

TfNSW CONTRACT DOCUMENT C65

UTILITY WORKS CONTRACT

REVISION REGISTER

Ed/Rev Number	Clause Number	Description of Revision	Authorised By	Date
Ed 1/Rev 0		Initial issue	Mgr, Contr Strategy	15.01.11
Ed 1/Rev 1		New Clause 23 National Code for Construction Industry. Definitions is now Clause 24 New Schedule Item 14 relating to National code	Mgr, Contr Strategy	08.07.11
Ed 1/Rev 2	Schedule 3	New Insurance schedule	Mgr, Contr Strategy	14.10.11
Ed 1/Rev 3		Reference to RTA changed to RMS	Mgr, Contr Strategy	04.11.11
Ed 1/Rev 4		Disclaimer page removed	Mgr, Contr Strategy	01.12.11
Ed 1/Rev 5		Requirement of Statutory Declaration removed. New Contractor Statement	Mgr, Contr Strategy	07.02.12
Ed 1/Rev 6	23	Reference to National Code of Practice for the new Construction Industry Implementation Guidelines May 2012	Mgr, Contr Strategy	27.04.12
Ed 1/Rev 7	23	Reference to WHS instead of OHS	Mgr, Contr Strategy	03.12.12
Ed 1/Rev 8	7.3 & 7.7	Reference to sections in WHS regulation amended	Mgr, Contr Strategy	14.01.13
Ed 1/Rev 9	23 & schedule 1 item 14	National Code of Practice replaced by Building Code 2013	Mgr, Contr Strategy	08.05.13
Ed 1/Rev 10	14.4, 14.5, 14.7 & schedule 2	Changes related to Building and Construction Industry Security of Payment Act Amendment Bill 2013	Mgr, Contr Strategy	01.05.14
Ed 1/Rev 11	6.4, 7.8, Schedule 1/Item 16 & Schedule 4 22.6, 24 & Schedule 1/Item 15	Chain of responsibility requirements of the Heavy Vehicle National Law. RMS Representative.	Contracts Strategy Manager, Commercial	18.11.15
Ed 1/Rev 12	Parties Schedule 3	RMS' address amended AON contact details amended	GM, Commercial	20.06.16

Ed/Rev Number	Clause Number	Description of Revision	Authorised By	Date
Ed 1/Rev 13	23; 24; 26; Items 14 & 14A in Schedule 1 25; Item 14B in Schedule 1	Updated as a result of the enactment of the <i>Building and Construction Industry (Improving Productivity) Act 2016 (Cth)</i> and <i>the Code for the Tendering and Performance of Building Work 2016</i> New clause – NSW Government Code of Practice for Procurement and Implementation Guidelines	Director, Commercial Services	04.08.17
Ed 1/Rev 14	Clauses 7.3(a), 23.2(d), 23.12(c) & 26 Clauses 13.3, 13.9 & Schedule 3 Schedule 3 Schedule 3 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 15		Reference to TfNSW instead of RMS		01.12.19



**Transport
for NSW**

UTILITY WORKS CONTRACT

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Utility Works Contract

Parties: **Transport for NSW**

ABN 18 804 239 602 of 20-44 Ennis Road, Milsons Point NSW 2061 (**TfNSW**)

The Contractor named in item 1 of schedule 1 (**Contractor**).

Background

- A. TfNSW wishes to carry out the Project described in item 2 of schedule 1 (**Project**).
- B. The Utility Works are required to be undertaken to enable the Project to proceed.
- C. The Utility named in item 3 of schedule 1 (Utility) has requested that TfNSW procure and pay for the Utility Works to be undertaken by a contractor accredited by the Utility.
- D. The Contractor has represented to TfNSW that it is accredited by the Utility, and TfNSW wishes to engage the Contractor to carry out the Utility Works on the terms of the Contract.

Operative terms

1. Agreement

The parties agree to be bound by and comply with the terms set out in the Contract.

2. Contractor capacity

The Contractor acknowledges that TfNSW has no expertise in relation to the Utility Works and relies entirely on the expertise and capacity of the Contractor to perform the Utility Works in accordance with the Contract, for the Price and so as to meet all Utility Requirements.

3. Contractor warranties

The Contractor warrants that it:

- (a) is accredited by the Utility to carry out the Utility Works;
- (b) has familiarised itself with the site (including conditions at or affecting the site), the requirements of TfNSW with respect to the Utility Works and the requirements of the Utility with respect to the Utility Works;
- (c) has the skills, expertise, resources and experience to carry out the Utility Works within the timeframe and to the standards required by the Contract; and
- (d) has satisfied itself that the Price includes everything required for the proper and timely performance of the Contract.

4. Site access

The Contractor is responsible for arranging access to site and for obtaining all approvals, licences, permits and consents prudent or necessary for the performance of the Utility Works (other than those approvals, licences, permits or consents listed in item 4 of schedule 1) . TfNSW will provide advice and assistance to facilitate any site access to the extent it falls

within the TfNSW's' functions as a roads authority, but only if the Utility's own efforts have been unsuccessful and it makes a specific written request to TfNSW for assistance.

