

**TfNSW CONTRACT DOCUMENT C63**  
**MINOR SUPPLY AGREEMENT (PANEL CONTRACT)**  
**(INFRASTRUCTURE)**  
**REVISION REGISTER**

<b>Ed/Rev Number</b>	<b>Clause Number</b>	<b>Description of Revision</b>	<b>Authorised By</b>	<b>Date</b>
Ed 1/Rev 0		First issue	Manager, Contracts Strategy	30.03.11
Ed 1/Rev 1		Reference to RTA changed to RMS	Manager, Contracts Strategy	01.11.11
Ed 1/Rev 2		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 3	Background  Reference Schedule  1  3.5  19	Note D inserted – compliance with the NSW Government Code of Practice and Implementation Guidelines  Item 8 inserted - Building Code 2013 Compliance  Definition of WHS Law inserted  New clause - chain of responsibility requirements of the Heavy Vehicle National Law  Building Code 2013 Compliance	Manager, Contracts Strategy	18.11.15
Ed 1/Rev 4	Agreement Page 11.2	RMS Fax number deleted  AON Contact details amended	GM, Commercial	20.06.16
Ed 1/Rev 5	Reference Schedule Item 8, Clause 19  Clause 1  Clauses 11.1(d)(i), 11.2	Updated requirement for Building Code 2016 compliance from 2013  WHS Laws definition 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)	Director Commercial Services	29.09.17
Ed 1/Rev 6		Reference to RMS changed to TfNSW	Director Commercial Services	01.12.19

**MINOR SUPPLY AGREEMENT (Panel Contract) (INFRASTRUCTURE)**

**BETWEEN**

Name **Transport for NSW**  
ABN 18 804 239 602  
Short form name **TfNSW**  
Address for Notices 20-44 Ennis Road, Milsons Point 2061  
Facsimile: [insert facsimile]  
Email:[insert email]  
**Attention: [TfNSW to insert name]**

**AND**

Name  
ABN  
Short form name **Supplier**  
Address for Notices

Facsimile:  
Email:  
**Attention:**

**Background**

- A The Supplier has tendered rates and/or prices for the potential supply of Goods on the terms of this Agreement.
- B By TfNSW returning to the Supplier a fully executed copy of this Agreement, TfNSW confirms its acceptance of the Supplier's rates and/or prices in the Schedule of Rates and Prices which forms part of this Agreement.
- C Under this Agreement, TfNSW may place Orders with the Supplier from time to time, but is not obliged to do so. The Supplier is obliged to supply, deliver and perform, and TfNSW will pay for, Order Goods on the terms of this Agreement.
- D The Supplier must comply with the NSW Government’s Code of Practice for Procurement (NSW Code) and the New South Wales Government's Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction (NSW Guidelines).

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# Reference Schedule

Item	Issue	Details
1.	Commencement Date (clause 1)	.....
2.	Term: (clause 1)	.....
3.	Time or times for provision of invoices: (clause 7.2)	.....
4.	Time for payment: (clause 7.4)	..... (If no time is stated, the time for payment is 15 days)
5.	Supplier's Representative (clause 8.1)	Name: Address: Phone: Fax: Email:
6.	TfNSW Representative (clause 8.2)	Name: Address: Phone: Fax: Email:
7.	Supplier's Warranty Period (clause 12(a))	The warranty period is:                      days (If no period is stated, the warranty period is 12 months)
8.	Building Code 2016 Compliance (clause 19)	Project has/will receive funding from the Australian Government: <b>[Insert]</b>  (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 19)

# Agreed terms

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## 1. Definitions

In this Agreement:

**accepted** (in whatever tense or part of speech it is used, including 'accept', 'accepts' and 'acceptance') means, in relation to an Order, when TfNSW is satisfied that the Order Goods have been properly supplied, delivered and performed;

**Agreement** means this document including all schedules and annexures;

**Business Day** means any day other than:

(a) a Saturday, Sunday or public holiday; or

(b) 27, 28, 29, 30 or 31 December;

