December.
Conditions of Standing Offer	The document headed 'Conditions of Standing Offer'. Only applies to Work-as-Ordered Contracts.
Contract	(a) Either: <ul style="list-style-type: none"> (i) a Work Order issued under a Works-as-Ordered Contract; or (ii) a Project Contract; or (iii) a Term Services Contract, whichever is applicable, and (b) all of the documents making up the agreement between the parties as described in the Form of Agreement signed by the parties.
Contract Interpretation Guide	This document.

Defined term	Meaning
Contract Schedule	The schedule which accompanies the Terms for Contracted Work and sets out the specific requirements of TfNSW for the Contracted Work.
Contract Sum	<p>If the Contract is for a lump sum, the lump sum price.</p> <p>If the Contract is a schedule of rates contract, the sum of the tendered rates multiplied by the quantities stated in the Schedule of Rates.</p> <p>If the Contract is a combined lump sum/schedule of rates contract, the lump sum price plus the sum of the tendered rates multiplied by the stated quantities.</p>
Contracted Work	The work or services required under the Contract, including (if applicable) and Project Works.
Contractor Management Plan	The plan issued by TfNSW to the Contractor, setting out the Contractor's performance monitoring and reporting requirements which will address the issues identified in Schedule 6 (as applicable).
Date of Completion	The date when you complete the Contracted Work to the satisfaction of the TfNSW Representative. Does not apply to Term Services Contracts.
Date for Completion	The date or time on or by which you are required to complete Contracted Work as extended by an extension of time granted under the Terms for Contracted Work. Does not apply to Term Services Contracts.
Day	A calendar day, including all Business Days and non-Business Days.
Designated Building Law	Has the meaning given in the BCIP Act.
Form of Agreement	The formal document signed by the parties and headed 'Form of Agreement'.
GST	The Goods and Services Tax introduced in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> .

Defined term	Meaning
GST Legislation	All laws and regulations relating to GST.
Letter of Award (or 'LOA')	The letter issued by TfNSW to you, and duly signed by TfNSW's authorised delegate, confirming that your tender submission has been accepted by TfNSW.
Materials	Includes materials, plant, equipment and other goods.
Offer Term	The period during which a Standing Offer is open. This is defined in the Contract Schedule. Only applies to Work-as-Ordered Contracts.
Panel	A generic term used to describe the group of contractors who have each entered into a Panel Contract offering to provide a particular work or service during the same Offer Term.
Panel Contract	A Work-as-Ordered Contract under which you are one of a number of contractors on a Panel.
Payment Claim	A claim for payment made by the Contractor to the TfNSW under clause 23.1.
Payment Claim Day	The meaning given in clause 23.1.
Payment Schedule	A schedule containing TfNSW's assessment of a Payment Claim and stating the amount TfNSW proposes to pay, in the form required by clause 23.3.
Pricing Schedules	The schedules or other documents which set out the prices, rates or lump sums tendered by you.
Project Contract	A contract under which you are engaged to carry out Contracted Work in order to complete a particular project. Not a Term Services Contract or a Work-as-Ordered Contract.
Project Works	Works forming a part of the Contracted Work that are required to be constructed on an TfNSW worksite and handed over to TfNSW on their completion.

Defined term	Meaning
Provisional Quantities	The quantity of an item of work which is specified in the Contract, but the quantity of which or whether that item of work will actually be required is not known definitively at the time of award.
Quantity Agreement Sheets (or the ‘QAS’)	The document for recording the agreed daily quantities for material used in relation to the Contracted Work, in the form required by TfNSW from time to time.
Recipient Created Tax Invoice	As defined in the GST Legislation.
TfNSW (or the ‘Principal’)	Transport for NSW, the principal under the Contract.
TfNSW Representative (or the ‘Superintendent’)	The person described as TfNSW Representative in the Contract Schedule and the Terms for Contracted Work.
“RTA” or “Roads and Traffic Authority”	The Principal, and a reference to any “RTA” or RMS document (including an RTA or RMS Specification, Test Method or other document) is a reference to the equivalent document published by the Principal (or , the RTA or RMS), regardless of whether it is titled “RTA”, “Roads and Maritime Services”, “RMS”, "Transport for NSW" or "TfNSW" (in this respect, the parties acknowledge that the Principal is progressively updating its documents from “RTA” or “RMS” to "TfNSW" and that this is likely to be ongoing during the currency of the Contract).”
Site Representative	A delegate of TfNSW Representative or a private company or person engaged by TfNSW to act in the capacity of Site Representative.
Specification	The document or documents described as the ‘Specification’ or as the ‘Brief’ or by any other name which sets out the TfNSW's detailed requirements for the work or services under the Contract. ‘Specification’ includes any associated drawings.

