

**TfNSW CONTRACT DOCUMENT C61
MAJOR SUPPLY AGREEMENT (INFRASTRUCTURE)**

REVISION REGISTER

Ed/Rev Number	Clause Number	Description of Revision	Authorised By	Date
Ed 1/Rev 0		First issue	Manager, Contracts Strategy	19-01-10
Ed 1/Rev 1	Schedule 1	New Item 14 included to select whether PAI is applicable or not	Manager, Contracts Strategy	11-10-11
Ed 1/Rev 2	Schedule 4	New Insurance Schedule	Manager, Contracts Strategy	14-10-11
Ed 1/Rev 3		Reference to RTA changed to RMS	Manager, Contracts Strategy	10-11-11
Ed 1/Rev 4		Definition of RTA and Roads and Traffic Authority added. RMS's Representative changed to RMS Representative.	Manager, Contracts Strategy	01-12-11
Ed 1/Rev 5		Requirement of Statutory Declaration removed. New Contractor Statement.	Manager, Contracts Strategy	07-02-12
Ed 1/Rev 6		OHS replaced by WHS reference	Manager, Contracts Strategy	07-05-13
Ed 1/Rev 7	Clauses 6(b) & 22(f); Schedule 1/Item 15; Schedule 6	Chain of Responsibility requirements of the Heavy Vehicle National Law 2013	Manager, Contracts Strategy	18-11-15
Ed 1/Rev 8	1.1; 6(c); Schedule 1/Item 16; Schedule 7	Inserted requirements re mandatory implementation of the NSW Government <i>Policy on Aboriginal Participation in Construction</i>	GM, Commercial	20-06-16

Ed/Rev Number	Clause Number	Description of Revision	Authorised By	Date
Ed 1/Rev 9	Clauses 6(a), 19(a) and 19(c)(ii) Clauses 24.3 & Schedule 4 Schedule 4 Schedule 4 Note 1(d)	Revised to reflect the introduction of the Work Health and Safety Regulation 2017, replacing the 2011 Regulation Revised to reflect change from insurance broker (AON) to insurer (iCare) Updated excesses to match new policies and thresholds Inclusion of Self Insurance Corporation as an approved insurer	Director Commercial Services	29-09-17
Ed 1/ Rev 10		Reference to TfNSW instead of RMS	Director Commercial Services	01-12-19



MAJOR SUPPLY AGREEMENT (INFRASTRUCTURE)

BETWEEN

Transport for NSW (ABN 18 804 239 602) a NSW Government agency constituted under the Transport Administration Act 1988 (NSW) (TfNSW)

AND

Supplier Name:(Supplier) ABN:
Address:
Fax:
Name and position:
Mobile phone:Office Phone:Email:

FORMAL INSTRUMENT OF AGREEMENT

- (a) TfNSW and the Supplier agree to carry out their respective obligations in accordance with this agreement, which comprises:
(i) this cover page including the execution clause;
(ii) the Agreed Terms; and
(iii) the Supply Details and other schedules to this agreement (together Agreement).
(b) In consideration for the supply and (if relevant) Installation of the Goods, TfNSW will pay the Charges in accordance with the terms of this Agreement.
(c) Capitalised terms used in this formal instrument of agreement have the meaning given to those terms in the Agreed Terms.

EXECUTED as an agreement on20.....

Executed for and on behalf of Transport for NSW (ABN 18 804 239 602) by its authorised delegate in the presence of:

(Signature of witness)

(Signature of [insert position])

(Full name of witness)

(Name of [insert position])

Signed for and on behalf of [the Supplier] in the presence of:

(Witness)

(Authorised signatory)

(Name printed)

(Name printed) who warrants to TfNSW that he or she is authorised to sign this Agreement on behalf of the Supplier.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this Agreement:

Affected Suppliers has the meaning given to that term in clause 34(c).

Business Day means any day other than a Saturday, Sunday or a public holiday in New South Wales.

Business Hours means from 9.00am to 5.00pm on a Business Day.

Charges means the amounts payable for the supply and (if relevant) Installation of Goods under this Agreement, specified in or calculated in accordance with **Item 1** of the Supply Details.

Completion means the date when:

- (a) the delivery of the Goods to the Site;
- (b) where relevant, the Installation of the Goods is complete to the reasonable satisfaction of TfNSW; and
- (c) the Supplier has otherwise done everything which the Supply Details requires it to do.

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

Date for Completion means the date for Completion identified at **Item 2** of the Supply Details.

Defect means any defect, fault or omission in the Goods including any aspect of the Goods which is not in accordance with the Specifications or not delivered or (if relevant) Installed in accordance with this Agreement.

Delivery Schedule means any delivery schedule set out in **Schedule 3** which, amongst other things, sets out the major phases and deliverables to be achieved under this Agreement as modified from time to time in accordance with this Agreement.

Documentation means:

- (a) the standard operating manuals, user instructions, technical literature and other documentation ordinarily supplied with the Goods by the Supplier (or the manufacturer or supplier of those Goods);
- (b) the operational and technical documentation specifying operator procedures necessary for the use and maintenance of the Goods supplied by the Supplier; and
- (c) any other related material supplied to TfNSW by the Supplier pursuant to this Agreement to assist with the use and application of the Goods,

as modified pursuant to this Agreement.

Excess Amounts has the meaning given to that term in clause 24.7.

Goods means all products, items, materials, equipment or things which the Supplier is, or may be, required to provide under this Agreement, including the Goods described at **Item 3** of the Supply Details.

Installation means the installation, configuration and commissioning of the Goods at the Site, and **Install** has a corresponding meaning.

Intellectual Property means any intellectual property including a patent, trade mark or service mark, copyright, registered design, trade secret, know how or confidential information or the right to exploit any

of the foregoing or the right to register any of the foregoing or rights in the registration of any of the foregoing.

IPR Claim has the meaning given to that term in clause 28(b).

Legal Requirements has the meaning given to that term in clause 6.

Liquidated Damages means the sum of money that may become payable by the Supplier under clause 9 which is calculated at the rate shown at **Item 4** of the Supply Details.

Manufacturers' Warranties has the meaning given to that term in clause 27(a).

Notice has the meaning given to that term in clause 35.1.

Other Contractors has the meaning given to that term in clause 16(a).