5. Performance of Utility Works

- 5.1 **Compliance:** The Contractor must carry out the Utility Works in accordance with Utility Requirements, the TfNSW's Specifications and the other requirements of the Contract.
- 5.2 **Co-operation:** The Contractor must co-operate with TfNSW any other contractor engaged by TfNSW, and must, if required by TfNSW, co-ordinate the Utility Works with works undertaken by TfNSW any other contractor engaged by TfNSW.
- 5.3 **Quality:** The Contractor must ensure that the Utility Works on completion satisfy and conform to the Utility Requirements and the Contract.
- 5.4 **Properly supervise:** The Contractor must properly and actively supervise the Utility Works.
- 5.5 **Timeliness:** The Contractor must commence the Utility Works promptly after award of the Contract, and work expeditiously and diligently so as to complete the Utility Works by the Date for Completion.
- 5.6 **Cost:** The Contractor must do and provide everything necessary for the proper performance of the Contract at its own cost, unless the Contract contains an express entitlement to payment.
- 5.7 **Compliance with laws:** The Contractor must carry out the Utility Works lawfully, including complying with the requirements of applicable authorities and all applicable approvals, licences, permits and consents.
- 5.8 **Minimise impacts:** The Contractor must carry out the Utility Works carefully and safely, so as to minimise the impact of the Utility Works on persons, property and the environment.
- 5.9 **Artefacts and heritage items:** The Contractor must not disturb or damage any item of archaeological, cultural, heritage or environmental significance found on the site of the Utility Works, except in accordance with law and the directions of the owner of the site.
- 5.10 **Care for Utility Works:** The Contractor is responsible for care of the Utility Works and everything necessary to carry out the Utility Works until they are complete and handed over to the Utility.
- 5.11 **Keep clean:** The Contractor must clean up regularly and continuously as it carries out the Utility Works.
- 5.12 **Repair:** The Contractor must make good any damage it causes, arising out of or in connection with the Utility Works, to any property (including any road or road-related infrastructure) and this obligation will survive the termination of this Contract.

- 5.13 **Accreditation:** The Contractor must maintain its accreditation to undertake the Utility Works at all times until the expiry of the Defects Liability Period.
- 5.14 **Location of utilities:** The Contractor must make its own enquiries and carry out its own investigations to determine the existence and location of utilities that may be affected by the Utility Works. The Contractor must not rely on any information provided by TfNSW in relation to existing utilities as TfNSW has no responsibility for the currency, completeness or accuracy of the information.

6. Personnel and subcontractors

- 6.1 The Contractor must use qualified and experienced personnel in the performance of the Utility Works and, if it subcontracts any part of the Utility Works, must ensure that the subcontractor and its personnel are similarly qualified and experienced.
- 6.2 If the Utility Requirements include particular qualifications for particular personnel, the Contractor must only use personnel who have those qualifications.
- 6.3 Before engaging any subcontractor, the Contractor must notify TfNSW of the names and qualifications of any subcontractors it engages and obtain the TfNSW's written approval to the subcontract.
- 6.4 The Contractor must ensure that every Subcontract, regardless of the Subcontract value, includes provisions of clause 7.8 and a clause to the same effect as this clause 6.4 which is binding on the subcontractor, and provide evidence of this to TfNSW when requested by TfNSW.
- 6.5 The Contractor remains liable for the performance of the Contract, regardless of the appointment of any subcontractor.

7. Responsibility for work health and safety

- 7.1 The Contractor is solely responsible for, and has control over all aspects of the Utility Works, including their safe and proper performance, and the safety issues at the site of the Utility Works.
- 7.2 The Contractor acknowledges that:
- (a) TfNSW has (depending on the circumstances) a range of different potential obligations to ensure the safety of persons on the site of the Utility Works;
 - (b) TfNSW may be subject to civil claims or criminal prosecution if the Contractor does not adequately ensure the health and safety of persons while performing the Utility Works;
 - (c) TfNSW is relying on the Contractor's specialist expertise and experience in performing the Utility Works; and
 - (d) TfNSW has provided the Contractor with sufficient information on risks associated with the site on which the Utility Works are occurring and the Utility Works to enable the Contractor to properly assess and control those and other risks.

- 7.3 Subject to clause 7.7, where TfNSW is the owner of the place of work where the Utility Works are to be carried out, TfNSW hereby:
- (a) appoints the Contractor as the principal contractor for the Utility Works pursuant to section 293 of the Work Health and Safety Regulation 2017 (NSW) (**WHS Regulation**); and
 - (b) authorises the principal contractor to exercise such authority of TfNSW as is necessary to enable the principal contractor to discharge the responsibilities imposed on a principal contractor by Chapter 6 of the WHS Regulation.
- 7.4 Subject to clause 7.7, where TfNSW is not the owner of the place of work where the Utility Works are to be carried out, the Contractor must exercise and fulfil the functions and obligations of a principal contractor under the WHS Regulation, whether or not it has been appointed by the owner to do so.
- 7.5 The Contractor must ensure that signs, that are clearly visible from outside the site and on which the name and contact telephone numbers (including an after-hours emergency telephone number) of the Contractor are stated, are placed on the site of the Utility Works.
- 7.6 If requested, the Contractor must promptly provide evidence to TfNSW of its satisfaction of the obligations imposed on it under this clause 7.
- 7.7 Clauses 7.3 and 7.4 do not apply if TfNSW notifies the Contractor that TfNSW or another person is the principal contractor under Chapter 6 of the WHS Regulation.
- 7.8 The Contractor must comply with the chain of responsibility provisions of the *Heavy Vehicle National Law* (NSW) (2013). Where required by item 16 of Schedule 1, the Contractor must prepare a Chain of Responsibility (CoR) Management Plan, meeting the requirements of Schedule 4. The Contractor must comply with the CoR Management Plan at all times.

8. Variations

- 8.1 The Contractor must not vary the Utility Works, unless all of the following requirements are satisfied before any work commences on the variation:
- (a) the Utility has approved the variation in writing and a copy of the approval has been provided to TfNSW;
 - (b) the Contractor has provided a quote for the variation and the quote has been approved in writing by TfNSW; and
 - (c) TfNSW has directed the Contractor to proceed with the variation.
- 8.2 TfNSW has no obligation to pay for any variation unless all of the requirements of clause 8.1 are satisfied.

9. Delay and extensions of time

- 9.1 The Contractor must promptly notify TfNSW if it becomes aware of anything that may disrupt or delay the Utility Works.

9.2 The Contractor may claim an extension of time if it is delayed or disrupted in the performance of the Utility Works by TfNSW or by a variation directed by TfNSW under clause 8.1, but not otherwise. The claim must be made within 10 Business Days of the cause of delay arising. The duration of an extension of time will be determined by agreement between the parties and failing agreement, will be determined by TfNSW, acting reasonably.