Defined term	Meaning
Subcontract	A contract, whether written or oral, under which work, services, material, plant, equipment or advice is provided by a Subcontractor.
Subcontractor	A person who supplies work, services, materials, plant, equipment or advice to you, any of your subcontractors or any of their subcontractors in connection with the Contracted Work.
Minimum Aboriginal Participation Spend	<p>An amount identified in the Contract Schedule. It represents no less than 1.5% of:</p> <ul style="list-style-type: none"> (a) for Project Contract, the Contract Sum (excluding GST) as at the date when TfNSW writes to the Tenderer accepting its tender; (b) for Work-as-Ordered Contract, the value of each Work Order (excluding GST), as at the date of issue of relevant Work Order; and (c) for Term Services Contract, the value of annual notional Contract Sum (excl GST), <p>less allowable exclusions, in line with the NSW Government <i>Policy on Aboriginal Participation in Construction</i> goals</p> <p>Allowable exclusions are costs incurred by the Contractor over which it has little or no control, e.g.:</p> <ul style="list-style-type: none"> .1 specialised capital equipment (e.g. tunnel exhaust fans, tunnel boring machines, batch plants); .2 imported materials; <p>where no suitable Australian supplier exists in the market, and</p> <ul style="list-style-type: none"> .3 value of existing and new non-Contract/Project specific assets apportioned to the Contract/Project, where they are used in delivery of the Contract/Project; .4 property i.e. acquisitions, indirect leasing costs, extra land, adjustments; and .5 non-construction related services; <p>as agreed between TfNSW and the Contractor.</p>

Defined term	Meaning
Tender Documents	<p>The documents on which your tender is based. The Tender Documents are usually described in the Tender Form submitted by you as your tender offer.</p> <p>The Tender Documents include the Terms for Contracted Work, the Contract Schedule issued at the time of tender, the Contract Interpretation Guide and the Specification.</p> <p>In a Work-as-Ordered Contract, the Tender Documents also include the Conditions of Standing Offer.</p> <p>The Tender Documents do not include the Conditions of Tender and Notice to Tenderers or documents provided for information only.</p>
Tender Form	<p>The form submitted by you at the time of tender setting out your tender offer.</p>
Term	<p>The period of time during which you agree to provide the Contracted Work as extended by formal agreement between the parties. If the Contract is terminated, the term ends on the date of termination regardless of anything else in the Contract. Only applies to Term Services Contracts.</p>
Term Services Contract	<p>A contract under which you agree to provide the Contracted Work on a regular basis or as specified over a certain agreed period of time.</p>
Terms for Contracted Work	<p>The conditions of contract relating to the performance of the Contracted Work.</p>
WHS Laws	<p>The <i>Work Health and Safety Act 2011</i> (NSW) and the <i>Work Health and Safety Regulations 2017</i> (NSW).</p>
Work Order	<p>An order for work or services issued under a Work-as-Ordered Contract.</p>

Defined term	Meaning
Work-as-Ordered Contract	A contract under which you offer to provide Contracted Work for TfNSW at pre-agreed rates or prices whenever issued with a Work Order during an agreed Offer Term. A Work-as-Ordered Contract may also be a Panel Contract.
Worker	An employee of the Contractor or a Subcontractor who does work connected with the Contract.
Workplace Relations Management Plan (State)	The Workplace Relations Management Plan contemplated by the NSW Guidelines.
You (or the ‘Contractor’)	The person or entity engaged as the contractor under the Contract.

37. Rules of interpretation and order of precedence applying to the Contract

The rules set out below govern the interpretation of the Contract:

- .1 Headings and underlinings are for convenience only.
- .2 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Contract.

Unless the context otherwise requires:

- .3 Words in the singular include the plural and vice versa.
- .4 Words which suggest a gender include any gender.
- .5 An expression which suggests a natural person includes a company, partnership, joint venture, association, corporation or other body corporate and a governmental agency.
- .6 A reference to a thing (including, without limitation, the Contract and the Contracted Work) includes a part of the thing.
- .7 A reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances, or by-laws varying, consolidating or replacing them, and a reference

to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.

- .8 A reference to a document includes an amendment or supplement to, or replacement or novation of, that document.
- .9 A reference to a party is a reference to a party to the Contract and includes that party's successors and permitted assigns.
- .10 Other parts of speech and grammatical forms of a word or phrase defined in the Contract have a corresponding meaning.
- .11 A reference to a clause, sub-clause, attachment, schedule or annexure in any of the Contract documents is a reference to a clause and a sub-clause of, and an attachment, schedule or annexure to that document.