Payment Period has the meaning given to that term in clause 13.1.

Principal Contractor has the meaning given to that term in clause 19(a).

Project means the project described at **Item 5** of the Supply Details.

Rejected Goods has the meaning given to that term in clause 15(c).

RMS, Roads and Maritime, RTA or Roads and Traffic Authority means the Principal, and a reference to any "RMS" or "RTA" document (including an Specification, Test Method or any other document) is a reference to the equivalent document published by the Principal regardless of whether it is titled "RMS," "Roads and Maritime Services," "RTA," "Transport for NSW" or "TfNSW" (in this respect, the parties acknowledge that the Principal is progressively updating its documents from "RMS" or "RTA" to "TfNSW" and that this is likely to be ongoing during the currency of the Contract).

Site means the site or sites nominated by TfNSW to which the Supplier is to deliver and (if relevant) install the Goods as identified in **Item 6** of the Supply Details.

Specifications means any specifications set out in **Schedule 2**.

Supply Details means the details set out at **Schedule 1** to this Agreement.

Minimum Aboriginal Participation Spend means the amount identified in **Item 16** of the Supply Details. It represents 1.5% of the Charges (excluding GST) at the Date of Agreement less allowable exclusions, in line with the NSW Government *Policy on Aboriginal Participation in Construction* goals.

Allowable exclusions are costs incurred by the Supplier over which it has little or no control, e.g.:

- .1 specialised capital equipment (e.g. tunnel exhaust fans, tunnel boring machines, batch plants;
- .2 imported materials;

where no suitable Australian supplier exists in the market, and

- .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;

as agreed between TfNSW and the Supplier.

Test Notice has the meaning given to that term in clause 25(c).

Tests has the meaning given to that term in clause 25(a).

TfNSW Acceptance has the meaning given to that term in clause 15(b).

TfNSW Representative means the person listed at **Item 12** of the Supply Details.

Training means the training (if any) to be provided by the Supplier as specified in **Schedule 2**.

Variation Direction has the meaning given to that term in clause 11(a).

Warranty Period means the period of time stated in **Item 10** of the Supply Details commencing on Completion, or where rectification works must be undertaken by the Supplier, commencing on completion of such rectification works and (if relevant) Installation of such rectified Goods.

Work under the Agreement means the whole of the work which the Supplier is to undertake in accordance with this Agreement, including variations, remedial work, supply of Goods and (if relevant) their Installation.

Works means the works described at **Item 7** of the Supply Details in relation to which the Goods are to be supplied.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Sydney, Australia time;
- (g) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

(p) Headings are for ease of reference only and do not affect interpretation.

2. Supply of Goods

- (a) The Supplier must supply and (if relevant) Install the Goods in accordance with this Agreement.
- (b) In consideration for the supply and (if relevant) Installation of the Goods, TfNSW will pay the Charges in accordance with the terms of this Agreement.

3. Supplier's Warranties

The Supplier warrants that:

- (a) the Goods, materials and workmanship supplied to TfNSW and (if relevant) Installed under this Agreement will:
 - (i) comply with the Supply Details;
 - (ii) conform to the Specifications (including any specifications of the manufacturer of the Goods) as well as any Documentation supplied with the Goods;
 - (iii) comply with the requirements of this Agreement and any other specifications or requirements notified to the Supplier by TfNSW prior to the signing of the Agreement including any relevant specifications for the Works;
 - (iv) comply with relevant industry standards and codes including Australian Standards and the Building Code of Australia;
 - (v) be free of Defects; and
- (b) the Goods and other materials supplied to TfNSW under this Agreement will:
 - (i) comply, where relevant, with any samples of the Goods provided by the Supplier and any goods previously supplied by the Supplier; and
 - (ii) be reasonably suitable and fit for their intended purpose as made known to the Supplier by TfNSW in the Specifications or otherwise.

4. Installation

- (a) References in this Agreement to Installation of the Goods, only apply where **Item 13** of the Supply Details indicates that Installation of the Goods forms part of this Agreement.
- (b) Where the Supplier must Install the Goods under this Agreement, the Supplier warrants, in addition to the warranty at clause 3(b)(ii), that the Goods as Installed be will be reasonably suitable and fit for their intended purpose as made known to the Supplier by TfNSW in the Specifications or otherwise.

5. Compliance with Schedules and delivery requirements

- (a) The Supplier must supply and (if relevant) Install the Goods in accordance with:
 - (i) the directions of the TfNSW Representative;
 - (ii) the specifications and other technical requirements set out in **Schedule 2** (Specifications); and
 - (iii) the timing set out in **Schedule 3** (Delivery Schedule).
- (b) The Supplier must:
 - (i) liaise with the TfNSW Representative 7 days prior to the Date for Delivery to confirm progress and arrangements for the delivery and (if relevant) Installation of the Goods;
 - (ii) label the Goods as directed by the TfNSW Representative;

- (iii) supply all necessary resources for handling , loading and transporting the Goods to the Site; and
- (iv) deliver the Goods in accordance with the Delivery Schedule.
- (c) The TfNSW Representative may, within 3 Business Days of the original delivery date as specified in the Delivery Schedule, give the Supplier a written direction changing a delivery date in the Delivery Schedule, and the Supplier must comply with this direction.

6. Compliance with law and policies

- (a) The Supplier must ensure that all Goods supplied under, or incidental to, the Agreement and their manner of delivery and (if relevant) their Installation will comply with all applicable laws and regulations including those regulations relating to product standards and Work Health and Safety Regulation 2017 applying in New South Wales (**Legal Requirements**).
- (b) The Supplier must comply with the chain of responsibility provisions of the *Heavy Vehicle National Law (NSW) (2013)*. Where required by **Item 15** of the Supply Details the Supplier must, before commencing Delivery of the Goods, submit to the TfNSW Representative a Chain of Responsibility (CoR) Management Plan, satisfying the requirements set out in **Schedule 6**. The Supplier must comply with the CoR Management Plan at all times.
- (c) Where required in **Item 16** of the Supply Details, the Supplier must comply with the NSW Government *Policy on Aboriginal Participation in Construction*. Where applicable, the Minimum Aboriginal Participation Spend (MAPS) on Aboriginal participation is stated in **Item 16** of the Supply Details.

