

**TRANSPORT FOR NSW (TfNSW)
CONTRACT DOCUMENT C76
PROFESSIONAL SERVICES SHORT FORM CONTRACT
(CONSTRUCTION INDUSTRY)
REVISION REGISTER**

Ed/Rev Number	Clause Number	Description of Revision	Authorised By	Date
Ed 1/ Rev 0		Initial Issue	[Insert]	[Insert]



Transport
for NSW

PROFESSIONAL SERVICES SHORT FORM CONTRACT (CONSTRUCTION INDUSTRY)

Transport for NSW (PRINCIPAL)
[INSERT CONTRACTOR] (Contractor)

PROFESSIONAL SERVICES CONTRACT (SHORT FORM)

[NAME OF PROJECT] – [DESCRIPTION OF SERVICES]

CONTRACT NUMBER: [Insert Contract No. if applicable]

PART A – CONTRACT PARTICULARS

<p>Principal</p>	<p>Transport for NSW ABN 18 804 239 602 Address: [18 Lee Street, Chippendale, NSW, 2008] Telephone: +61 2 [Insert] Fax: +61 2 [Insert]</p>
<p>Contractor</p>	<p>[Insert full company name] ABN [Insert] / ACN [Insert] Address: [Insert] Telephone: +61 2 [Insert] Fax: +61 2 [Insert]</p>
<p>Project (clause 1.1)</p>	<p>[Insert short description of the Project]</p>
<p>Services (clause 1.1 & 2)</p>	<p>As described in Annexure A.</p>
<p>Commencement Date (clause 1.1 & 2.2(a))</p>	<p>[Insert the date the Contractor is to commence the Services]</p>
<p>Term (clause 1.1 & 2.2)</p>	<p>The period commencing on the Date of Contract and expiring on [Insert date].</p>
<p>Date for Completion (clause 1.1 & 2.5(a)(i))</p>	<p>[Insert the date on which the Services are to be completed]</p>
<p>Fee (clauses 1.1, 6 & 7)</p>	<p>The basis of payment is: [insert one of the following: "(Lump sum / schedule of rates / schedule of rates and lump sum)"]</p> <p><i>[Guidance Note: If the basis of payment is by lump sum and schedule of rates, then complete each of the fields below, including the Upper Limiting Fee]</i></p> <p>Lump sum amount: \$[Insert]</p> <p><i>[Guidance Note: If the basis of payment is by lump sum only, delete the below wording relating to schedule of rates and delete the Upper Limiting Fee]</i></p> <p>Schedule of rates: [Insert rates]</p> <p><i>[Guidance Note: If the basis of payment is by a schedule of rates only, delete the above wording relating to a lump sum and insert the Upper Limiting Fee.]</i></p> <p>The Upper Limiting Fee is: \$[Insert]</p> <p><i>[Guidance Note: If a schedule of rates is used for any part of the Fee payable for the Services then an Upper Limiting Fee must be included.]</i></p>

Expenses (clause 1.1 & 7(a)(iii))	[Insert details of any expenses]
Contractor's Insurances (clause 10)	<p>The Contractor's professional indemnity insurance must be for an amount not less than the minimum level of professional indemnity insurance set out in Category PI-2 in Item 4 of Annexure B (Insurances).</p> <p>[Guidance Note: The category of the Contractor's professional indemnity insurance may only be changed to Category PI-1 if the Services are applicable to PI-1 Services contained in item 4 of Annexure B (insurances). If more than one category is applicable to the Services, the higher category of professional indemnity insurance should be noted to apply.]</p> <p>Other insurances:</p> <p>[Type of insurance policy]: [insert] [Minimum sum insured]: [insert] [Period of insurance]: [insert] [Insurance cover]: [insert]</p> <p>[Guidance Note: If there are no other insurances delete the text above and insert "Nil".]</p>
Limit of Contractor's Liability (clause 1.1 & 11(c))	<p>Where the Fee is a lump sum amount, the Fee. Otherwise the limit of the Contractor's liability is the Upper Limiting Fee.</p>
Contractor's Representative (clause 1.1 & 16)	[Insert name, title, email address and phone number]
Principal's Representative (clause 1.1 & 17)	[Insert name, title, email address and phone number]
Notices (clause 20)	<p>Principal:</p> <p>Transport for NSW ABN 18 804 239 602</p> <p>Address: [Insert]</p> <p>Attention: [Insert]</p> <p>Email: [Insert]</p> <p>Telephone: [Insert]</p> <p>Contractor:</p> <p>[Insert] ABN [Insert]</p> <p>Address: [Insert]</p> <p>Attention: [Insert]</p> <p>Telephone: [Insert]</p> <p>Email: [Insert]</p>