In the event of any inconsistency, ambiguity or discrepancy between the various documents comprising the Contract the following order of precedence applies (with the documents listed first having precedence over documents subsequently listed):

- .1 these Terms for Contracted Work;
 - .2 Schedules to the Contract; and
 - .3 other documents forming part of the Contract.
-

SCHEDULE 1 Unconditional Undertaking

On behalf of the Contractor

Name of Financial Institution:

The Principal: Transport for NSW (TfNSW) of 20-44 Ennis Rd, Milsons Point NSW 2061, Australia

The Contractor:

ACN/ABN

Security Amount: \$

The Contract: The contract between the Principal and the Contractor

Contract Description: »

Contract Number: »



Undertaking

- .1 At the request of the Contractor and the Financial Institution, and in consideration of the Principal accepting this *Undertaking* from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.
- .2 The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Contractor and despite any notice from the Contractor not to pay.
- .3 The Principal must not assign this *Undertaking* without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
- .4 This *Undertaking* continues until one of the following occurs:
 - .1 the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
 - .2 this *Undertaking* is returned to the Financial Institution; or
 - .3 the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.
- .5 At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this *Undertaking* (or a lesser sum specified by the Principal), and the liability of the Financial Institution will then immediately end.

Dated at

Execution by the Financial Institution:

SCHEDULE 2 CONTRACTOR STATEMENT AND SUPPORTING STATEMENT

	Transport for NSW	<h3 style="margin: 0;">Contractor Statement</h3> <p style="margin: 0;">Payment of Workers, Payroll Tax & Worker's Compensation Premiums</p>																					
<p>All suppliers/contractors must provide this Statement with every invoice/Payment Claim for all works/services carried out for Transport for NSW (TINSW). TINSW is entitled by law to withhold payment until this Statement is provided (see Note 2 overleaf).</p>			<p style="font-size: small;">Workers Compensation Insurance Certificate of Currency for the work period in question. Unless the contractor is exempt</p> 																				
Details																							
Contractor's Legal Name:	_____																						
Contractor's Trading / Business Name:	_____																						
Contractor's ABN:	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> <td style="width: 5%; height: 15px;"> </td> </tr> </table>																					Contractor's ACN:	_____
Contractor's Address:	_____																						
TINSW Contract No:	_____	Project/Contract Title:	_____																				
Description of Works:	_____																						
Period of Work this Statement applies to (see Note 3):	From:	_____	To:	_____																			
Invoice or Payment Claim Numbers this applies to:	_____																						
Invoice or Payment Claim Dates this Statement applies to:	_____																						
Declaration																							
I declare that the following is true to the best of my knowledge and belief in respect of the Period of Work above:			Tick one in each row																				
All workers engaged by the Contractor in respect of the works have been paid all remuneration entitlements.			_____																				
All workers compensation insurance premiums have been paid and attached is a true copy of a Certificate of Currency for workers compensation insurance valid for the period covered by this Statement; or			_____																				
the Contractor is an exempt employer for workers compensation purposes (see Note 6):			_____																				
The Contractor is registered as an employer under the Payroll Tax Act 2007 and has paid all payroll tax due in respect of employees in relation to the works the subject of this Statement; or			_____																				
the Contractor is not required to be registered;			_____																				
The Contractor has not engaged any subcontractors for the works the subject of this Statement; or			_____																				
The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors and believes it to be true			_____																				
I am authorised to make this declaration and I am in a position to know the truth of its contents			_____																				
Signature of Authorised Person:	Name of Signatory (print):																						
Date:	Position / Job Title of Signatory (print - see Note 4):																						
(Electronic copy is available at: http://home.rfa.nsw.gov.au/forms/categories/contractandroadworks/45062893.pdf)																							
(see Notes on page 2)																							
Page 1 of 2																							

Notes for Contractor Statement

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

Generic Version of Statement

This form has been specially adapted for use specifically for Contractors working for TfNSW. Generic versions of this Statement for non-TfNSW use can be obtained at:

http://www.industrialrelations.nsw.gov.au/pdfs/subcontractor_statement_form.pdf; or
<http://www.osr.nsw.gov.au/lib/doc/forms/opt011.pdf>.

Record Retention

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

Offences for False Statement

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

Further Information

These notes are not intended as legal advice and Contractors should obtain their own professional advice if they have any questions about this Statement or these Notes. For more information, refer to OSR Revenue Ruling PT 59 at <http://www.osr.nsw.gov.au/lib/doc/rulings/rrpt59.pdf>, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or the Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Supporting Statement

This statement must accompany any Payment Claim served on a principal to a construction contract by a head contractor.