**Charges** means with respect to an Order, the total of the rates and unit prices for individual Goods as set out in the Schedule of Rates and Prices extended by the actual measured quantities of Goods delivered in accordance with the Order;

**Commencement Date** means the date set out in item 1 of the Reference Schedule;

**date** includes (if specified in, or with respect to, an Order) time as well as date;

**Date for Delivery** means, with respect to an Order, the date specified in the Order by which the Supplier is required to complete the delivery of the Order Goods;

**Date of Delivery** means the date by which the Supplier completes the delivery of the Order Goods;

**delivery** (in whatever tense or part of speech it is used, including but not limited to 'deliver' and 'delivered') means, for each Order, when the Order Goods have been supplied, performed and delivered in accordance with the Order (but have not necessarily been accepted or rejected);

**Goods** means all, or any part, of the products, items, materials, equipment or things and the associated services which the Supplier is or may be required to deliver under this Agreement;

**Order** means an instruction issued by TfNSW to the Supplier under clause 2.2(a);

**Order Goods** means the categories and quantities of Goods delivered or to be delivered under a particular Order and includes all variations and changes in scope as are made to the relevant Order in accordance with this Agreement;

**Payment Amount** means the amount assessed by TfNSW in accordance with clause 7.3(a);

**TfNSW's Nominee** means a person nominated by the TfNSW Representative pursuant to clause 8.3;

**TfNSW Representative** means a person appointed from time to time by TfNSW pursuant to clause 8.2;

**RMS or Roads and Maritime Services** means TfNSW or Transport for NSW, and a reference to "RMS" in a document (including an RMS specification or other document) is to be read as a reference to TfNSW or Transport for NSW.

**Schedule of Rates and Prices** means Schedule 2 which, in respect of each category of Goods, shows the price per unit for the supply, delivery and performance of that category of Goods;

**Specification** means the TfNSW requirements and specifications with respect to the Goods which are described in Schedule 1 and any modification of such requirements and specifications as are agreed by the parties in writing;

**Supplier's Obligations** means all obligations (including those set out in clause 3) which the Supplier is obliged to perform or fulfil pursuant to this Agreement;

**Supplier's Representative** means a person appointed from time to time by the Supplier pursuant to clause 8.1; and

**Term** means the period stated in item 2 of the Reference Schedule commencing on the Commencement Date, as varied by written agreement of the parties.

**WHS Laws** means the *Work Health and Safety Act 2011* (NSW) and the Work Health and Safety Regulations 2017 (NSW).

## 2. Nature of the Agreement

### 2.1 Term supply contract

- (a) The Agreement is a standing offer by the Supplier to perform the Supplier's Obligations during the Term in accordance with this Agreement, including supplying and delivering Goods and, if relevant, performing associated services for the rates and prices set out in the Schedule of Rates and Prices in accordance with Orders (if any) placed by TfNSW.
- (b) The Agreement is formed if and when TfNSW accepts the Supplier's tender by executing and returning to the Supplier a complete counterpart of the Agreement, including the Supplier's tendered rates and prices set out in the Schedule of Rates and Prices.
- (c) If the Supplier finds any ambiguity, discrepancy or inconsistency in the documents constituting this Agreement, it must immediately notify TfNSW in writing and TfNSW will determine the proper interpretation.

### 2.2 Orders

- (a) At any time and from time to time during the Term, TfNSW may issue to the Supplier Orders specifying:
  - (i) the Order Goods to be delivered;
  - (ii) the Date for Delivery;
  - (iii) the location to which the Order Goods are to be delivered; and
  - (iv) any other information which TfNSW considers necessary or appropriate.
- (b) The Supplier acknowledges and agrees that each Order will be taken to incorporate by reference the terms and conditions of this Agreement and not any terms or conditions proffered or otherwise specified by the Supplier. In particular, the Supplier acknowledges and agrees that no terms or conditions that the Supplier purports to incorporate, on the back of its invoices or documents of supply or otherwise, will be of any force or effect under any circumstances at all.
- (c) The Supplier acknowledges and agrees with TfNSW that at all times:
  - (i) TfNSW retains the sole and absolute discretion to:
    - (A) issue or not issue Orders;
    - (B) appoint suppliers other than the Supplier to supply, deliver and perform the same or similar goods and services (including on different terms and at

different rates and prices) as those the subject of the Supplier's Obligations under this Agreement, if any; and