If required by **Item 16** of the Supply Details, the Supplier must prepare and submit the following:

- (i) to the TfNSW Representative and NSW Procurement Board (nswbuy@finance.nsw.gov.au):
 - (A) Aboriginal Participation Plan by the Date of Agreement, showing how the Supplier intends to direct the MAPS to appropriate Aboriginal education and employment opportunities; and
 - (B) Aboriginal Participation Report at 90% completion of the Delivery of the Goods and, where relevant, the Installation of the Goods, which explains how the Aboriginal Participation Plan has been implemented and what outcomes have been achieved.
- (ii) to the TfNSW Representative only:
 - (A) if requested, a draft Aboriginal Participation Plan referred to in clause 6.(c)(i)A, within by the Date of Agreement;
 - (B) quarterly, its Aboriginal Participation Report in the form set out in **Schedule 7**, providing details of the implementation of the Policy and achievement of targets; and
 - (C) final Aboriginal Participation Report, at the end of 12 months period after the date of actual Completion. Details included in the final Aboriginal Participation Report must explain how the Aboriginal Participation Plan has been implemented within the specified period and what actual outcomes have been achieved.

The Aboriginal Participation Plans and the Aboriginal Participation Reports (except the reports referred to in clause 6(c)(ii)(B)) must be prepared in accordance with the NSW Government *Policy on Aboriginal Participation in Construction* and in the format prescribed by the NSW Procurement Board. Templates are available at:

(<https://www.procurepoint.nsw.gov.au/aboriginal-participation-construction-information-contractors>).

7. Packing

The Supplier must ensure that all Goods are suitably packed and prepared for shipment so as to secure the Goods against damage.

8. Training

Where necessary, the Supplier must provide the Training to enable the TfNSW or persons nominated by TfNSW to operate and otherwise use the Goods in accordance with the Documentation or as required in the Specifications.

9. Date for Completion

- (a) The Supplier must achieve Completion by the Date for Completion.
- (b) If Completion has not occurred by the Date for Completion, TfNSW will be entitled to (without limiting its other rights under this Agreement or under the common law), and the Supplier must pay TfNSW, the Liquidated Damages for each calendar week or part of a week between the Date for Completion and:
 - (i) the actual date of Completion; or
 - (ii) the effective date of termination of this Agreement;whichever is the earlier.
- (c) The Supplier acknowledges that the Liquidated Damages are a genuine pre-estimate of the likely loss, damage, cost and expense which TfNSW will suffer as a result of the Supplier's failure to achieve Completion by the Date for Completion.

10. Delay

- (a) If the Supplier becomes aware of any event or circumstance which is causing or likely to cause delay or disruption to:
 - (i) the delivery of the Goods in accordance with the Delivery Schedule; or
 - (ii) Completion by the Date for Completion,the Supplier must:
 - (iii) promptly notify the TfNSW Representative, including in the notice, the Supplier's recommendation as to how to minimise impact of the delay upon the timing of the delivery of the Goods;
 - (iv) consult with the TfNSW Representative to consider any remedial action that can be taken; and
 - (v) take all practical steps as are necessary or appropriate to avoid and minimise such delay and disruption.
- (b) TfNSW may, at any time, at its sole discretion and without being obliged to do so, grant an extension of time to the Date for Completion for any reason, whether the Supplier is entitled to the extension of time.

11. Variations

- (a) The TfNSW Representative may direct the Supplier to carry out a variation to the Work under the Agreement by a written variation order or an oral instruction confirmed by a written variation order (**Variation Direction**).
- (b) The Supplier must comply with the Variation Direction.

- (c) The Charges will be adjusted for all variations to the Supply Details which have been the subject of a Variation Direction, and which result in increased or decreased cost to the Supplier, by a reasonable amount:
 - (i) as agreed between the parties; or
 - (ii) failing agreement, as determined by the TfNSW Representative acting reasonably, having regard to:
 - (A) the rates and prices used to price similar goods or work under the Agreement; or
 - (B) if there is no similar goods or work under the Agreement, the cost to the Supplier of supplying and (if relevant) Installing the works and goods.
- (d) In calculating an adjustment to the Charges under clause 11(c), the Supplier will be entitled to a percentage for profit and attendance shown in **Item 8** of the Supply Details.

12. Charges all inclusive

- (a) Subject to clause 11(c), the Charges are the maximum amount TfNSW will pay for the Goods to be supplied and (if relevant) Installed.
- (b) The Charges are inclusive of GST and all charges including, without limitation, freight, taxes, duty, packaging, insurance, delivery charges and other expenses incurred by the Supplier.

13. Invoicing and Payment

13.1 Invoice

Within 10 Business Days after the end of each calendar month (**Payment Period**), the Supplier will invoice TfNSW for the Contract Price in respect of the Goods supplied and (if relevant) Installed in that Payment Period. For the purposes of this Agreement, an invoice is not correctly rendered unless:

- (a) the invoice is a Tax Invoice which includes the Supplier's Australian Business Number;
- (b) the amount claimed in the invoice is due for payment;
- (c) the amount specified in the invoice is correctly calculated in accordance with this Agreement;
- (d) the invoice includes TfNSW's reference number and is set out in a manner that identifies the Goods which the invoice covers and itemises each amount claimed to a level of detail satisfactory to TfNSW acting reasonably;
- (e) the invoice is accompanied by documents that adequately demonstrate to TfNSW the services that were performed; and
- (f) the invoice is accompanied by a completed Contractor Statement in the form set out in **Schedule 5**.

13.2 Payment

- (a) TfNSW must pay an invoice rendered correctly in accordance with clause 13.1, within 15 Business Days after receipt of that invoice.
- (b) Where TfNSW considers that an invoice is not correctly rendered, TfNSW will issue to the Supplier within 10 Business Days after receipt of the Supplier's invoice a notice:
 - (i) setting out the reasons why TfNSW considers that the invoice is not correctly rendered; and
 - (ii) identifying any amounts which are in dispute and giving reasons why payment is being withheld in respect of those amounts.

14. Responsibility for delivery

The Supplier agrees that it is responsible for all aspects of supply of the Goods (except those aspects of the delivery of the Goods expressly reserved to TfNSW in **Schedule 3** (Delivery Schedule)). The

Supplier will oversee the supply of the Goods and their Installation (where relevant) in accordance with the Agreement.