9.3 TfNSW may extend the Date for Completion at any time for its own convenience.

10. Completion

10.1 The Utility Works are Complete when:

- (a) the Utility notifies TfNSW that the Utility Works are complete or otherwise acceptable to the Utility;
- (b) the Contractor has executed and delivered a direct deed in favour of the Utility if required with respect to the Utility Works; and
- (c) TfNSW is reasonably satisfied (without any obligation to make enquiries) that:
 - (1) the Contractor has done and provided everything it is required to do and provide to properly perform and Complete the Utility Works; and
 - (2) has satisfied all obligations required to be satisfied under the Contract before Completion.

10.2 It is the Contractor's responsibility to obtain the Utility notification under clause 10.1(a).

10.3 When the requirements of clause 10.1 are satisfied, TfNSW will provide a written notice to the Utility confirming the Date of Completion.

10.4 The Contractor must rectify, within a reasonable time or within any time nominated by TfNSW, at the TfNSW's request from time to time, any defect appearing in the Utility Works during the period set out in item 5 of schedule 1 from and including the Date of Completion (**Defects Liability Period**).

11. Consequences of delay

11.1 The Contractor acknowledges that the timely Completion of the Utility Works is critically important to TfNSW and to the success of the Project.

11.2 If the Utility Works are not Complete by the Date for Completion, the Contractor must pay TfNSW by way of liquidated damages the amount set out in item 10 of schedule 1 for each day after the Date for Completion to and including the Date of Completion.

12. Indemnity

The Contractor indemnifies TfNSW against loss or damage to the TfNSW's property and against any claim or action which may be brought or made against TfNSW, its employees or

agents in respect of personal injury or death or loss of or damage to property caused by an act or omission of the Contractor or any of its employees, subcontractors or agents.

13. Insurance

TfNSW-arranged insurance

- 13.1 TfNSW will effect the insurances listed in schedule 3 as "Principal Arranged Insurances (TfNSW)" (**TfNSW Arranged Insurance**) for the purposes of the Contract, and will maintain those insurances until the expiry of the Defects Liability Period.
- 13.2 The Contractor acknowledges that other insureds may be named on the TfNSW Arranged Insurances, including other government entities with an interest in the Contract.
- 13.3 The Contractor must, as soon as practicable after award of the Contract (and in any case, before commencing any work under the Contract) provide the TfNSW's Insurer with a copy of this Contract and all details reasonably required by the insurer for the purpose of TfNSW effecting the TfNSW Arranged Insurances. Contact details for TfNSW's insurer are set out at the end of schedule 3.
- 13.4 The Contractor acknowledges and agrees that any settlement paid pursuant to a claim under the TfNSW Arranged Insurance may be paid directly to TfNSW.
- 13.5 The Contractor must ensure that it complies with the conditions of insurance under the TfNSW Arranged Insurance and must:
- (a) not do or omit to do anything which might vitiate, impair or derogate from the cover under the TfNSW Arranged Insurance or which might prejudice any claim under the TfNSW Arranged Insurance;
 - (b) immediately notify TfNSW, upon becoming aware of any event which may result in the TfNSW Arranged Insurance being varied, cancelled or avoided; and
 - (c) ensure that its personnel and subcontractors comply with this clause and keep the Contractor informed of occurrences, claims, demands or circumstances that may give rise to claims under the TfNSW Arranged Insurance.
- 13.6 Upon becoming aware of any occurrence, claim, demand or circumstance that may give rise to a claim under the TfNSW Arranged Insurance (**Occurrence**), the Contractor must:
- (a) immediately notify TfNSW of the Occurrence;
 - (b) provide all information reasonably requested by TfNSW, and comply with all reasonable requests made by TfNSW, in relation to the Occurrence; and
 - (c) keep TfNSW fully informed of developments concerning any subsequent claim or claims upon the TfNSW Arranged Insurance.

- 13.7 The existence of the TfNSW Arranged Insurance does not reduce, vary, or otherwise affect the Contractor's liabilities and obligations under the Contract.
- 13.8 The Contractor must pay or discharge the relevant deductible or excess set out in schedule 3 under the heading "Principal Arranged Insurance (TfNSW)" payable or retained by itself or TfNSW in connection with any claim made in respect of any loss or liability caused by, or contributed to by the Contractor, its subcontractors, employees or agents covered by the TfNSW Arranged Insurance.
- 13.9 The Contractor may inspect the terms of the TfNSW Arranged Insurance by appointment at the TfNSW's insurer's offices.

Contractor-arranged insurances

- 13.10 The Contractor must obtain and maintain the policies of insurance listed in schedule 3 under the heading "Contractor Arranged Insurances" (**Contractor Arranged Insurance**). The Contractor Arranged Insurances must be on the terms, for the risks identified and for the duration and amounts specified in schedule 3.
- 13.11 The Contractor must provide evidence of the insurances obtained and maintained under clause 13.10, in the form of a certificate of currency, to the TfNSW's insurance broker nominated in schedule 3.
- 13.12 If the Contractor breaches clauses 13.10 or 13.11, TfNSW may in its absolute discretion, obtain the relevant Contractor's insurances itself and may recover the cost of doing so as a debt due from the Contractor or deduct the premiums for the relevant insurances from amounts otherwise payable to the Contractor.

Notification of claims

- 13.13 The Contractor must:
- (a) promptly (and in any case within 48 hours of becoming aware of the relevant circumstance) provide TfNSW with full particulars in writing of:
 - (1) any occurrence or event connected with the Contract that may give rise to a claim against any of the policies obtained and maintained under or as required by this Contract; and
 - (2) any claim or subsequent proceeding or action and developments concerning the claim.
 - (b) promptly provide TfNSW with any further information regarding the claim as TfNSW may require; and
 - (c) take such steps as are necessary or appropriate to ensure that any subcontractor will, in relation to TfNSW and in respect of an event or claim of a like nature arising out of or relating to the operations or responsibilities of the subcontractor, take similar action to that which the Contractor is required to take under this clause.