- (ii) the categories and quantities of goods or services set out in any of the documents provided by TfNSW to the Supplier, whether as estimates or not, including documents relevant to the tender for this Agreement:
  - (A) are not to be taken as a representation in relation to; and
  - (B) bear no relation whatsoever to,the categories or quantities of the goods or services the subject, or to be the subject, of any Order or the Supplier's Obligations under this Agreement.

### **3. Supplier's Obligations**

#### **3.1 Timely performance**

- (a) The Supplier must:
  - (i) perform the Supplier's Obligations expeditiously and in accordance with this Agreement;
  - (ii) complete delivery of the Order Goods by the Date for Delivery specified in the relevant Order; and
  - (iii) comply with the provisions of clause 4 in relation to delays or other changes.

#### **3.2 Quality**

- (a) The Supplier must:
  - (i) perform the Supplier's Obligations in a diligent manner and to the standard of skill and care expected of a supplier experienced in the performance of the type of obligations to which the Supplier is subject under this Agreement;
  - (ii) comply with all relevant statutory requirements, codes and Australian Standards (unless the Agreement provides otherwise);
  - (iii) ensure that all Order Goods and all plant, materials, goods, workmanship and methods used in the making of, or incorporated into, all Order Goods:
    - (A) are suitable and fit in all respects for their intended purposes;
    - (B) meet the requirements set out in the Order (including this Agreement); and
    - (C) do not infringe any protected rights; and
  - (iv) comply with the provisions of clause 6 in relation to non-conformances.

#### **3.3 Supplier's Warranties**

- (a) Without limiting or affecting any warranty implied by law, the Supplier warrants that the Order Goods:
  - (i) will meet and comply with the requirements and specifications set out in the Specification and all relevant statutory requirements, codes and Australian Standards (unless the Specification provides otherwise);
  - (ii) will be free from defects in materials and workmanship and fit for their intended purposes; and
  - (iii) are free from all liens, charges, claims and other encumbrances upon payment being made in respect of them.

- (b) The Supplier must obtain for the benefit of TfNSW similar warranties to those set out in clause 3.3(a) (in addition to any manufacturer's warranty or warranty implied by law) from any sub-suppliers or subcontractors in respect of the Order Goods.

### **3.4 Compliance with directions**

- (a) The Supplier must (subject to any alternative requirement in the relevant Order):
  - (i) liaise with the TfNSW Representative, or the TfNSW's Nominee, as the case may be, 5 Business Days prior to the Date for Delivery to confirm progress and arrangements for the delivery of the Order Goods.
- (b) The Supplier must, and must ensure that its personnel, comply with all of the TfNSW directions, procedures and policies relating to work health and safety and security when present at the TfNSW's sites, premises or facilities; and
- (c) Upon entering an TfNSW site, premises or facility, the Supplier must strictly comply with the directions of the person or entity appointed by TfNSW to discharge the responsibilities imposed on a 'principal contractor' by the applicable work health and safety legislation.

### **3.5 Compliance with Heavy Vehicle National Law – Chain of Responsibility**

The Supplier must:

- (a) comply with the chain of responsibility provisions of the *Heavy Vehicle National Law (NSW) (2013)*.
- (b) must ensure that every subcontract between the Supplier and its subcontractors relating to the Goods and the Work under the Agreement, regardless of the subcontract value, includes provisions of clause 3.5(a) and a clause to the same effect as this clause 3.5(b) which is binding on the Subcontractor, and provide evidence of this to TfNSW when requested by TfNSW.

### **3.6 Packing and handling**

- (a) The Supplier must, where relevant, ensure that the Order Goods are suitably packed, prepared for transport and handled so as to prevent damage to the Order Goods or to any other property or injury to any person.
- (b) The Supplier must (subject to any alternative requirement in the relevant Order):
  - (i) label the Order Goods as directed by the TfNSW Representative or the TfNSW's Nominee;
  - (ii) supply all necessary resources for handling, loading, unloading and transporting Order Goods to the place where they are to be delivered; and
  - (iii) unload the Order Goods as directed.