15. Responsibility for the Goods

- (a) The Supplier agrees that care for and risk in the Goods remains with the Supplier until the Goods have been accepted by TfNSW.
- (b) The parties agree that the Goods will only be deemed to have been accepted by TfNSW after the Goods have actually been unpacked, (if relevant) Installed, inspected and not rejected by TfNSW, regardless of when this may occur (**TfNSW Acceptance**).
- (c) TfNSW may reject any Goods which, in its reasonable opinion, do not conform with the Specifications or the requirements of this Agreement (**Rejected Goods**).
- (d) The Supplier agrees that TfNSW is not liable to pay for any Rejected Goods.
- (e) If loss or damage occurs to the Goods prior to TfNSW Acceptance, the Supplier must promptly make good the loss or damage at its own expense and in doing so must consult with TfNSW and take such action as may reasonably be required by TfNSW to ensure that the Project proceeds with minimal impact or disruption.
- (f) Payment of any invoice relating to particular Goods does not constitute acceptance of Goods by TfNSW. The Supplier must promptly refund payment to TfNSW for any Goods subsequently found to be Rejected Goods although payment has been made.

16. Co-operation

- (a) The Supplier must fully co-operate, at its cost, with all other contractors engaged by TfNSW (**Other Contractors**).
- (b) The Supplier must:
 - (i) co-ordinate and integrate the supply and (if relevant) Installation of Goods with the services and works being carried out by Other Contractors; and
 - (ii) avoid interfering with, disrupting or delaying the services or works being carried out by the Other Contractors.

17. Conduct on Site

- (a) When supplying and (if relevant) Installing the Goods to a Site, the Supplier must minimise the disruption or inconvenience caused to TfNSW, any Other Contractors, occupiers, tenants and potential tenants of the Site in their occupation or use of, or attendance upon, any part of the Site.
- (b) The Supplier must at all reasonable times give the TfNSW Representative, TfNSW and any authorised person (including the Other Contractors) access to the Site or (where access is required for the purposes of the Project) any areas off-Site where the Supplier is supplying and (if relevant) Installing the Goods.
- (c) The Supplier must ensure that it keeps the areas of the Site where the Supplier is supplying or (if relevant) Installing the Goods clean, tidy and free of refuse.

18. Supplier's vehicles, plant and equipment

In relation to any vehicles, plant or equipment which the Supplier brings, or causes to be brought, to the Site:

- (a) the Supplier is responsible for the care of such vehicles, plant or equipment;
- (b) the Supplier must ensure that such plant and equipment is in accordance with the manufacturers' specifications and is in good repair; and

- (c) the vehicles, plant and equipment are appropriately licensed (if relevant).

19. Work Health and Safety

- (a) The Supplier acknowledges that the Other Contractor identified at **Item 9** of the Supply Details has been appointed as ‘principal contractor’ within the meaning of Chapter 8 of the Work Health and Safety Regulations 2017 (NSW) in respect of work forming part of the Project (**Principal Contractor**).
- (b) Whenever the Supplier is supplying or (if relevant) Installing the Goods at a Site the Supplier must strictly comply with the directions of the Other Contractor in its capacity as Principal Contractor.
- (c) Where the Other Contractor has not been appointed as Principal Contractor, the Supplier:
 - (i) accepts its appointment by TfNSW as Principal Contractor in respect of the supply and (if relevant) Installation of the Good at the Site; and
 - (ii) will strictly comply with its obligations as Principal Contractor under the Work Health and Safety Regulations 2017 (NSW).
- (d) The Supplier must at all times comply with work health and safety laws and with the security and work health and safety procedures of TfNSW as are reasonably determined by TfNSW and notified to the Supplier from time to time.

20. Conflict of Interest

- (a) The Supplier warrants that, at the date of this Agreement, no conflict of interest exists or is likely to arise in the performance of the Supplier’s obligations under this Agreement.
- (b) If a conflict of interest or risk of such conflict of interest arises in the performance of the Supplier’s obligations, the Supplier must notify the TfNSW Representative immediately in writing, with sufficient details, of that conflict or risk.

21. Assignment

- (a) If TfNSW requests the Supplier to do so, the Supplier must assign to TfNSW the benefit of all manufacturer’s warranties and/or service warranties granted to the Supplier by suppliers and manufacturers of the Goods without need for further consideration.
- (b) The Supplier must not:
 - (i) assign its rights under this Agreement; or
 - (ii) otherwise encumber or grant any right or interest in any of the Goods in favour of any third party,without the prior written consent of TfNSW.
- (c) The Supplier must not consult with any other person or body for the purposes of entering into an arrangement which will require novation of this Agreement without first consulting TfNSW.
- (d) Subject to clause 21(e), TfNSW may assign this Agreement in whole or in part by notice in writing to the Supplier, only with the prior consent of the Supplier, which must not be unreasonably withheld or delayed.
- (e) Despite clause 21(d), TfNSW may novate this Agreement, in whole or in part, without the consent of the Supplier to any government department, to any other body created by or pursuant to a statute or ministerial direction of the State of New South Wales for the purpose of administering the functions or discharging the role of TfNSW as described in this Agreement or to any ‘government sector agency’ within the meaning given to that term in section 3 of the *Government Sector Employment Act 2013*. The Supplier must execute all documents necessary to give effect to such a novation.

22. Subcontracting

- (a) The Supplier may only subcontract the supply and Installation of Goods under this Agreement:
 - (i) with the prior written consent of TfNSW; and
 - (ii) on such conditions as TfNSW may impose.
- (b) TfNSW is not liable for refusing consent under this clause 22.
- (c) Despite any consent given by TfNSW under clause 22(a), the Supplier is responsible for ensuring:
 - (i) the suitability of a sub-contractor for the work proposed to be carried out by that sub-contractor; and
 - (ii) the work performed by a sub-contractor or goods supplied by a sub-contractor meet the requirements of this Agreement.
- (d) The Supplier is liable to TfNSW for the acts, omissions, defaults and neglects of all of its sub-contractors which cause loss or damage to TfNSW or which place the Supplier in breach of this Agreement.
- (e) TfNSW may at any time and without liability withdraw, limit or suspend its approval of the Supplier's sub-contractor. If TfNSW does so, it must notify the Supplier (giving reasons) and the Supplier must propose another sub-contractor for approval within a reasonable time if required by TfNSW and without inconvenience or additional cost to TfNSW.
- (f) The Supplier must ensure that every Subcontract, regardless of the subcontract value, includes provisions of clause 6(b) and a clause to the same effect as this clause 22(f) which is binding on the Subcontractor, and provide evidence of this to TfNSW when requested by TfNSW.