Insurance claims procedure

13.14 The Contractor must:

- (a) not, without the consent of the insurer, make any admission, offer, promise or payment in connection with any occurrence or claim; and
- (b) promptly give all information and reasonable assistance to TfNSW and the insurer as TfNSW or the insurer, or its nominee, may require in the prosecution, defence or settlement of any occurrence or claim.

Nothing in this clause prevents a party from taking immediate action to avoid loss of life or damage to property where that is reasonably necessary in the circumstances, and any such action will not prejudice the position of either party under the policies of insurance effected in respect of any loss or damage.

14. Payment

14.1 The Contractor must submit payment claims to TfNSW at the times stated in item 11 of schedule 1.

14.2 The Contractor must not include the price of any materials in any payment claim unless and until those materials have been incorporated into the Utility Works.

14.3 The payment claim must be addressed to the person specified in item 12 of schedule 1 and must include any details required by the Contract or reasonably requested by TfNSW for the purpose of assessing the claim.

14.4 All claims for payment must be accompanied by :

1. a completed and true Contractor's Statement and Supporting Statement attesting to payment of workers, subcontractors, payroll tax and workers compensation and made by a senior representative of the Contractor. The Contractor Statement and Supporting Statement must be in the form set out in schedule 2 executed on the date of the Payment Claim;
2. all relevant calculations;
3. all relevant conformance records; and
4. any other information specified in the Contract.

14.5 TfNSW will assess each payment claim and issue a payment schedule to the Contractor within 10 Business Days of receipt of the payment claim. The payment schedule will be in the form of a Recipient Created Tax Invoice, unless TfNSW advises otherwise. The payment schedule to the Contractor must:

1. Identify the payment claim to which it relates;
2. Indicate the amount TfNSW proposes to pay as the *Scheduled Amount*; and
3. If the *Scheduled Amount* is less than the *Claimed Amount*, provide reasons explaining why it is less and why any money is being withheld. Reasons why

the *Scheduled Amount* is less than the *Claimed Amount* may include failure by the Contractor to comply with any outstanding obligations under:

- i. clause 13 (Insurance);
- ii. clause 14.4.1 (Contractor's Statement and Supporting Statement (schedule 2));
- iii. clauses 14.4.2 to 14.4.4 (other items to accompany a Payment Claim);
- iv. any provision of the Contract requiring the Contractor to submit anything or provide proof of any state of affairs at the time of a Payment Claim.

- 14.6 The Contractor must be registered for GST before submitting any claim for payment, and must notify TfNSW if it ceases to be registered for GST.
- 14.7 TfNSW will pay the Contractor the *Scheduled Amount* within 15 Business Days after being served with the Payment Claim.
- 14.8 TfNSW may deduct from an amount payable to the Contractor under the Contract any amount which is, or in the opinion of TfNSW is likely to become, payable by the Contractor to TfNSW.
- 14.9 If the Contractor has not provided TfNSW with its ABN, TfNSW will withhold tax from payments in accordance with the *A New Tax System (Pay As You Go) Act 1999*.
- 14.10 Payments by TfNSW are on account only and do not evidence the TfNSW's acceptance of the Utility Works.
- 14.11 TfNSW may pay money direct to a worker or subcontractor of the Contractor if TfNSW is satisfied on reasonable evidence (such as a court order) that the worker or subcontractor is owed money in connection with work done by it for the Contract. TfNSW may recover any such amount from the Contractor as a debt due.
- 14.12 Unless otherwise stated, the Price includes GST. If there is a change in the rate of GST at any time before the Price has been paid in full, the Price will be adjusted accordingly.

15. Intellectual property

- 15.1 Intellectual property in all reports, designs, drawings, calculations, written materials and documents (including materials and documents in electronic form and on any media) (**Documents**) created in respect of the Utility Works remain the property of the person creating them, but TfNSW is not obliged to return any Documents supplied by the Contractor.
- 15.2 The Contractor grants TfNSW a perpetual, non-exclusive, transferable, irrevocable royalty-free licence to use, reproduce, add to, modify and communicate to the public the Documents created by the Contractor for any purpose connected with the Utility Works, the Project or the exercise of any function or power of TfNSW.

- 15.3 The Contractor indemnifies TfNSW against any claim by a third party in respect of the ownership of, or rights to use, intellectual property the Contractor uses, develops or creates in connection with the performance of the Utility Works including intellectual property in the Documents licensed to TfNSW under clause 15.2 or arising out of the TfNSW's use of those Documents in accordance with the Contract.

16. Confidentiality

- 16.1 Each party (**Recipient**) undertakes to protect and preserve the confidential nature and secrecy of any Confidential Information of the other party (**Discloser**) which is disclosed to the Recipient in connection with the Contract.
- 16.2 The Recipient must not disclose the Discloser's Confidential Information to any person except:
- (a) as required for the purposes of the Contract;
 - (b) with the prior written consent of the other party;
 - (c) in the case of TfNSW, to any government agency provided that the government agency is made aware of the confidential nature of the information;
 - (d) if required to do so by law or to comply with the requirements of any government agency or a stock exchange; or
 - (e) if required to do so in connection with legal proceedings relating to the Contract or to obtain professional advice in relation to the Contract.
- 16.3 In making any disclosure under clause 16.2(a) or 16.2(b), the Recipient must ensure that persons receiving the Confidential Information from it do not disclose the information except in the circumstances permitted in clause 16.2.

17. Publicity

The Contractor must refer all media enquiries about the Utility Works to TfNSW, and must not make any public statement or communication (including without limitation a press release, interview or advertisement) about the Utility Works, the Project or TfNSW without the prior written approval of TfNSW, which approval may be withheld by TfNSW in its absolute discretion.