EXECUTED as an agreement

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

Signature of Witness

Signature of Authorised Delegate

Full Name of Witness

Full Name of Authorised Delegate

[This execution block to be used when the Contractor is a company]

**Signed by [insert company name of Contractor]
[ABN] in accordance with section 127 of the
Corporations Act 2001 (Cth):**

Signature of Director

Signature of Company Secretary/Director

Full Name of Director

Full Name of Company Secretary/Director

[This execution block to be used when the Contractor's authorised signatory is to execute the Agreement]

**Signed for and on behalf of [insert company
name of Contractor] [ABN] by its authorised
signatories in the presence of:**

Signature of Witness

Signature of Authorised Signatory

Full Name of Witness

Full Name of Authorised Signatory

PART B – OPERATIVE CLAUSES

1. INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Agreement means this document and includes any annexures to it.

Authority means any public or other authority which has jurisdiction in relation to the Services.

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

Commencement Date means the date specified in the Contract Particulars for the commencement of the Services.

Completion means that stage when the Services are completed in accordance with the requirements of this Agreement.

Contract Material means any Document created, written or otherwise brought into existence by or on behalf of the Contractor in the course of performing this Agreement, including in those aspects of the Services and the Deliverables, in which subsists newly created Intellectual Property Rights.

Contract Particulars means Part A of this Agreement.

Contractor Arranged Insurances means the 'Contractor Arranged Insurances' listed in Annexure B (Insurances).

Contractor Statement means a statement in the form set out in and including the details required by Annexure C (Contractor Statement and Supporting Statement) or such other form and details as are required by the relevant legislation from time to time.

Contractor's Representative means the person specified in the Contract Particulars or such other person as nominated in writing by the Contractor and approved by the Principal from time to time.

Date for Completion means the date or period of time for Completion of the Services specified in the Contract Particulars, as may be varied or extended in accordance with clause 2.5(a)(i) or otherwise by written agreement of the parties.

Date of Contract means the date that this Agreement is executed by the last party to do so.

Deliverable means any Document or other item provided or required to be provided to the Principal or produced by or on behalf

of the Contractor in connection with the Services or this Agreement.

Discrepancy means an inconsistency, discrepancy, ambiguity, inadequacy, deficiency, error, inaccuracy or omission.

Documents means all documents, reports, plans, drawings, layouts, designs, computer disks, specifications and all other materials in both hard and electronic formats.

Expenses means the expenses the Contractor incurs at the express direction of the Principal in respect of the items specified in the Contract Particulars.

Fee means the fee calculated at the rates and / or in the amounts set out in the Contract Particulars, as increased or decreased by this Agreement.

Fit for Purpose means fit for their intended purpose having regard to any purpose contemplated in or reasonably ascertainable from:

- (a) this Agreement and the Principal's Material;
- (b) to the extent relevant for determining the purpose in connection with a Variation, a document provided by the Principal to the Contractor specifically in connection with the Variation.

GST has the meaning given to this term in the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all present and future registered and unregistered rights conferred by statute, common law or equity in, or in relation to, copyright, trademarks, patents, designs, circuit layouts, trade secrets, know how, confidential information, inventions, source code, models, manuals and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967

Law means statutes, regulations, by-laws, ordinances, rules, subordinate legislation, common law and rules of equity.

Notice means a written notice or other communication given in accordance with clause 20.

Payment Claim means a claim for payment submitted in accordance with clause 7(a).

Payment Claim Date means the last Business Day of every month.

Payment Schedule means a payment schedule under clause 7(c).

Personal Information has the meaning in the *Privacy and Personal Information Protection Act 1998* (NSW).

Principal Arranged Insurance means the 'Principal Arranged Insurances' specified in Annexure B (Insurances).

Principal's IP means any Intellectual Property Rights subsisting in the Documents provided or made available to the Contractor by or on behalf of the Principal in connection with this Agreement which are vested in, or otherwise owned by, the Principal.

Principal's Material means all Documents provided to the Contractor by the Principal from time to time and any other documents, equipment, machinery and data (stored by any means).

Principal's Representative means the person specified in the Contract Particulars or any replacement person notified in writing by the Principal to the Contractor from time to time.