23. Exclusions and Indemnities

23.1 Civil Liability Act 2002 (NSW)

The parties agree that:

- (a) Part 4 of the *Civil Liability Act 2002* (NSW) does not apply to this Agreement; and
- (b) their respective rights, obligations and liabilities will be those which would exist if Part 4 of the *Civil Liability Act 2002* (NSW) did not apply.

23.2 Supplier Indemnity

The Supplier indemnifies TfNSW against all expense, loss, damage and cost that TfNSW may suffer or incur, whether directly or indirectly, arising out of or in connection with:

- (a) any breach of this Agreement by the Supplier (including where TfNSW exercises a right to terminate the Agreement as a result of a breach of the Agreement by the Supplier); or
- (b) any act, error, omission or neglect of the Supplier, its personnel, agents or subcontractors (of any tier).

24. Insurance

24.1 TfNSW Insurance

TfNSW must obtain and thereafter maintain the policy of insurance listed at Items 1 and 2 of **Schedule 4** for the risks identified, and for the periods of time set out in Schedule 4 (Principal Arranged Insurance).

24.2 Supplier Insurance

Before commencement of the Services, the Supplier must obtain on terms approved by TfNSW (acting reasonably) and thereafter maintain the policies of insurance listed at Items 4 and 5 of Schedule 4, for the risks identified, and for the periods of time set out in Schedule 4.

24.3 Evidence of insurance

The Supplier must provide proof that the policies of insurance required under this Agreement (including subcontractors) have been effected and are current at all times during the period of insurance stated in Schedule 4. As proof of compliance the Supplier must provide Certificates of Currency to the TfNSW Insurer specified in Schedule 4 (Insurances).

24.4 Supplier notification

The Supplier must notify TfNSW within two Business Days of:

- (a) the cancellation of any of the policies of insurance required under this Agreement; and/or
- (b) the variation or reduction in the limits of coverage of such insurance policies.

24.5 Failure to provide evidence of insurances

If the Supplier does not comply with clause 24.2, TfNSW may, but is not obliged to, effect the relevant insurances and may:

- (a) recover the cost of doing so as a debt due from the Supplier; or
- (b) deduct the premiums payable for the relevant insurances from amounts payable to the Supplier.

24.6 Claims

The Supplier must:

- (a) notify TfNSW as soon as possible after any event occurs, (and in any event not later than 2 Business Days after its occurrence) that may give rise to a claim under any policy referred to in clause 24.2;
- (b) ensure TfNSW is kept fully informed about each of those claims; and
- (c) ensure that all of its subcontractors take all steps required to enable the Supplier to comply with this clause.

24.7 Principal Arranged Insurance Excess

- (a) The Supplier must pay the amount of any excess payable under the Principal Arranged Insurance (**Excess Amounts**).
- (b) The Supplier acknowledges that it may effect its own insurance to cover the Excess Amounts.
- (c) The Excess Amounts that are current at the date of the Agreement are set out at **Schedule 4**.

25. Testing

- (a) At any time prior to the expiration of the Warranty Period, TfNSW may direct that any Goods supplied under this Agreement be tested (**Tests**).
- (b) The Supplier must provide such assistance and samples and make such parts of the Work under the Agreement accessible, to enable the Tests to be undertaken, as required by TfNSW.
- (c) Before a Test is conducted the Supplier or TfNSW will give reasonable notice, and in any case no less than 2 Business Days, in writing to the other party of the time, date and place of the test (**Test Notice**). If the other party does not attend, despite a Test Notice being issued, the Test may proceed.
- (d) Results of a Test must be made promptly available by the party who conducted the Test.
- (e) TfNSW will bear the cost incidental to the Tests unless:

- (i) this Agreement (and in particular in the Specifications) otherwise provides that the Supplier will pay for the Tests;
- (ii) the Test results show that the Goods or Work under the Agreement are not in accordance with the Agreement;
- (iii) the Tests resulted from Work under the Agreement which was covered up without TfNSW's prior approval where such approval was required or otherwise requested by the TfNSW Representative in advance of the Test being undertaken; or
- (iv) the Tests show that the Supplier failed to comply with a requirement of this Agreement, in respect of the Goods the subject of the Test.

26. Non-compliance of Goods

- (a) If any of the Goods as supplied or (if relevant) Installed do not comply with the Specifications, or are otherwise not in accordance with this Agreement, TfNSW may, at its election:
 - (i) require that any relevant Defect be rectified by the Supplier;
 - (ii) return the Goods to the Supplier and require their immediate repair or replacement;
 - (iii) require that TfNSW be credited in respect of any Charges that TfNSW has paid for the supply and (if relevant) Installation of such Goods; or
 - (iv) return all of the Goods to the Supplier and cancel the balance of any other orders not yet supplied.
- (b) The Supplier indemnifies TfNSW for any cost, loss, damage or expense arising out of or in connection with the return or cancellation of Goods pursuant to subclauses 26(a)(ii) and (a)(iv), including the cost of freight and packaging.

27. Warranty Period

- (a) TfNSW acknowledges that Goods may be supplied subject to the warranties given by the manufacturer of those Goods (**Manufacturers' Warranties**). The Supplier must ensure that TfNSW obtains the full benefit of the Manufacturers' Warranties.
- (b) Without limiting clause 25(a), during the Warranty Period, the Supplier must rectify all Defects at its cost so as to ensure that the Goods comply with the Supply Details.
- (c) Where the Supplier carries out work to rectify Defects, any Goods the subject of rectification work will be subject to an additional Warranty Period commencing on completion of such rectification works or (if relevant) Installation of such rectified Goods, whichever is later.