18. Disputes

- 18.1 The parties will attempt to resolve disputes speedily by negotiation in good faith.
- 18.2 If a dispute cannot be resolved by negotiation between the respective representatives of TfNSW and the Contractor within 14 days of commencement of negotiations, the dispute will be referred for further discussion and negotiation to an appropriate senior executive nominated by each party.
- 18.3 If the senior executives are unable to resolve the dispute within 14 days of commencement of discussion (or such longer time as is agreed between them), either party may commence formal dispute resolution proceedings by expert determination.

- 18.4 The expert determination will be conducted in accordance with the TfNSW's Rules for the Conduct of Expert Determination and the TfNSW's Code of Conduct for an Expert. A copy of the Rules and Code of Conduct is available on request.
- 18.5 The parties must continue to perform their obligations under the Contract in spite of a dispute.

19. Termination

- 19.1 TfNSW may terminate the Contract for its convenience at any time on 14 days written notice to the Contractor. On termination under this clause, TfNSW will pay the Contractor in accordance with clause 14 for the work done by it up to the date of termination, but will have no other liability to the Contractor.
- 19.2 If the Contractor breaches the Contract, TfNSW may:
- (a) suspend payment to the Contractor until the breach is rectified to the TfNSW's satisfaction; and
 - (b) issue the Contractor a notice requiring it to show cause why the Contract should not be terminated.
- 19.3 If a show cause notice is issued under clause 19.2 and the Contractor does not show cause to the satisfaction of TfNSW within 14 days, TfNSW may terminate the Contract by written notice which takes effect immediately.
- 19.4 TfNSW may terminate the Contract immediately by written notice to the Contractor if the Contractor is unable to pay its debts as and when they fall due, or if the Contractor becomes subject to external administration within the meaning of chapter 5 of the Corporations Law.

20. Government Information (Public Access) Act 2009 ("GIPA Act")

- 20.1 This clause 20 only applies to the extent that the Contractor is required to provide goods or services to the public on behalf of TfNSW.
- 20.2 Within 2 days of receiving a written request by TfNSW, the Contractor must provide TfNSW with immediate access to information referred to in s.121(1) of the GIPA Act (but excluding information referred to in s.121(2) of the GIPA Act) contained in records held by the Contractor at the Contractor's expense and in such a medium as TfNSW may reasonably require. This is an essential term of the Contract.
- 20.3 TfNSW will consult with the Contractor before releasing any information obtained from the Contractor where required under s.54 of the GIPA Act.

21. Contract Disclosure (GIPA Act, ss.27-35)

- 21.1 The Contractor acknowledges that TfNSW may be required to publish certain information concerning this document in accordance with ss.27-35 of the GIPA Act.
- 21.2 If the Contractor reasonably believes that any part of this document contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, then the Contractor should immediately advise

TfNSW in writing, identifying the provisions and providing reasons so that TfNSW may consider seeking to exempt those provisions from publication.

22. General

- 22.1 **Entire agreement:** The Contract is the entire agreement between the parties in respect of its subject matter and supersedes all prior communications.
- 22.2 **Notices:** Notices under or in respect of the Contract must be addressed to the applicable address for service of notices set out in item 13 of schedule 1 or any more recent address notified by the addressee. All notices must be in writing signed by an authorised officer of the sender.
- 22.3 **No assignment:** The Contractor must not assign or encumber a right or interest under the Contract without the prior written consent of TfNSW. Any assignee must be accredited by, and acceptable to, the Utility.
- 22.4 **Amendment and waiver:** The Contract can only be amended by agreement in writing by both parties. A right relating to the Contract may only be waived in writing signed by the party or parties waiving the right.
- 22.5 **Governing law:** The Contract is governed by New South Wales law.
- 22.6 **TfNSW Representative:** The Contractor must deal with the TfNSW Representative. The TfNSW Representative has full authority to give directions and carry out other functions for and on behalf of TfNSW in respect of the subject matter of this Contract.

23. Building Code

- 23.1 This clause 23 only applies if item 14 of schedule 1 specifies that the Building Code applies to the Utility Works because:
- (a) Commonwealth funding (above the minimum thresholds specified in Schedule 1 of the Building Code) has been obtained for the project which the Utility Works form part of; and
 - (b) the ABC Commissioner has not exempted the Contractor from the Building Code under section 6A of the Building Code.
- 23.2 The Contractor must comply, and ensure that each other Building Code Entity complies, in the performance of the Contract, with the requirements of the Building Code and the BCIP Act, including by ensuring that no subcontractor:
- (a) is subject to an 'enterprise agreement' (as that term is defined in the *Fair Work Act 2009* (Cth)) that does not meet the requirements of section 11 of the Building Code;
 - (b) is subject to an 'exclusion sanction' (as that term is defined in section 3(3) of the Building Code) or is excluded from undertaking work funded by a state or territory government, unless approval to engage that Building Code Entity has been obtained from the ABC Commissioner; and