For the purposes of this Statement the terms "principal", "head contractor", "subcontractor", and "construction contract" have the meanings given in section 4 of the Building and Construction Industry Security of Payment Act 1999.

The Contractor is a "head contractor" in terms of the Building and Construction Industry Security of Payment Act 1999, and makes relevant statements below accordingly.

This Statement must be signed by the Contractor (or by a person who is authorised, or held out as being authorised, to sign the statement by the Contractor).

Relevant legislation includes *Building and Construction Industry Security of Payment Regulation 2008* cl 4A

Main Contract

Head contractor:

_____ *(Business name of the head contractor)*

ABN _____ ACN _____

Of _____ *(Address of Contractor)*

has entered into a contract with **Transport for NSW**

Contract description _____

Contract number/identifier _____

Subcontracts

The head contractor has entered into a contract with the subcontractors listed in the attachment to this Statement

Period

This Statement applies for work _____ and _____ inclusive, between:

subject of the payment claim dated: _____

I, _____ (full name) being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature: _____ Date: _____

Full Name: _____ Position / Title: _____

Attachment to the Supporting Statement

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

Notes for Supporting Statement

Offences for False Statement

In terms of s 13(8) of the Building and Construction Security of Payment Act 1999 a head contractor who serves a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances is guilty of an offence.

Further Information

These notes are not intended as legal advice and Contractors should obtain their own professional advice if they have any questions about this Statement or these Notes. Copies of relevant legislation can be found at www.legislation.nsw.gov.au.

SCHEDULE 3 – INSURANCES

Clause 19 INSURANCE SCHEDULE

NOTES TO TfNSW STAFF AND TENDER DOCUMENTER: (delete this boxed text after drafting TfNSW C41:

Contact the TfNSW Insurance Team where any insurance submissions or provisions are not complying with this document or where additional specific insurances may be required.

All enquiries are to be directed to Principal's Insurance Team (Ph: (02) 9462 6150).

Details in Schedule 3 were current at the time of issuing Revision 34 of C41 model document. Contact the TfNSW Insurance Team regarding the latest insurance policy details and update Schedule 3 accordingly, prior to including C41 in tender documents.

Principal Arranged Insurance - Insurance Schedule

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
Principal Arranged Insurance (TfNSW)				
The details of the policies below are provided in the Insurer's certificate of currency. A copy of these policies may be inspected by appointment at the offices of the TfNSW's Insurer.				
1	Contract Works	Contract Works – as per Declared Value	Duration of the Works – covering TfNSW, Construction Manager and subcontractors and other parties as specified in the works contract	TfNSW has arranged standard policies of insurance for contract works insurance (reinstatement cost) insurance under its principal arranged insurance program.
Excess for Contract Works	<p>The Contractor is responsible for meeting the amount of any excess payable under the principal-arranged insurance. The excess amounts current at the date of the Contract are:</p> <ul style="list-style-type: none"> • Contract Works Value (up to \$5m) – excess is \$15,000 per Event/Occurrence (4.7(a)) • Contract Works Value (between \$5m & \$20m) – excess is \$50,000 per Event/Occurrence (4.7(a)) • Contract Works Value (between \$20m & \$100m) – excess is \$100,000 per Event/Occurrence (4.7(a)), other than: <ul style="list-style-type: none"> • Water Damage – excess is \$250,000 per Event/Occurrence (4.7(a)) • Wet Works – excess is \$350,000 per Event/Occurrence (4.7(a)) • Tunnelling Contracts – excess is \$250,000 per Event/Occurrence (4.7(a)) (where applicable) <p>The Contractor may effect insurance to cover the amount of that excess.</p>			
2	Public and Products Liability	Public and Products Liability \$200m	Duration of the Works – covering TfNSW, Construction Manager and subcontractors and other parties as specified in the works contract	TfNSW has arranged standard policies of insurance for contract works insurance (reinstatement cost) and third party liability insurance under its principal arranged insurance program.
Excess for Public and Product Liability	<p>The Contractor is responsible for meeting the amount of any excess payable under the principal-arranged insurance. The excess amounts current at the date of the Contract are:</p> <ul style="list-style-type: none"> • Worker to Worker Liability – excess is \$100,000 per Event/Occurrence (4.2) • Products Liability – excess is \$50,000 per Event/Occurrence (4.2) • Underground Services – excess is \$50,000 per Event/Occurrence (4.2) 			