28. Intellectual Property Warranty

- (a) The Supplier warrants that the Supplier is the owner or valid licensee of all Intellectual Property in the Goods and that the supply of the Goods in accordance with this Agreement, and the use of the Goods by TfNSW as contemplated by this Agreement, does not and will not infringe any Intellectual Property of any third party.
- (b) In the event that either party receives notice of a claim that the Goods or their supply or use in accordance with this Agreement infringes any Intellectual Property rights of any third party (**IPR Claim**), the party receiving such notice must notify the other party of the IPR Claim in writing as soon as practicable.
- (c) If an IPR Claim is made, the Supplier must, at its expense, promptly defend or settle such IPR Claim and must pay any sums of money arising from any judgments awarded or settlements entered into as a consequence of the IPR Claim, and the Supplier must at the Supplier's expense but at the TfNSW's option:

- (i) modify the Goods so that the use of them ceases to infringe the rights of the claimant of any IPR Claim;
 - (ii) procure promptly and without additional cost for TfNSW the right to use the Goods free of any claim or liability for infringement; or
 - (iii) replace the Goods promptly with non-infringing substitute goods or material that comply with the requirements of this Agreement.
- (d) The Supplier indemnifies TfNSW against all cost, loss, damage or expense suffered or incurred by TfNSW arising out of or in connection with all IPR Claims.

29. Suspension

- (a) The TfNSW Representative may in his or her absolute discretion direct the Supplier to suspend or, if a suspension has already been directed, to recommence performance of all or a part of the Supplier's obligations under this Agreement.
- (b) If a suspension under this clause 29 arises as a result of the Supplier's failure to perform its obligations in accordance with this Agreement, the Supplier will have no right:
- (i) to be paid for any cost, loss, damage or expense; or
 - (ii) to any extension of time for Completion,
- arising out of or in connection with the suspension.
- (c) If a suspension under this clause 29 arises other than as a result of the Supplier's failure to perform its obligations in accordance with this Agreement, TfNSW:
- (i) will pay the reasonable costs incurred by the Supplier, arising out of that suspension, provided however that the Supplier takes all reasonable steps to mitigate such costs arising from that suspension; and
 - (ii) will grant an extension of time to the Date for Completion equivalent to the period of duration of the suspension under this Agreement.

30. Termination for default or insolvency

- (a) Without limiting its other rights under this Agreement and at law, TfNSW may terminate the Supplier's employment under this Agreement, by written notice, if:
- (i) the Supplier breaches this Agreement and fails to remedy such breach within the time period reasonably specified (and in any case no later than 10 Business Days) by written notice from TfNSW requiring remedy of the breach;
 - (ii) any item of the Goods is rejected by TfNSW under clause 26; or
 - (iii) if any of the following occurs:
 - (A) the Supplier becomes insolvent or bankrupt;
 - (B) the Supplier has a receiver or liquidator appointed;
 - (C) an application is made to a court for the appointment of a receiver or liquidator to the Supplier;
 - (D) the Supplier ceases or threatens to cease carrying on business in the Goods; or
 - (E) the Supplier's business is sold or otherwise comes under the control of any other person and TfNSW has not provided its prior written consent in accordance with clause 21.

31. Termination for convenience

TfNSW may terminate the Supplier's employment under this Agreement, at any time by issuing the Supplier with 10 Business Days prior written notice of its intention to do so.

32. Consequences of Termination

- (a) If TfNSW terminates the Supplier's employment under this Agreement in accordance with clause 30:
 - (i) TfNSW will not be obliged to make any further payments to the Supplier; and
 - (ii) TfNSW will be entitled to recover from the Supplier all cost, loss, damage or expense which TfNSW suffers or incurs arising out of or in connection with such termination.
- (b) If TfNSW terminates the Supplier's employment under this Agreement in accordance with clause 31, TfNSW shall pay the Supplier:
 - (i) the cost of the Goods delivered in accordance with this Agreement prior to the date of termination;
 - (ii) the reasonable cost of materials and goods reasonably ordered by the Supplier for the Work under the Agreement, provided that:
 - (A) such materials and goods are:
 - (I) delivered to a place directed by the TfNSW Representative;
 - (II) labelled as directed by the TfNSW Representative; and
 - (III) free from any liens, charges, claims and other encumbrances, and
 - (B) ownership of the materials and goods passes to TfNSW upon their delivery to and acceptance by TfNSW.
- (c) Where TfNSW terminates the Supplier's employment whether under clause 30 or 31:
 - (i) the Supplier must:
 - (A) cease work on the day the termination becomes effective; and
 - (B) vacate the Site; and
 - (ii) TfNSW may require the Supplier:
 - (A) to novate to TfNSW or TfNSW's nominee any or all subcontracts between the Supplier and its subcontractors relating to the Goods and the Work under the Agreement;
 - (B) to provide all reasonable assistance to TfNSW in dealing with such subcontractors to ensure supply of the Goods and (if relevant) their Installation to TfNSW or its nominee; and
 - (C) to deliver promptly to TfNSW:
 - (I) all confidential information of TfNSW in the Supplier's possession;
 - (II) all Documentation relevant to the Goods already supplied and (if relevant) Installed at the date of termination; and
 - (III) all Goods in their then current state of completion.

33. Building Code 2013 Compliance

The Supplier acknowledges and agrees that if it is indicated at **Item 11** of the Supply Details that the Project has received, is receiving or will receive funding from the Australian Government, the Supplier must ensure that it complies with, and procures that its subcontractors comply, with the Building Code 2013 and the Supporting Guidelines in undertaking the Work under the Agreement.

34. GST

- (a) All prices in this Agreement will be inclusive of GST unless otherwise expressly stated.
- (b) The Supplier warrants to TfNSW that, if required under Australian law, it is registered for GST purposes.
- (c) In respect of any supply of Goods under this Agreement in respect of which GST is payable (**Affected Supplies**):
 - (i) the Supplier must, within the time required by law (and in any event within 20 Business Days of a request by TfNSW), issue a tax invoice in respect of such GST which will enable TfNSW, where entitled under the GST law, to claim an input tax credit in respect of such GST; and
 - (ii) TfNSW will (subject to clause 36.3) pay to the Supplier the amount shown on such tax invoice at the same time and in the same manner as the amounts otherwise payable under this Agreement for the affected supplies,

provided however that, if the Supplier fails to issue a tax invoice as required by law in respect of the Affected Supplies, the Supplier agrees that TfNSW is entitled to deduct from any payment an amount required to be deducted by law for remitting to the Australian Taxation Office on the Supplier's account.