## **4. Changes to delivery**

### **4.1 Delay and change notified by the Supplier**

- (a) If the Supplier becomes aware of any event or circumstance which causes or is likely to cause change, delay or disruption to delivery of the Order Goods by the Date for Delivery, the Supplier must:
  - (i) promptly notify the TfNSW Representative, or the TfNSW Nominee, giving the circumstances and extent or likely extent of the change, delay or disruption; and
  - (ii) take all practical steps as are necessary or appropriate to avoid and minimise delay and disruption to delivery, including, if requested by TfNSW, procuring delivery

of substitute goods and services by parties other than the Supplier, at no extra cost to TfNSW.

- (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 Delivery for any reason.

#### **4.2 Liability for delay**

- (a) If, for any reason other than delay caused by TfNSW, its employees, agents or contractors other than the Supplier, the Supplier fails to deliver the Order Goods by the Date for Delivery, TfNSW may:
  - (i) forthwith or at any time up until delivery of the Order, by notice in writing to the Supplier cancel and withdraw the Order;
  - (ii) by whatever means it sees fit obtain substitute Order Goods from a party or parties other than the Supplier; and
  - (iii) if the cost to TfNSW of obtaining the substitute Order Goods in accordance with clause 4.2(a)(ii) above exceeds the Charges that would otherwise have been due to the Supplier in respect of the cancelled Order, recover from the Supplier the extra over cost as a debt due and payable by the Supplier to TfNSW.
- (b) The taking by TfNSW of any of the steps referred to in clause 4.2(a) will not relieve the Supplier from any of its obligations or liabilities under this Agreement.

#### **4.3 Changes notified by TfNSW**

- (a) Subject to the TfNSW rights under clause 4.2, TfNSW may direct a change in the requirements of any Order at any time before delivery of that Order.
- (b) Changes may include the cancellation of the whole or part of an Order, alteration of quantities, substitution of Order Goods or change to the Date for Delivery specified in an Order.
- (c) Where TfNSW directs a substantial change in the requirements of an Order under clause 4.3(a) which cancels, alters or substitutes any or any part of the Order Goods and compliance with the direction causes the Supplier to incur costs or make savings, the Supplier must provide TfNSW with particulars of the costs incurred or the savings made and TfNSW will make a fair valuation of the amount to be added to or deducted from the Charges, as the case may be, in respect of the cancellation, alteration or substitution.

### **5. Risk, title and acceptance**

- (a) The Supplier agrees that:
  - (i) care for and risk in Order Goods remains with the Supplier until the Order Goods have been, or are taken in accordance with clause 5(b) to have been, accepted by TfNSW; and
  - (ii) title to Order Goods transfers to TfNSW on the earliest of:
    - (A) written or deemed acceptance by TfNSW;
    - (B) incorporation of Order Goods into other goods or physical works performed by or on behalf of TfNSW; and
    - (C) payment for those Order Goods.
- (b) TfNSW will be taken to have accepted Order Goods if:



- (i) title to those Order Goods transfers under clause 5(a)(ii); or
  - (ii) 10 Business Days after delivery, TfNSW has not given a direction to the Supplier under clause 6(a).
- (c) Payment of any invoice relating to particular Order Goods does not constitute acceptance of any other Order Goods.
- (d) Acceptance of any particular Order Goods shall not be taken as implying that any or all of the Supplier's Obligations have been fulfilled and shall not prevent TfNSW from subsequently rejecting those Order Goods, or exercising any other right it may have under this Agreement or otherwise, if the Order Goods are defective or do not conform with the Specification, the requirements of the relevant Order or this Agreement.