Project means the project described in the Contract Particulars.

Security of Payment Act means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

Services means the services described in Annexure A (Services) and any services incidental or related to the Services, including Variations to the Services which are directed in accordance with this Agreement.

Supporting Statement means a statement in the form set out in and including the details required by Annexure C (Contractor Statement and Supporting Statement) or such other form and details as are required by the relevant legislation from time to time.

Statement of Business Ethics means the statement of business ethics published by the Principal from time to time. At the Date of Contract, a copy of the Principal's Statement of Business Ethics is available at www.rms.nsw.gov.au/about/what-we-do/ethics/statement-business-ethics.html

Term means the period specified in the Contract Particulars.

Third Party IP means any Intellectual Property Rights subsisting in the Documents provided or made available to the Contractor by or on behalf of the Principal in connection with this Agreement which have been licensed to the Principal and which the Principal has a right to sublicense to the Contractor to use, reproduce and modify to the extent required for the Services or the Contractor's other obligations under this Agreement.

Upper Limiting Fee means the maximum Fee payable where the Services or part of the Services are payable by a schedule of rates as specified in the Contract Particulars or otherwise agreed in accordance with clause 5(b).

Variation means a change to the Services by Notice given under clause 5.

1.2 Interpretation

In this Agreement, the following rules apply in interpreting this Agreement unless the context makes clear that a rule is not intended to apply:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (c) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (d) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (e) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (f) if a word or phrase is given a defined meaning, any other part grammatical forms of have a corresponding meaning;
- (g) "includes" in any form is not a word of limitation; and
- (h) "\$" or "dollars" is a reference to Australian dollars;
- (i) if the day on or by which anything is to be done under this Agreement is not a Business Day, that thing must be done no later than the next Business Day.

2. THE SERVICES

2.1 Performance

The Contractor will provide the Services in accordance with this Agreement.

2.2 Commencement

This Agreement:

- (a) commences on the Date of Contract; and
- (b) unless terminated earlier in accordance with this Agreement or at law, expires at the end of the Term.
- (iii) comply with all obligations and meet all requirements set out in this Agreement; and
- (iv) ensure the Services are free from Discrepancies and comply with all applicable Laws, standards (including Australian Standards), codes (including the Australian National Construction Code) and all applicable requirements of any Authority.

2.3 Conditions to be satisfied prior to the Commencement Date

The Contractor must not start providing the Services until the Contractor has provided the Principal with:

- (a) satisfactory proof that the Contractor's insurances have been obtained in accordance with clause 10(a)(ii); and
- (b) the information to be provided in accordance with clause 9(d).

2.4 Prior Services

This Agreement retrospectively applies to any Services performed by the Contractor before the Date of Contract. If the Contractor commences Services before the Commencement Date, this Agreement continues to apply to those Services.

2.5 Contractor's obligations

- (a) Without limiting the generality of clause 2.1, the Contractor must:
 - (i) commence providing the Services on the Commencement Date and progress the Services expeditiously, without delay and in accordance with any directions of the Principal and, if a Date for Completion is included in the Contract Particulars, complete the Services so as to achieve Completion by the Date for Completion provided that such date will be extended by a reasonable time for any delay to the Services caused by an event which is beyond the reasonable control of the Contractor or a Variation directed by the Principal under clause 5;
 - (ii) perform the Services in a diligent manner and to the professional standard of skill and care expected of a Contractor qualified, competent and experienced in the provision of services of the nature of the Services;

3. THE DELIVERABLES

3.1 Standard of Deliverables

The Contractor must ensure that the Deliverables:

- (a) are complete, clear, accurate, coordinated, and free from Discrepancies;
- (b) comply with all relevant standards (including Australian Standards, where applicable), codes (including the Australian National Construction Code, where applicable) and manufacturer's recommendations;
- (c) comply with the Principal's reasonable requirements regarding form and format; and
- (d) comply with the other requirements of this Agreement.

3.2 Fitness for purpose

The Contractor warrants that the Services, the Deliverables and any design contained in the Deliverables are Fit for Purpose.

3.3 Preparation of Deliverables

- (a) The Contractor must prepare and submit the Deliverables as reasonably directed by the Principal taking into account its requirements for the Project.
- (b) If at any time either party or another contractor identifies any Discrepancy in the Deliverables or the Services, the Contractor must at its cost revise or amend the Deliverables and the Services as required to remedy or resolve the Discrepancy.
- (c) If remedying the Discrepancy in the Deliverables or the Services involves effecting a material change or making a determination in relation to the design intent of any works, the Contractor must consult the Principal before

effecting such a remedy or resolution.