- (c) without limiting any other obligation on the Contractor under the Contract, uses any Materials in the performance of the Utility Works that do not, at a minimum, comply with the relevant Australian standards published by, or on behalf of, Standards Australia Limited (ABN 85 087 326 690); or
 - (d) has failed to fully comply with any adverse decision, direction or order made by a court or tribunal for a breach of the BCIIIP Act, a Designated Building Law, a work health and safety law (including, but not limited to, the *Work Health and Safety Act 2011* (NSW) and the Work Health and Safety Regulation 2017 (NSW)) or competition and consumer law (including, but not limited to, the *Competition and Consumer Act 2010* (Cth)).
- 23.3 Compliance with the Building Code will not relieve the Contractor from its responsibility to perform this Contract, or from liability for any defect in the Utility Works arising from compliance with the Building Code.
- 23.4 Where item 14 of schedule 1 states that a Workplace Relations Management Plan (Commonwealth) is required, the Contractor must comply, and must ensure that each of its subcontractors complies, with the version of the Workplace Relations Management Plan (Commonwealth) provided by the Contractor that TfNSW notifies the Contractor has been approved by the ABCC.
- 23.5 The Contractor must maintain adequate records of the compliance with the Building Code by each Building Code Entity.
- 23.6 The Contractor must notify the ABCC of any breach or suspected breach of the Building Code as soon as practicable but no later than 2 working days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
- 23.7 The Contractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIIIP Act and the Building Code and will ensure that each Building Code Entity complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the BCIIIP Act, requests to interview any person under section 74 of the BCIIIP Act, requests to produce records or documents under sections 74 and 77 of the BCIIIP Act and requests for information concerning matters relating to the Building Code under section 7(c) of the Building Code.
- 23.8 If the Contractor does not comply with the requirements of the Building Code or the BCIIIP Act in the performance of this Contract such that a sanction is applied by the ABC Commissioner, the ABCC or the Minister for Employment, without prejudice to any rights that would otherwise accrue, those parties will be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Contractor or a related entity in respect of work funded by the Commonwealth or its agencies.
- 23.9 The Contractor agrees that it and each other Building Code Entity will agree to a request from TfNSW, the Commonwealth (or any person authorised by the Commonwealth) or any person contemplated by the BCIIIP Act or the Building Code

as having a right to obtain information from a Building Code Entity, to provide the relevant information within a specified period, in person, by fax, by post or other means.

- 23.10 Without limiting the Contractor's obligations under clause 4, prior to allowing a Building Code Entity to obtain access to the site, the Contractor must obtain, and must require each other Building Code Entity to obtain, a completed 'collection notice' (as required by privacy legislation) from all employees, independent contractors, consultants or agents which they engage to carry out the Utility Works. Each 'collection notice' must contain a consent to the collection, use and disclosure of the individuals' personal information for the purposes of monitoring compliance with the Building Code.
- 23.11 Where item 14 of schedule 1 specifies that Commonwealth funding (above the minimum thresholds specified in Schedule 1 of the Building Code) has been obtained for the project which the Utility Works form part of, the Contractor must, prior to engaging any subcontractor, obtain and retain from each proposed subcontractor a copy of a 'Declaration of Compliance', substantially in the form set out in the document titled '*Code for the Tendering and Performance of Building Work 2016 – Model Clauses Type B: Model Clauses for Tender and Contract Documentation for Contractors and Subcontractors*'.
- 23.12 The Contractor must require each of its subcontractors to:
- (a) prior to entering into a subcontract with that person; and
 - (b) every six months during the term of the relevant subcontract,
- provide the Contractor with confirmation that the subcontractor has not, within the preceding three year period:
- (c) had an adverse decision, direction or order made by a court or tribunal for a breach of a Designated Building Law, work health and safety law (including, but not limited to, the *Work Health and Safety Act 2011* (NSW) and the Work Health and Safety Regulation 2017 (NSW)) or the *Migration Act 1958* (Cth); or
 - (d) been required to pay any amounts under an adjudication certificate (provided in accordance with a law relating to the security of payments (including, but not limited to, the *Building and Construction Industry Security of Payment Act 1999* (NSW)), that are due to persons in respect of Building Work) or owed any unsatisfied judgement debts (including by any related entity (as contemplated by section 3(2) of the Building Code)) to a Building Contractor or a Building Industry Participant.
- 23.13 Without limiting any other obligation on a Building Code Entity under the Building Code, the Contractor must ensure that all subcontracts impose obligations on subcontractors equivalent to the requirements of this clause 23.

24. Australian Government Work Health and Safety Accreditation Scheme

- 24.1 If required by item 14A of schedule 1, the Contractor must maintain accreditation under the Work Health and Safety Accreditation Scheme (Scheme) established by section 43 of the BCIIP Act while carrying out Building Work, and comply with all conditions of the Scheme accreditation.

25. NSW Government Code of Practice for Procurement and Implementation Guidelines

- 25.1 This clause 25 only applies if item 14B of schedule 1 specifies that the New South Wales 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**) (as published by the NSW Treasury July 2013) apply to the Utility Works. The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.
- 25.2 In addition to terms defined in this Contract, terms used in this clause 25 have the same meaning as is attributed to them in the NSW Guidelines.
- 25.3 The Contractor must at all times comply with and meet any obligations imposed by the NSW Code and NSW Guidelines.
- 25.4 The Contractor must notify the Construction Compliance Unit (**CCU**) and TfNSW of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- 25.5 Where the Contractor engages a subcontractor, the Contractor must ensure that the subcontract imposes on the subcontractor equivalent obligations to those in this clause 25, including that the subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Code and NSW Guidelines.
- 25.6 The Contractor must not appoint or engage another party in relation to the Utility Works where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.
- 25.7 The Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors and related entities.
- 25.8 The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
- (a) enter and have access to sites and premises controlled by the Contractor;
 - (b) inspect any work, material, machinery, appliance, article or facility;
 - (c) access information and documents;
 - (d) inspect and copy any record relevant to the Utility Works;
 - (e) have access to personnel; and

(f) interview any person;

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

- 25.9 The Contractor agrees to comply, and will require its related entities to comply, with a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.
- 25.10 The Contractor warrants that at the time of entering into this Contract, neither it nor any of its related entities is subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- 25.11 If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- 25.12 Where a sanction is imposed:
- (a) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (b) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - (i) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
 - (ii) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.
- 25.13 The Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Code and NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from TfNSW or the State of NSW for such costs.
- 25.14 Compliance with the NSW Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the Utility Works and any other obligation under this Contract, or from liability for any defect in the Utility Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- 25.15 Where a change in this Contract or the Utility Works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines:

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

26. Definitions

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

ABC Commissioner has the meaning given in the BCIP Act.

ABCC has the meaning given in the Building Code.