## 6. Non-conformances

- (a) If any of the Order Goods as delivered are defective or do not conform with the Specification, the requirements of the relevant Order or this Agreement, TfNSW may, at its absolute discretion, do or direct the Supplier to do, one or a combination of the following:
- (i) require that any relevant non-conformance be rectified by the Supplier, at the Supplier's cost;
  - (ii) reject the whole or any part of the Order Goods (in this clause 6, **Rejected Goods**) and require the Supplier to immediately replace and/or re-perform (if relevant) the Rejected Goods;
  - (iii) reject the Rejected Goods and return them (if practicable) to the Supplier, or require the Supplier to remove them, and cancel the balance (if any) of the Order and/or any other Orders not yet supplied; or
  - (iv) require that TfNSW be credited or refunded in respect of any Charges that TfNSW has paid for the Rejected Goods.
- (b) The Supplier is not entitled to any payment or compensation for complying with any direction issued under clause 6(a) and, subject to clause 6(c)(ii), TfNSW is not liable to pay for any Rejected Goods.
- (c) If the Supplier fails to comply with any direction issued under clause 6(a):
- (i) TfNSW shall have the power to accept the Rejected Goods as is, or to have the Rejected Goods removed, replaced, re-performed or rectified by others at the cost of the Supplier; and
  - (ii) if TfNSW elects under 6(c)(i) to accept the Rejected Goods as is, then TfNSW shall have the power to determine the reduced Charges payable, subject to clause 16(a), in respect of those Rejected Goods.
- (d) The Supplier:
- (i) releases TfNSW from any claim; and
  - (ii) must indemnify TfNSW against any cost, loss, damage or expense suffered by TfNSW,
- arising out of or in connection with the return, removal or replacement of Rejected Goods or cancellation of Orders pursuant to clause 6(a)(ii) or clause 6(a)(iii), or the removal,

replacement, re-performance or rectification by others of Rejected Goods pursuant to clause 6(c)(i), including the cost of handling, transport and packaging.

## **7. Invoicing and Payment**

### **7.1 Charges all inclusive**

The rates and prices listed in the Schedule of Rates and Prices shall be taken to include:

- (a) the cost of the whole of the Supplier's Obligations, including incidentals, whether or not expressly referred to in this Agreement, associated with or necessary for the performance of the Supplier's Obligations, including packaging, insurance and delivery charges; and
- (b) all statutory or other charges, fees and amounts associated with the Supplier's Obligations including royalties and duty,

and to exclude GST in respect of any supply made by the Supplier, except where expressly indicated.

### **7.2 Supplier's Invoice**

- (a) For each Order, upon delivery of the Order Goods or at such other times as are specified in item 3 of the Reference Schedule, the Supplier must correctly render an invoice to TfNSW in respect of the Order.
- (b) For the purposes of this Agreement, an invoice is not correctly rendered unless:
  - (i) the Order Goods have been delivered;
  - (ii) all amounts claimed in the invoice are due for payment;
  - (iii) the invoice is a tax invoice which includes the Supplier's Australian Business Number;
  - (iv) the invoice includes the TfNSW reference number and is set out in a manner that identifies the actual quantities of Order Goods delivered against each Order appearing on the invoice and itemises each amount claimed to a level of detail that enables TfNSW to verify the invoice;
  - (v) the Supplier has correctly calculated the Charges for those actual quantities of Order Goods in accordance with this Agreement;
  - (vi) the invoice sets out the total amount claimed by the Supplier and separately identifies the amount claimed in respect of GST; and
  - (vii) the invoice is accompanied by such other information and documents as TfNSW may require, acting reasonably.

### **7.3 Assessment of Payment Amount**

- (a) TfNSW will assess the Payment Amount in respect of each invoice, being the Charges paid or payable in respect of the Order Goods supplied, delivered and performed to the time of receipt by TfNSW of the invoice less:
  - (i) amounts already paid in respect of those Charges; and
  - (ii) amounts TfNSW is entitled to deduct or set off.
- (b) Where TfNSW considers that an invoice is correctly rendered and the Payment Amount is the same as the amount claimed on the invoice, TfNSW need not notify the Supplier, but where TfNSW considers that an invoice is not correctly rendered, or if the Payment

Amount differs from the amount claimed, 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;
- (ii) identifying any amounts which are in dispute and giving reasons why payment is being withheld in respect of those amounts; and
- (iii) setting out the Payment Amount (including identifying any amount paid, deducted or set off) that TfNSW intends to pay in respect of the invoice.