3.4 Review by the Principal

- (a) The Principal may:
- (i) review any Deliverable, or resubmitted Deliverable, prepared and submitted by the Contractor; and
 - (ii) within 15 Business Days of the submission by the Contractor of such Deliverable or resubmitted Deliverable, reject the Deliverable if in its reasonable opinion the Deliverable does not comply with the requirements of this Agreement.
- (b) If any Deliverable is rejected, the Contractor must:
- (i) at its own cost, promptly make any changes to the Deliverable required by the Principal to ensure the Deliverable complies with this Agreement; and
 - (ii) the Contractor must, if required by the Principal, resubmit the revised Deliverable to the Principal, in which case this clause 3.4(b) will reapply.
- (c) The Contractor must not commence any Services in respect of the Deliverables which it has submitted to the Principal unless the Principal has had 15 Business Days to review the Deliverables and has not rejected those Deliverables.

3.5 No obligation to review

- (a) The Principal does not assume or owe any duty of care to the Contractor to review, or in reviewing, any Deliverables submitted by the Contractor for errors, omissions or compliance with this Agreement.
- (b) No review of, comments upon, rejection of, or failure to review or comment upon or reject, any Deliverable prepared by the Contractor or any other direction by the Principal about the Deliverable will:

- (i) relieve the Contractor from, or alter or affect, the Contractor's liabilities; or
- (ii) prejudice the Principal's rights against the Contractor, whether under this Agreement or otherwise according to Law.

4. SUSPENSION

The Principal may, for its sole convenience and at its absolute discretion, immediately suspend the provision of the Services and payments relating to those suspended Services, regardless of whether there has been any default on the Contractor's part, at any time, by giving a Notice to the Contractor. The Principal may only suspend payment in relation to those Services which are yet to be performed. Clause 6 shall continue to apply in respect of previously performed Services.

5. VARIATIONS

- (a) At any time prior to the date of Completion, the Principal may issue a Notice to the Contractor setting out details of a proposal to vary the Services (including, omitting or deleting Services), or the timing of the Services (including, the time for Completion), or both (**Variation**). The Contractor may only withhold its consent to a Variation that is outside the general scope of the Services.
- (b) Within 10 Business Days of receipt of the Notice under clause 5(a), the Contractor must provide the Principal with a written estimate of the time, adjustment to the Fee (if any), adjustment to the Upper Limiting Fee (if any) and effects of the proposed Variation. The value of a Variation must be determined by the Principal's Representative using the schedule of rates set out in the Contract Particulars, or such other reasonable rates determined by the Principal's Representative, and the Fee will be adjusted accordingly.
- (c) If the Principal issues a direction which the Contractor considers to be a Variation but which does not state that it is a Variation, the Contractor must notify the Principal within 5 Business Days.
- (d) Within 10 Business Days of receiving the Notice under clause 5(c), the Principal may issue a direction to the Contractor:

- (i) stating that it does not agree that a particular direction constitutes a Variation; or
- (ii) the amount claimed in respect of those Services calculated in accordance with clause 6; and
- (ii) stating that it does agree that a particular direction constitutes a Variation and will issue a Notice in accordance with clause 5(a).
- (iii) any Expenses incurred during the relevant period,

in each case as supported by:

6. FEE PAYABLE

- (a) Where the Contract Particulars states that the Contractor is to be paid for Services or any part of the Services at a lump sum amount, the Principal will pay the Contractor the amount specified in accordance with clause 7. The amount may be a pro-rata or proportional payment of the lump sum fee and need not be aligned directly with the value of the Services completed in the period covered by the Payment Claim.
- (b) Where the Contract Particulars state that the Contractor is to be paid for Services or any part of the Services by a schedule of rates:
 - (i) the Principal will pay the Contractor the amount calculated by multiplying the measured quantity of each section, item or hour of work actually undertaken in accordance with this Agreement by the applicable rate set out in the Contract Particulars for that section, item or hour, in accordance with clause 7; and
 - (ii) the Principal will not be liable for any amount incurred in excess of the Upper Limiting Fee unless otherwise agreed as a Variation in accordance with clause 5.