35. Notices and other communications

35.1 Service of notices

A notice, demand, consent, approval or communication under this Agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified on the cover page of this Agreement, as varied by any Notice given by the recipient to the sender.

35.2 Effective on receipt

A Notice given in accordance with clause 35.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

36. Miscellaneous

36.1 Alterations

This agreement may be altered only in writing signed by each party.

36.2 Approvals and consents

Except where this Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

36.3 Set-off

TfNSW may at any time retain, deduct, withhold or set-off from any moneys otherwise due to the Supplier from TfNSW any debt or other moneys due from the Supplier to TfNSW or any other claim which TfNSW may have against the Supplier.

36.4 Costs

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

36.5 Survival

Any indemnity or any obligation of confidence under this Agreement is independent and survives termination of this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement.

36.6 Counterparts

This agreement may be executed in counterparts. All executed counterparts constitute one document.

36.7 No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

36.8 Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

36.9 Further action

Each party must do, at its own expense, everything reasonably necessary or appropriate (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

36.10 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

36.11 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

36.12 Relationship

- (a) This agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- (b) The Supplier must not, and must not purport to, enter into any agreement on behalf of TfNSW.

36.13 Confidentiality

A party may only use confidential information of another party for the purposes of this Agreement, and must keep the existence and the terms of this Agreement and any confidential information of another party confidential except where:

- (a) the information is public knowledge (but not because of a breach of this Agreement) or the party has independently created the information;

- (b) disclosure is required by law or a regulatory body (including a relevant stock exchange); or
- (c) disclosure is made to a person who must know for the purposes of this Agreement on the basis that the person keeps the information confidential.

36.14 Announcements

- (a) The Supplier must seek TfNSW's prior written approval to:
 - (i) any press release or advertisement, or
 - (ii) the release for publication in any media of any information, publication, document or article , concerning this Agreement, TfNSW , the Goods or the Work under the Agreement.
- (b) The Supplier must refer any media enquiries concerning this Agreement, TfNSW, the Goods or the Work under the Agreement to the TfNSW Representative.
- (c) The Supplier must ensure that all consultants, subcontractors and suppliers engaged by TfNSW for the performance of this Agreement or the Work under the Agreement comply with the requirements of this clause.

36.15 Governing law and jurisdiction

This agreement is governed by the law of New South Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

Schedule 1 – Supply details

Item	Issue	Details
1.	Charges (Clause 1.1)	<i>[Insert amounts payable for supply and installation of goods or if relevant how such Charges will be calculated.]</i> Charges shown are inclusive of GST.
2.	Date for Completion (Clause 1.1)	<i>[Insert]</i>
3.	Goods (Clause 1.1)	<i>[Insert details of all Goods to be provided under this Agreement.]</i>
4.	Liquidated Damages (Clauses 1.1 and 9)	[\$ <i>[Insert]</i>]/week or part thereof. (If Liquidated Damages are not to apply insert 'N/A')
5.	Project (Clause 1.1)	<i>[Insert general description of the overall project to which this Agreement relates.]</i>
6.	Site (Clause 1.1)	<i>[Insert site or sites nominated where Goods are to be delivered and (if relevant) Installed]</i>
7.	Works (Clause 1.1)	<i>[If the Supplier is required to supply the Goods in accordance with specifications for the overall Works of the Project, insert general description of the works that form part of the Project in relation to which the Goods are being supplied.]</i> (If specifications for the Works are not relevant to this Agreement insert 'N/A')
8.	Variations (Clause 11(d))	Percentage for profit and attendance: <i>[Insert]</i> (If no percentage is inserted, the percentage is 5%)
9.	Work Health and Safety (Clause 19)	The person appointed as Principal Contractor is: <i>[Insert]</i> (If no other person is appointed as Principal Contractor insert 'Supplier to act as Principal Contractor'.)
10.	Warranty Period (Clause 1.1 and 25(a))	The warranty period is: <i>[Insert]</i> days (If no period is inserted the warranty period is 90 days.)
11.	Building Code 2016 Compliance (Clause 33)	Project has/will receive funding from the Australian Government: <i>[Insert]</i> (Insert 'Yes' or 'No'. If 'Yes' is inserted or the item is left blank the Project is deemed to have Federal Government funding for the purpose of clause 33.)
12.	TfNSW Representative (Clause 1.1)	Name: <i>[Insert]</i> Address: <i>[Insert]</i> Fax: <i>[Insert]</i>
13.	Installation (Clause 4)	Installation forms part of the Agreement: <i>[Insert]</i> (Insert 'Yes' or 'No'. If 'Yes' is inserted or the item is left blank Installation forms part of the Agreement.)
14.	Insurance (Clause 24.1)	Principal Arranged Insurance applicable: <i>[Insert]</i> (Insert 'Yes' or 'No' if it is a supply only Contract)
15.	Chain of Responsibility (Clause 6(b))	Chain of Responsibility Management Plan required: <i>[Insert]</i> (‘No’ applies if item is left blank)

Item	Issue	Details
16	Aboriginal Participation (Clause 6(c))	<p>NSW Government <i>Policy on Aboriginal Participation in Construction</i> applicable: [Insert] (Insert 'Yes' or 'No'. 'No' applies if item is left blank)</p> <p>The Aboriginal Participation Project Category is: [Insert Category]</p> <p>Is the Contractor required to submit an Aboriginal Participation Plan and Participation Reports? [Insert] (Insert 'Yes' or 'No'. 'No' applies if item is left blank)</p> <p>The Minimum Aboriginal Participation Spend (MAPs) at the Date of Agreement is: [\$[Insert amount] (excl GST)</p>

Schedule 2 – Specifications

[Include detailed description of the nature of the Goods and the quality and quantity to be supplied. Provide details of Sites and any related testing, installation, training or other services.]

[Include a broad description of the purpose for which the Good are required to ensure TfNSW obtains the benefit of the Supplier's fitness for purpose warranty.]

The Supplier will provide the following Training: **[Insert]** (If no Training is required insert 'N/A')

Schedule 3 – Delivery Schedule

[Include:

- ***details of delivery timetable***
- ***detail of the Sites to which particular goods/deliverables are to be delivered.***
- ***if there is a particular methodology for the delivery or installation of the Goods, also insert details here.***

Where TfNSW has responsibility for the delivery of the Goods, or aspects of the delivery, this should be stated here.]