#### **7.4 Payment**

Following receipt and assessment of an invoice, TfNSW will pay the Payment Amount to the Supplier within the time specified in item 4 of the Reference Schedule.

If no time is specified in item 4 of the Reference Schedule, TfNSW will pay the Payment Amount within 15 days after receipt of the invoice.

#### **7.5 Right of set-off**

TfNSW may deduct from amounts otherwise payable to the Supplier any amount due from the Supplier to TfNSW in connection with the Supplier's Obligations, including any amount TfNSW requires to be refunded in accordance with clause 6(a)(iv).

### **8. Representatives**

#### **8.1 Supplier's Representative**

- (a) The Supplier's Representative is the person named in item 5 of the Reference Schedule or such other person as the Supplier may from time to time notify to TfNSW in writing.
- (b) If TfNSW reasonably objects to the Supplier's Representative at any time, the Supplier must replace that person.
- (c) Any direction given by TfNSW to the Supplier's Representative shall be regarded as having been given to the Supplier.

#### **8.2 TfNSW Representative**

- (a) The TfNSW Representative is the person named in item 6 of the Reference Schedule or such other person as TfNSW may from time to time notify to the Supplier in writing.
- (b) The TfNSW Representative shall be entitled to give directions and carry out other functions under this Agreement as agent for and on behalf of TfNSW for all purposes in connection with this Agreement.

#### **8.3 TfNSW's Nominee**

- (a) The TfNSW Representative may from time to time notify the Supplier in writing of the name of one or more persons who are each nominated as an TfNSW's Nominee.
- (b) The TfNSW's Nominee shall be entitled to give directions and carry out functions of TfNSW as agent for and on behalf of TfNSW only under the following clauses:
  - (i) clause 2.2(a);
  - (ii) clause 3.4;
  - (iii) clause 4.1;
  - (iv) clause 4.2(a);

- (v) clause 4.3;
- (vi) clause 6(c);
- (vii) clause 7.3; and
- (viii) clause 7.5.

## 9. Assignment and subcontracting

- (a) The Supplier must not:
  - (i) assign its rights under this Agreement;
  - (ii) subcontract any part of the Supplier's Obligations; or
  - (iii) otherwise encumber or grant any right or interest in any of the Order Goods in favour of any third party,without the prior written consent of TfNSW.
- (b) 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.

## 10. Exclusions and indemnity

### 10.1 Supplier's Indemnity

The Supplier must indemnify TfNSW against all claims, 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).

The Supplier's liability to indemnify TfNSW is reduced proportionally to the extent that an act, error, omission or neglect of TfNSW or its personnel, agents or contractors (excluding the Supplier) may have contributed to the claim, expense, loss, damage or cost.

## 11. Insurance

### 11.1 Supplier's Insurances

- (a) At all times during the Term, the Supplier must have in place the policies of insurance identified in Table 1 below (**Supplier's Insurances**).
- (b) The Supplier's Insurances must be placed with an Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia, or such other insurer as TfNSW consents to in writing.
- (c) The Supplier's Insurances must be subject to the laws of an Australian State or Territory and the jurisdiction of their courts.

- (d) The Supplier must:
- (i) promptly notify TfNSW and the TfNSW's insurer identified in clause 11.2 as soon as the Supplier becomes aware of any claim or occurrence that may result in a claim against the Supplier's Insurances or TfNSW in connection with this Agreement;
  - (ii) not, without the prior written consent of TfNSW or the TfNSW's insurer, make any admission, offer, promise or payment in connection with any occurrence or claim; and
  - (iii) promptly give all information and reasonable assistance to TfNSW or its nominee, the TfNSW's insurer or its nominee, as any of them may require in the prosecution, defence or settlement of any occurrence or claim.