BCIP Act means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

Building Code means the Building Code issued under subsection 34(1) of the BCIP Act, being the document titled '*Code for the Tendering and Performance of Building Work 2016*'.

Building Code Entity means each of:

- (a) the Contractor;
- (b) the Contractor's subcontractors; and
- (c) the Contractor's related entities (as contemplated by section 3(2) of the Building Code).

Building Contractor has the meaning given in the BCIP Act.

Building Industry Participant has the meaning given in the BCIP Act.

Building Work for the purposes of:

- (a) clause 23 and item 14 of schedule 1, has the meaning given in the Building Code; and
- (b) clause 24 and item 14A of schedule 1, has the meaning given in the BCIP Act.

Business Day means any day other than a Saturday, Sunday, public holiday in New South Wales, or 27, 28, 29, 30 or 31 December.

Completion means the stage in the performance of the Utility Works when the requirements of clause 10.1 are satisfied. **Complete** has the corresponding meaning.

Confidential Information means confidential, non-public or proprietary information relating to a party's business, technology or other affairs.

Contract means the contract between the parties comprising this document and its schedules, the TfNSW's Specifications, the Utility Requirements, the TfNSW's letter of award for the Utility Works and any documents incorporated into the Contract by the letter of award.

Contractor Arranged Insurance has the meaning given in clause 13.10.

Date for Completion means the date identified in item 6 of schedule 1.

Date of Completion means the date on which Completion is achieved as determined by TfNSW and notified in accordance with clause 10.3.

Defects Liability Period means the period determined in accordance with clause 10.4.

Designated Building Law has the meaning given in the BCIP Act.

Materials includes materials, plant, equipment and other goods.

NSW Code means the New South Wales Government's Code of Practice for Procurement dated 18 January 2005.

NSW Guidelines means the New South Wales Government's Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction dated July 2013 and any Practice Direction current at the date of this Contract.

Price means the price nominated in, or calculated in accordance with, item 7 of schedule 1.

Project means the project described in item 2 of schedule 1.

TfNSW Arranged Insurance has the meaning given in clause 13.1.

TfNSW Representative means the person specified in item 15 of schedule 1 or such other person as TfNSW may from time to time notify to the Contractor in writing.

TfNSW Specifications means the specifications listed in item 8 of schedule 1.

Utility means the utility nominated in item 3 of schedule 1.

Utility Requirements means:

- (a) the documents listed in item 9 of schedule 1;
- (b) any instructions or directions given by the Utility; and
- (c) any other requirements of the Utility which are known to the Contractor or which the Contractor, as an experienced specialist contractor, should reasonably be aware of.

Utility Works means the make ready or other works that are required to be undertaken on or with respect to property of the Utility before TfNSW can proceed with the Project, as described in the Utility Requirements.

WHS Legislation means the *Work Health and Safety Act 2011* (NSW) and the Work Health and Safety Regulation 2017 (NSW).

Workplace Relations Management Plan (Commonwealth) has the meaning given to 'WRMP' in the Building Code.

Workplace Relations Management Plan (State) is the Workplace Relations Management Plan contemplated by the NSW Guidelines.

Schedule 1 – Contract details

Item 1 – Contractor

Contractor name:

Contractor ACN: Contractor ABN:

Contractor address:

Item 2 – Project

(Background and clause 11.1, 15.2, 17 and 24 of the Conditions of Contract)

The Project is:

Item 3 – Utility

(Background and clauses 3, 4, 5.9, 8, 10, 22.3 and 24 of the Conditions of Contract)

Utility name:

Utility ABN:

Item 4 – Approvals etc that the Contractor does not have to obtain

(clauses 4 of the Conditions of Contract)

Approvals, licences,
permits and consents that
the Contractor does not
have to obtain:

Item 5 – Defects Liability Period

(clauses 10.4, 13.1 and 24 of the Conditions of Contract and schedule 3)

The Defects Liability Period is:

Item 6 – Date for Completion

(clauses 5.5, 9.3, 11.2 and 24 of the Conditions of Contract)

The Date for Completion is:

Item 7 – Price (e.g., lump sum or schedule of rates)

(clauses 2, 3, 14.12 and 24 of the Conditions of Contract)

The Price is:

Item 8 - TfNSW Specifications

(clauses 5.1 and 24 of the Conditions of Contract)

The TfNSW's specifications
the Contractor must comply
with are:

Item 9 – Utility Requirements

(clauses 2, 5.1, 5.3, 6.2 and 24 of the Conditions of Contract)

The Utility Requirements
are:

[insert description of the Utility Requirements]

Item 10 – Liquidated damages

(clause 11.2 of the Conditions of Contract)

Amount of liquidated
damages is:

[\$insert] per day

Item 11 – Time for payment claims

(clause 14.1 of the Conditions of Contract)

Payment claims must be
made at the following times:

[Monthly payments unless otherwise specified]

Item 12- Person to whom payment claim must be addressed

(clause 14.3 of the Conditions of Contract)

Person to whom payment
claims must be addressed:

[Empty box for person to whom payment claims must be addressed]

Item 13 – Address for service of notices

(clause 22.2 of the Conditions of Contract)

TfNSW's address for
service:

[Empty box for TfNSW's address for service]

Contractor's address for
service:

[Empty box for Contractor's address for service]

Item 14 – Building Code

(clause 23 of the Conditions of Contract)

- 1) Does the Building Code apply to the Utility Works as there is Commonwealth funding (above the minimum thresholds specified in Schedule 1 of the Building Code) for the Project which the Utility Works form part of and the ABC Commissioner has not exempted the Contactor from the Building Code under section 6A of the Building Code?

Applies / Doesn't apply

("Doesn't apply" applies if not filled in.)

If "Applies" is selected, each Building Code Entity must comply with the Building Code)

- 2) Is a Workplace Relations Management Plan (Commonwealth) required?

Yes / No

('No' applies if this item is not filled in.)