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
	<ul style="list-style-type: none"> Any other claim – excess is \$10,000 per Event/Occurrence (4.2) The Contractor may effect insurance to cover the amount of that excess. 			
3	Professional Indemnity	TfNSW has affected a Principal Professional Indemnity policy for its own benefit.		
Contractor Arranged Insurances				
4	Motor Vehicle Comprehensive or Third Party Property Damage effected with an approved insurer as defined in Definitions and Notes clause 1 below	\$20 million for any single occurrence	Annual	(a) Motor Vehicles owned or used by the Contractor or subcontractors directly or indirectly engaged in performance of the Services. (b) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 2 below. (c) If applicable to the contract – all plant and equipment owned or used by the Contractor or subcontractors directly or indirectly in the performance of the Services.
5	Workers Compensation effected with an approved insurer as defined in Definitions and Notes clause 1 below	As per the relevant Workers Compensation legislation	Annual	As per State Workers Compensation legislation.
6	Professional Indemnity	TfNSW will not set any requirements for the minimum sum insured for professional indemnity in the Contract. The contractor / consultant / supplier should make their own independent decision regarding their own Professional Indemnity requirements.		

Definitions and Notes:

1. Approved insurer means:
 - (a) An Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia; or
 - (b) Lloyds Underwriters; or
 - (c) A Treasury Managed Fund insurance scheme with the NSW State Government; or
 - (d) Self Insurance Corporation of NSW through Insurance and Care NSW (icare); or
 - (e) The Comcover insurance scheme for the Australian Federal Government.

Note that where the insurance risk is insured by an insurer not listed in Note 1(a) or 1(b) then a ‘fronting’ placement is acceptable from an insurer list in Note 1(a) or 1(b).

2. Insurances policies must be subject to the laws of Australian (or an Australian State or Territory) and their courts.

SCHEDULE 4 – PA INSURANCES EXTRACT

Links to the Policy documents

Copies of the Policy documents are available on the Road and Maritime website under **Business & Industry > Partners & Suppliers > Specifications > Model Legal Documents** at the following links

<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/specifications/pai-primary-cw.pdf>

<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/specifications/pai-primary-ppl.pdf>

SCHEDULE 5 - ABORIGINAL PARTICIPATION IN CONSTRUCTION - QUARTERLY REPORT

PROJECT DETAILS	
Contract No and Description	
Contractor:	
Contract Award Value (or Project Value, where relevant) (excl GST)	
Project APiC Category:	
Minimum Aboriginal Participation Spend (MAPS) \$(excl GST)	
Date of APiC report:	

PROJECT PARTICIPATION	
Total number of people (all) employed on the project by the Contractor:	
Total number of hours worked by all employees of the Contractor on this project:	
Total number of sub-contractors on the project:	
Total number of people employed by sub-contractors on project (reports are due at the end of Mar, Jun, Sep, Dec):	

ABORIGINAL PARTICIPATION	
Total number of Aboriginal people employed by the Contractor on the project:	
Total number of hours worked by Aboriginal people employed by the Contractor on this project:	
Total number of Aboriginal people employed by sub-contractors on project:	

ABORIGINAL PARTICIPATION – DIRECT EXPENDITURE		
Type of expenditure	Recipients (if known)	Actual Amount
a) Direct employment (employees, apprentices) of Aboriginal people by the Contractor		
b) Employment of Aboriginal people by sub-contractors		
c) Goods/services bought from Aboriginal-owned businesses		
d) Education expenses <ul style="list-style-type: none"> • Apprentices • Trainees • Cadets • Other 	•	•
e) Payments for engagement or consultation with Aboriginal business/community organisations		
f) Other type of expenditure approved by TfNSW		
Total Direct Expenditure Amount (\$)		
Proposed expenditure in participation plan (\$)		

ABORIGINAL PARTICIPATION – ACTUAL SPEND			
Actual spend on APiC in reporting Quarter: \$ (excl GST)	\$	Total Actual spend on APiC (Cumulative): \$ (excl GST)	\$
Actual spend on APiC in reporting Quarter: as % of MAPS	%	Total Actual spend on APiC (Cumulative): as % of MAPS	%

Number of Aboriginal businesses invited to tender/supply who were unsuccessful and reasons for rejection (e.g. price, inability to meet required timeframe, did not respond)		
Tender details	No.	Reason

Comments:

Approved by (Name and Position in the Organisation):

SCHEDULE 6 – FORM OF CONTRACTOR MANAGEMENT PLAN

The Contractor Management Plan will address the following issues (as applicable):

- Overview
- Scope of the CMP
- Contract Summary
- Roles and Responsibility of Contract Management Team
- Contract Execution and Compliance
- Contract Management, performance monitoring and reporting requirements
- Service credits and key reporting areas
- Appendices