**TABLE 1 – SUPPLIER'S INSURANCES**

	<b>TYPES OF INSURANCES</b>	<b>MINIMUM SUM INSURED</b>	<b>PERIOD OF INSURANCE</b>	<b>INSURANCE COVER IS TO INCLUDE THE FOLLOWING</b>
1	Motor Vehicle Comprehensive or Third Party Property Damage effected with an approved insurer as defined in clause 11.1(b)	\$20 million for any single occurrence	Annual	(a) Motor Vehicles owned or used by the Supplier or sub-suppliers directly or indirectly engaged in delivering the Order Goods. (b) If applicable to any Order – all plant and equipment owned or used by the Supplier or sub-suppliers directly or indirectly in delivering the Order Goods.
2	Workers Compensation effected with an approved insurer as defined in clause 11.1(b)	As per the relevant Workers Compensation legislation	Annual	As per State Workers Compensation legislation.

## 11.2 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 Term. As proof of compliance the Supplier must provide certificates of currency when requested to the TfNSW's insurer as follows:

[Self Insurance Corporation of NSW  
through Insurance and Care NSW (icare)  
ABN 16 759 382 489

Level 15, 321 Kent Street  
SYDNEY NSW 2000

Telephone; 61 2 9216 3852  
Email: [cpai@icare.nsw.gov.au](mailto:cpai@icare.nsw.gov.au)

## 12. Manufacturers' Warranties

- (a) Where Order Goods delivered by the Supplier are manufactured by the Supplier, the Supplier:
  - (i) warrants that the Order Goods will comply with the Specification for the period set out in item 7 of the Reference Schedule; and

- (ii) will provide any warranties that it usually provides in respect of its Goods in addition to any other warranties it provides in accordance with this Agreement.
- (b) TfNSW acknowledges that where Order Goods delivered by the Supplier are not manufactured by the Supplier, they may be subject to warranties given by the manufacturer of those Order Goods (**Manufacturers' Warranties**). The Supplier must ensure that TfNSW obtains the full benefit of the Manufacturers' Warranties.

## 13. Intellectual Property

### 13.1 Supplier's materials

- (a) The Supplier warrants that the Supplier is the owner or valid licensee of all intellectual property rights in the Order Goods and that the supply of the Order Goods in accordance with this Agreement and the use of the Order Goods by TfNSW does not and will not infringe any intellectual property rights of any third party.
- (b) The Supplier must indemnify TfNSW against all cost, loss, damage or expense suffered or incurred by TfNSW arising out of or in connection with a claim that the Order Goods or their supply or use infringes any intellectual property rights of any third party.

### 13.2 TfNSW materials

- (a) The Supplier must protect and keep safe and secure all goods, materials and documentation provided by TfNSW to the Supplier.
- (b) Upon termination or expiry of this Agreement, the Supplier must promptly return to TfNSW those goods, materials and documentation.

## 14. Termination for default or insolvency

Without limiting its other rights under this Agreement and at law, TfNSW may terminate this Agreement by written notice if:

- (a) the Supplier breaches this Agreement (including failing to perform the Supplier's Obligations with due diligence and competence) 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;
- (b) the Supplier fails to comply with any direction issued by TfNSW under clause 6(a) within 10 Business Days; or
- (c) if any of the following occur:
  - (i) the Supplier becomes insolvent or bankrupt;
  - (ii) the Supplier has a receiver or liquidator appointed;
  - (iii) an application is made to a court for the appointment of a receiver or liquidator to the Supplier;
  - (iv) the Supplier ceases or threatens to cease carrying on business; or
  - (v) 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.

## 15. Termination for convenience

TfNSW may terminate this Agreement at any time by issuing the Supplier with 10 Business Days prior written notice.

## 16. Consequences of Termination

- (a) If TfNSW terminates this Agreement in accordance with clause 14:
  - (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 as a debt due and payable, all cost, loss, damage or expense which TfNSW suffers or incurs, or that is reasonably likely to be suffered or incurred by TfNSW, arising out of or in connection with such termination.
- (b) If TfNSW terminates this Agreement in accordance with clause 15, TfNSW will pay the Supplier in accordance with clause 7 for the Order Goods supplied in accordance with the Agreement prior to the date of termination.