- 3) On or after 2 December 2016, has the Contractor or a related entity of the Contractor submitted a response to an expression of interest or tender (howsoever described) for Commonwealth funded Building Work (regardless of whether or not that project was procured by TfNSW or whether or not the Contractor or the Contractor's related entity were successful)?

Yes / No

('No' applies if this item is not filled in.)

If "Yes" applies, the Contractor and each of the Contractor's related entities must comply with relevant provisions of the Building Code unless the ABC Commissioner has exempted the Contactor and its related entities from the Building Code under section 6A of the Building Code)

[delete whichever is inapplicable]

Item 14A – Work Health and Safety Accreditation Scheme

(clause 24 of the Conditions of Contract)

Is the Contractor required to maintain accreditation under the Work Health and Safety Accreditation Scheme?

Yes / No

('No' applies if this item is not filled in.)

[delete whichever is inapplicable]

Item 14B – NSW Government Code of Practice for Procurement & Implementation Guidelines

(clause 25 of the Conditions of Contract)

Do the New South Wales Government's Code of Practice for Procurement and New South Wales Government's Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction apply to the Utility Works?

Yes / No

('No' applies if this item is not filled in.)

Is a Workplace Relations Management Plan (State) required?

Yes / No

('No' applies if this item is not filled in.)

[delete whichever is inapplicable]

Item 15 – TfNSW Representative

(clauses 22.6 and 24 of the Conditions of Contract)

Name:

Contact Details:

Item 16 – Chain of Responsibility Management Plan

(clause 7.8 of the Conditions of Contract)

The Contractor must provide a Plan

Yes / No

Notes for Contractor's Statement

1. A Contractor is anyone who carries out work under a contract for TfNSW. References to "Subcontractor" and "Principal Contractor" in the legislation in Note 2 have been changed to "Contractor" and "TfNSW" for convenience.
2. This form is prepared for the purposes of section 127 of the *Industrial Relations Act 1996* ("IRA"), section 175B of the *Workers Compensation Act 1987* ("WCA") and Schedule 2 Part 5 of the *Payroll Tax Act 2007* ("PTA"). These laws allow TfNSW to withhold payment from a Contractor without any penalty unless and until the Contractor provides to TfNSW a Statement declaring that:
 - a. All workers compensation insurance premiums have been paid (or the Contractor is exempt); and
 - b. all employees have been paid; and
 - c. all payroll tax payable relating to the work has been paid or the Contractor is exempt.
3. A Statement is required for every Invoice/Payment Claim. The periods covered in each Statement must be sequential and leave no gap.
4. The person signing this declaration must be 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. 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.

2. Supporting Statement

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

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

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

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

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

Main Contract

Head contractor: _____
(Business name of the head contractor)

ABN _____ ACN _____

Of _____
(Address of Contractor)

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

Contract description _____

Contract number/identifier _____

Subcontracts

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

Period

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

subject of the payment claim dated: _____

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

Signature: _____ Date: _____

Full Name: _____ Position / Title: _____

Attachment to the Supporting Statement

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

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

Notes for Supporting Statement

Offences for False Statement

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

Further Information

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

Schedule 3 - Insurances

(clause 13)

Principal Arranged Insurance - Insurance Schedule

NOTES TO TfNSW STAFF AND TENDER DOCUMENTER: (delete this boxed text after drafting TfNSW C65:

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 3 were current at the time of issuing Revision 12 of C65 model document. Contact the TfNSW Insurance Team regarding the latest insurance policy details and update Schedule 3 accordingly, prior to including C65 in tender documents.

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

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
Contractor Arranged Insurances				
4	Motor Vehicle Comprehensive or Third Party Property Damage effected with an approved insurer as defined in Definitions and Notes clause 1 below	\$20 million for any single occurrence	Annual	(a) Motor Vehicles owned or used by the Contractor or subcontractors directly or indirectly engaged in performance of the Services. (b) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 2 below. (c) If applicable to the contract – all plant and equipment owned or used by the Contractor or subcontractors directly or indirectly in the performance of the Services.
5	Workers Compensation effected with an approved insurer as defined in Definitions and Notes clause 1 below	As per the relevant Workers Compensation legislation	Annual	As per State Workers Compensation legislation.
6	Professional Indemnity	TfNSW will not set any requirements for the minimum sum insured for professional indemnity in the Contract. The contractor / consultant / supplier should make their own independent decision regarding their own Professional Indemnity requirements.		

Definitions and Notes:

1. Approved insurer means:

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

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

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

3. TfNSW's Insurer is:

[insert insurer]ABN [insert number]

[insert address]

Telephone: [insert number]

Email: [insert email]

Schedule 4 – Chain of Responsibility Management Plan

Refer to clause 7.8 of the Conditions of Contract.

This Schedule only applies when “yes” has been inserted in item 16 of Schedule 1.

CoR Management Plan

NOTES TO TENDER DOCUMENTER: (delete this boxed text after drafting TfNSW C65:

If the CoR Management Plan is requested, the minimum requirements to be specified for each Utility Works Contract 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 trench backfill material to the Site where the Contractor uses its own fleet but it would be required where the Contractor 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, incidents and infringements 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 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/qualifications 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.

CoR Reporting

NOTES TO TENDER DOCUMENTER: (delete this boxed text after drafting TfNSW C65:

Where the CoR Management Plan is requested, the Contractor 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 (i.e. monthly progress report), the specific reporting requirements should be specified in G1 Specification or, if G1 is not used, in clause 7.8 of this model C65 document. Relevant reporting details should also be 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;

Execution

SIGNED for

Transport for NSW (ABN 18 804 239 602) on/...../.....

by its authorised delegate

in the presence of:

Witness

Delegate

Name printed

Name printed

SIGNED by the CONTRACTOR

on/...../.....

in accordance with section 127 of the Corporations Act 2001 (Cth)

Secretary (or additional Director)

Director

Name printed

Name printed