Schedule 4 – Insurance

[NOTES TO TfNSW STAFF AND TENDER DOCUMENTER: (delete this boxed text after drafting TfNSW C61):

Contact the TfNSW's 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 TfNSW's Insurance team (Ph: (02) 9462 6150)).

Details in Schedule 4 were current at the time of issuing Revision 8 of C61 model document. Contact the TfNSW's Insurance Team regarding the latest insurance policy details and update Schedule 4 accordingly, prior to issuing C61 to tenderers.]

[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 Aon 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) • Any other claim – excess is \$10,000 per Event/Occurrence (4.2) <p>The Contractor may effect insurance to cover the amount of that excess.</p>			

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
3	Professional Indemnity	TfNSW has effected 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.		

(a) 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.
- 3. References in this Insurance Schedule to the “contractor” and the “contract” are to be interpreted to harmonise with the terminology used in the contract in which this Insurance Schedule is used (eg “Service Provider” and “Agreement” or as the case may be).
- 4. TfNSW's Insurer is:
 [insert insurer name]ABN [insert ABN number]
 [insert address]
 Telephone; [insert number]
 Email: [\[insert email\]](#)

Schedule 5 – Contractor Statement

Contractor Statement



Transport
for NSW

Contractor Statement
Payment of Workers, Payroll Tax & Worker's Compensation Premiums

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).

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



Details

Contractor's Legal Name:			
Contractor's Trading / Business Name:			
Contractor's ABN:	<input type="text"/>	Contractor's ACN:	<input type="text"/>
Contractor's Address:			
TINSW Contract No:	<input type="text"/>	Project/Contract Title:	<input type="text"/>
Description of Works:			
Period of Work this Statement applies to (see Note 3):	From:	To:	
Invoice or Payment Claim Numbers this applies to:			
Invoice or Payment Claim Dates this Statement applies to:			

Declaration

Tick one in each row

I declare that the following is true to the best of my knowledge and belief in respect of the Period of Work above:

All workers engaged by the Contractor in respect of the works have been paid all remuneration entitlements.	<input type="checkbox"/>
All workers compensation insurance premiums have been paid and attached is a true copy of a Certificate of Currency for workers compensation insurance valid for the period covered by this Statement; or the Contractor is an exempt employer for workers compensation purposes (see Note 6);	<input type="checkbox"/>
The Contractor is registered as an employer under the Payroll Tax Act 2007 and has paid all payroll tax due in respect of employees in relation to the works the subject of this Statement; or the Contractor is not required to be registered;	<input type="checkbox"/>
The Contractor has not engaged any subcontractors for the works the subject of this Statement, or The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors and believes it to be true	<input type="checkbox"/>
I am authorised to make this declaration and I am in a position to know the truth of its contents	<input type="checkbox"/>

Signature of Authorised Person:

Name of Signatory (print):

Date:

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

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

(see Notes on page 2)

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Notes

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.]

Schedule 6 - Chain of Responsibility Management Plan

1. COR MANAGEMENT PLAN

NOTES TO TENDER DOCUMENTER: (delete this boxed text after drafting TfNSW C61:

If the CoR Management Plan is requested, the minimum requirements to be specified for each Supply Agreement are items (a), (b), (c), (g) and (i) listed below.

Further requirements should be requested as relevant for the nature and the extent of the Works. For example, (d) would not be required for supply of a large quantity of road base to the Site where the Supplier uses its own fleet but it would be required where the Supplier subcontracts the delivery to a subcontractor.

As a minimum, the CoR Management Plan must address:

- (a) Hazard identification and risk analysis of CoR issues;
- (b) Reporting on near misses, accidents infringements and incidents arising from CoR issues within two working days of such events taking place and including corrective actions in reports to TfNSW;
- (c) The orderly management of CoR issues throughout the Works and the provision of evidence that the Contractor has met its legal CoR obligations;
- (d) Methods of managing interfaces with stakeholders, suppliers, subcontractors and other organisations related to the CoR;
- (e) Methods of dealing with relevant regulators and Authorities related to CoR;
- (f) Methods of developing, implementing and reporting on safety metrics for CoR;
- (g) The organisation chart showing team structure and defining CoR responsibilities;
- (h) CoR related communication protocols;
- (i) Key personnel, description of their positions and reporting lines, as related to CoR; and
- (j) Resources management, including addressing shortage of skilled resources that are critical to management of CoR issues.

2. COR REPORTING

NOTES TO TENDER DOCUMENTER: (delete this boxed text after drafting TfNSW C61:

Where the CoR Management Plan is requested, the Supplier will state in its CoR Management Plan what it intends to report on and when.

If the additional CoR reporting is required or is required at certain times, clause 6(b) of this model C61 document must be amended to include the specific reporting requirements and relevant reporting details inserted below.

For example, if reporting of safety metrics is specified as a requirement for the CoR Management Plan (see (f) above), the following could be considered to be reported on:

a) Reporting on the Supplier's CoR metrics related to management of:

a.1) driver fatigue and speeding; and (or)

a.2) fleet maintenance.

Provide to the TfNSW Representative a report including the following CoR performance details:

(a) Reporting required by the CoR Management Plan.]

Schedule 7 - 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:	
Total number of hours worked by all employees on this project:	
Total number of sub-contractors on the project:	
Total number of people employed by sub-contractors on project:	

ABORIGINAL PARTICIPATION	
Total number of Aboriginal people employed on the project:	
Total number of hours worked by Aboriginal people employed 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)		
b) Other employment (contractors, group training)		
c) Goods/services bought from Aboriginal businesses		
d) Education expenses <ul style="list-style-type: none"> • Apprentices • Trainees • Cadets • Other 	•	•
e) Payments to Aboriginal business/community organisations		
f) Other type of expenditure approved by TfNSW		
Total Direct Expenditure Amount (\$)		
Proposed expenditure in participation plan (\$)		

ABORIGINAL PARTICIPATION – INDIRECT EXPENDITURE			
Proposed expenditure amount (\$) in participation plan		Actual expenditure amount (\$)	
<i>Description of activities (include participating business/community group details) and outcomes</i>			

ABORIGINAL PARTICIPATION – ACTUAL SPEND
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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):