## 17. GST

### 17.1 GST gross up

Any consideration payable or to be provided for a supply made under or in connection with this Agreement does not include any amount on account of GST. If GST is payable on any supply made under or in connection with this Agreement, the recipient of the supply must pay to the supplier an additional amount equal to the GST payable on the supply provided that the supplier gives the recipient a tax invoice for the supply.

### 17.2 Reimbursements (net down)

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of a GST group of which that party is a member, is entitled for that loss, cost or expense.

### 17.3 Exclusion of GST from calculations

If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

## 18. Miscellaneous

### 18.1 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) references to parts, clauses, parties, annexures, exhibits and schedules are references to parts and clauses of, and parties, annexures, exhibits and schedules to, this Agreement;
- (c) a reference to a document or instrument (including any statutory instrument) includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (d) a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (e) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (f) 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;

- (g) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (h) 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
- (i) any reference to GST or other term defined in the *A New Tax System (Goods and Services) Act 1999* has the meaning given in that Act and, as necessary, in related legislation and regulatory instruments.

## 18.2 Notices

A notice, demand, consent, approval or communication under this Agreement must be:

- (a) in writing; and
- (b) hand delivered or sent by prepaid post, facsimile or e-mail:
  - (i) in the case of a notification from the Supplier to TfNSW in relation to a specific Order:
    - (A) if an TfNSW's Nominee issued the Order, to the TfNSW's Nominee who issued the Order in accordance with the notice details advised by the TfNSW's Nominee, from time to time;
    - (B) if the TfNSW Representative issued the Order, to the TfNSW Representative at the address given in item 6 of the Reference Schedule; and
  - (ii) in any other case, to:
    - (A) the recipient's address for notices specified in the details of the parties on the first page of this Agreement; and
    - (B) in addition, if the notice is from the Supplier to TfNSW, to the TfNSW Representative at the address given in item 6 of the Reference Schedule, as varied by any notice given by the recipient to the sender.

## 18.3 Variations

This Agreement may be varied only in writing signed by each party.

## 18.4 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.

## 18.5 Confidentiality

The Supplier may only use confidential information of TfNSW for the purposes of this Agreement, and must keep the existence and the terms of this Agreement and any confidential information of TfNSW confidential except where TfNSW consents to disclosure, or where disclosure is required by law.

## 18.6 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.



## 19. Building Code 2016 Compliance

The Supplier acknowledges and agrees that, if it is indicated in item 8 of the Reference Schedule that the Project has received, is receiving or will receive funding from the Australian Government, the Supplier must ensure that it complies with the Building Code 2016 in undertaking the Work under the Agreement.

# Schedule 1 – Specifications

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*[Include detailed description of the Goods and any related services (for example, any related training or other services) that may be ordered by TfNSW. Include details on quality and quantity to be supplied.]*

*Provide details of the sites or locations to which the Goods may be required to be delivered, if ordered, and who will be responsible for each aspect of transport, including loading and unloading.*

*If there is a particular methodology to be used for the delivery of the goods (for example, a requirement to use only a particular size or type of vehicle for deliveries), also insert those details here.*

*Include a broad description of the purpose for which the Goods and any related services are required to ensure that 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 2 – Schedule of Rates and Prices

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[Include:

- a rates/prices schedule of goods/materials and any related services that may be ordered by TfNSW, including any separate charges (for example, transport)
- if relevant, details of any different rates or prices applicable to the different sites or locations to which particular goods may be required to be delivered, if ordered, or applicable to different delivery methods, order quantities, discounts or delivery times or timeframes
- specify that the rates/prices are exclusive of GST]

***[Note: TfNSW's preference is to make all rates and prices exclusive of GST and to add total GST as a separate line to the total of the extended pay items on each invoice.]***

# Signing page

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**EXECUTED** as an agreement on .....20.....

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

.....  
*(Witness)*

.....  
*(Name printed)*

.....  
*(Delegate)*

.....  
*(Name printed)*

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

.....  
*(Witness)*

.....  
*(Name printed)*

.....  
*(Authorised signatory)*

.....  
*(Name printed)*

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