- (iv) such information as the Principal requires to substantiate the claim; and
- (v) a properly executed Contractor Statement and Supporting Statement in relation to the Payment Claim.

- (b) A Payment Claim does not create a tax liability under GST Law.
- (c) Within 10 Business Days after receiving a Payment Claim, the Principal's Representative will issue to the Contractor a Payment Schedule evidencing the Principal's Representative's valuation of the money due from the Principal to the Contractor in relation to that Payment Claim and the reasons for any difference. In preparing the Payment Schedule, the Principal's Representative may deduct:
 - (i) any amount claimed by the Principal from the Contractor under this Agreement; and
 - (ii) the value of any of the Services for which payment is claimed that the Principal considers have not been performed in accordance with this Agreement.

7. PAYMENT

- (a) On each Payment Claim Date the Contractor may provide to the Principal a Payment Claim entitled "Payment Claim" setting out:
 - (i) details of the Services provided;

- (d) If an adjudication determination under the Security of Payment Act is made in connection with this Agreement or the Services, the Principal's Representative may account to the parties for any money then due and payable in any subsequent Payment Schedule, including by setting off any amounts payable or paid pursuant to that determination.
- (e) The Principal may correct any error in, or otherwise modify, any previous Payment Schedule.

- (f) Subject to clauses 7(a) and 7(g), the Principal must pay the Contractor the amount set out in a Payment Schedule as payable by the Principal within 15 Business Days of being served with the Payment Claim.
 - (g) The Principal may deduct from any payment otherwise due to the Contractor any amount the subject of a claim by the Principal against the Contractor.
 - (h) Any payment by the Principal for the Services is not an approval by the Principal of the Contractor's compliance with this Agreement, nor evidence of the value of the Services.
 - (i) Any failure by the Principal's Representative to set out in a Payment Schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off (whether under this Agreement or otherwise) will not prejudice the Principal's right to subsequently exercise that right to retain, deduct, withhold or set-off any amount.
- (ii) the Contractor must not issue a tax invoice in respect of any supply it makes to the Principal under this Agreement.
 - (f) The Contractor must be registered for GST purposes unless, before entering this Agreement, the Principal has notified the Contractor that the Principal does not require the Contractor to be registered for GST.
 - (g) Each party must notify the other party if it ceases to be registered for GST purposes or if it ceases to comply with any of the requirements of the GST Law in relation to issuing recipient created tax invoices (including any taxation ruling issued by a taxation authority relating to tax invoices).
 - (h) Despite any other provision of this Agreement, if the Principal is obliged to make any deduction or withholding on account of any tax, charge, rate, duty or impost however described in connection with this Agreement as a result of not being provided with the Contractor's ABN or for any other reason, the Principal may withhold the relevant amount from the payment due to the Contractor and promptly pay that amount to the relevant authority. The Principal has no obligation to pay any additional amount to the Contractor in connection with any withheld amount.

8. TAXES INCLUDING GST

- (a) Unless otherwise stated in this Agreement, amounts payable, and consideration to be provided, in connection with this Agreement exclude GST.
- (b) Terms used in this clause 8 which are not defined in this Agreement, but which are defined in the GST Law, have the meanings given in the GST Law.
- (c) If GST is payable on a supply made under this Agreement, the recipient must pay the supplier an amount equal to the GST payable on that supply at the time the recipient pays or provides consideration for the supply.
- (d) Other than as provided by clause 8(c), the Contractor is responsible for and must pay all taxes and charges payable in connection with the provision of the Services.
- (e) Unless the Principal notifies the Contractor otherwise in relation to a particular supply:
 - (i) the Principal will issue to the Contractor a recipient created tax invoice for each taxable supply made by the Contractor to the Principal under this Agreement; and

9. PRINCIPAL ARRANGED INSURANCE

- (a) The Principal will effect the Principal Arranged Insurance required to cover the Contractor as an insured in accordance with the requirements specified in Annexure B (Insurances) in relation to the provision of the Services.
- (b) The Principal may for its sole convenience and at its absolute discretion list other insureds on the Principal Arranged Insurance, including any other government entity with an interest in the Services.
- (c) The Principal must maintain the Principal Arranged Insurance required to cover the Contractor as an insured until the expiry of the Term.
- (d) Before the earlier of:

- (i) 10 Business Days of the Date of Contract; or
 - (ii) the Contractor starting to provide the Services,
- the Contractor must provide the Principal with all details reasonably requested by the Principal's Insurer for the purpose of the Principal effecting the Principal Arranged Insurance.
- (e) The Contractor acknowledges and agrees that any settlement paid pursuant to a claim under the Principal Arranged Insurance in relation to the Services may be paid directly to the Principal.
 - (f) The Contractor must:
 - (i) ensure that it complies with the conditions of insurance under the Principal Arranged Insurance;
 - (ii) not do or omit to do anything which might vitiate, impair or derogate from the cover under the Principal Arranged Insurance or which might prejudice any claim under the Principal Arranged Insurance;
 - (iii) immediately notify the Principal, upon becoming so aware, of any event which may result in the Principal Arranged Insurance being varied, cancelled or avoided;
 - (iv) immediately notify the Principal in writing, upon becoming so aware, of any occurrence, claim, demand or circumstance that may give rise to a claim under the Principal Arranged Insurance;
 - (v) if a notification is made pursuant to clause 9(f)(iv), provide all information reasonably requested by the Principal, and comply with all reasonable requests made by the Principal, in relation to the occurrence, claim,
- (vi) keep the Principal fully informed of developments concerning any subsequent claim or claims upon the Principal Arranged Insurance; and
 - (vii) ensure that its employee, agents and subcontractors keep the Contractor informed of any occurrence, claim, demand or circumstance that may give rise to a claim under the Principal Arranged Insurance so that the Contractor is able to comply with clause 9(f)(iv).
- (g) The existence of the Principal Arranged Insurance will not reduce, vary, or otherwise affect the Contractor's liabilities and obligations under this Agreement.
 - (h) The Contractor must pay or discharge the relevant deductible or excess set out Annexure B (Insurances) under the heading "Principal Arranged Insurance" payable or retained by itself or the Principal in connection with any claim made in respect of any loss or liability caused by, or contributed to by, the Contractor and its subcontractors covered by the Principal Arranged Insurance.
 - (i) The Contractor can access the public and product the Principal Arranged Insurance terms at: <http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/specifications/pai-primary-ppl.pdf>
- 10. CONTRACTOR'S INSURANCE**
- (a) The Contractor must:
 - (i) obtain and maintain the Contractor Arranged Insurances on the terms, for the risks identified, for the period of time and for the amounts specified in Annexure B (Insurances); and
 - (ii) provide evidence of the insurances obtained and maintained under clause 10(a)(i), in the form of a

certificate of currency, to the Principal on request.

(iv) a liability, event, risk or other matter for which the Contractor is required to insure against under this Agreement, in which case the Contractor's liability will be limited to the greater of:

11. LIABILITY

- (a) The Contractor must indemnify and keep indemnified the Principal against any:
- (i) loss of use or damage to any real or personal property of the Principal; and
 - (ii) claims by any person against the Principal in respect of personal injury or death or loss of use, or damage to property; and
 - (iii) claim for breach of confidence or privacy or misuse of Personal Information,

arising out of or in connection with the Services.

- (b) The Contractor's liability to indemnify the Principal is reduced proportionally to the extent that a malicious or negligent act or omission of the Principal, or employees or agents (other than the Contractor) of the Principal, or a breach of this Agreement by the Principal has contributed to the injury, damage or loss.
- (c) Subject to clause 11(d), the Contractor's total liability to the Principal arising out of or in connection with the Services (however arising) is limited to the amount stated in the Contract Particulars.
- (d) The limitation of liability in clause 11(c) will not apply to any liability arising out of or in any way in connection with:
- (i) liability which cannot be limited at law;
 - (ii) fraud, wilful misconduct or criminal conduct by the Contractor or any of its employees, servants or agents; or
 - (iii) infringement of third party intellectual property rights by the Contractor or its subcontractors;

(A) the amount of insurance that the Contractor is required to effect in relation to that event or those events; and

(B) the amount contemplated by clause 11(c).

(e) To the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) does not apply to this Agreement or any of the Services.

12. CONFIDENTIALITY

- (a) The Contractor must not and must not permit its employees, agents and subcontractors to use or disclose to any person or make public any information obtained by it or them relating to the Project and any materials provided by the Principal to the Contractor for the purpose of performance of the Services or pursuant to this Agreement except:
- (i) if the information is in the public domain (other than as a result of a breach of this Agreement by the Contractor);
 - (ii) if necessary for the performance of the Services; or
 - (iii) as required by law.
- (b) This clause 12 will survive the termination or expiry of this Agreement.

13. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

13.1 Ownership of new Intellectual Property Rights

Subject to clause 13.3, all Intellectual Property Rights which are created or developed by the Contractor in connection with the provision of the Services will vest absolutely in, and are assigned by the

Contractor to, the Principal from the date they are created or developed. The Contractor agrees to do all things necessary to give effect to this clause 13.1.

13.2 Licence to Contractor

The Principal grants to the Contractor and its Subcontractors a non-exclusive, non-transferrable, royalty free licence to use, reproduce and modify the Principal's IP and Third Party IP only to the extent required to provide the Services or meet the Contractor's other obligations under this Agreement. Except as expressly stated in this Agreement, no licence or right to Intellectual Property Rights is transferred to or created for the benefit of the Contractor or any of its employees or subcontractors.

13.3 Ownership of existing Intellectual Property Rights

All Intellectual Property Rights in those aspects of the Services and the Documents which:

- (a) were created by the Contractor before the date the Contractor commences the Services; or
- (b) are developed independently of this Agreement and the Services,

remain the property of the Contractor.

13.4 Licence to the Principal

The Contractor grants the Principal a perpetual, non-exclusive, transferable, irrevocable, royalty-free licence to:

- (a) use, reproduce, add to, modify and communicate to the public all Intellectual Property Rights not assigned to the Principal under clause 13.1 which are incorporated in or necessary to use or enjoy the benefit of any Deliverable or the Services in any manner;
- (b) permit any person to assist the Principal to do any of the things referred to in clause 13.4(a); and
- (c) sublicense any of the rights described in clause 13.4(a) or clause 13.4(b) to any person,

for any purpose. The Principal may for its sole convenience and at its absolute discretion assign this licence or license these rights to any entity that becomes entitled to any interest in the Services or the Deliverables to which the licence relates.

13.5 Indemnity

The Contractor indemnifies the Principal against any liability arising from others making any claims against the Principal in

respect of the ownership of, or rights to use, Intellectual Property Rights the Contractor uses, develops or creates in connection with the provision of the Services including Intellectual Property Rights vesting in the Principal under clause 13.1 or licensed to the Principal under clause 13.4 or arising out of the Principal's use of the Deliverables in accordance with this Agreement.

13.6 Ownership of Documents

All Documents provided to the Principal by the Contractor in connection with the Services will become the Principal's property when provided, and the Contractor must not use them or any information (about or belonging to the Principal) contained in them without the Principal's written consent other than for the purposes of providing the Services to the Principal.

14. MORAL RIGHTS

14.1 Warranty

The Contractor warrants to the Principal that:

- (a) all individuals who may have moral rights (as that expression is defined in the *Copyright Act 1968* (Cth)) in any Documents provided as part of the Services or any works constructed in accordance with that material have validly provided their written consent (pursuant to section 195AWA of that Act) to the Principal (or any other person); and
- (b) the consent referred to in clause 14.1(a) allows the Principal (and others) to deal with that material or those works (including by way of destruction or alteration) and without attribution of authorship in such manner as the Principal may for its sole convenience and at its absolute discretion decide without being held to have infringed any moral right of the individual.

14.2 Existing moral rights

Where the Services relate to any demolition or redevelopment of existing improvements or the use of any material in relation to which moral rights may exist, the Contractor must, in providing the Services, consider the obligations imposed by the *Copyright Act 1968* (Cth) in relation to moral rights and ensure that nothing is done which may place the Principal in breach of those obligations.

15. SUBCONTRACTING

- (a) The Contractor must not assign or subcontract any part of the Services without the prior written approval of the Principal.
- (b) An approval given by the Principal permitting the Contractor to subcontract any portion of the Services does not relieve the Contractor from its obligations and liabilities pursuant to this Agreement and the Contractor will be vicariously liable for the acts and omissions of its subcontractors.

16. CONTRACTOR'S REPRESENTATIVE

The Contractor's Representative will be responsible to the Principal for all aspects of the Services. The Contractor represents and warrants that the Contractor's Representative has full authority to act on behalf of the Contractor and the legal power to bind the Contractor in respect of any matters arising in connection with the Services.

17. PRINCIPAL'S REPRESENTATIVE

The Principal's Representative will act as the Principal's Representative and will have authority to act on behalf of the Principal for all purposes in connection with this Agreement.

18. PERFORMANCE REPORTING AND DISCLOSURE OF CONTRACT INFORMATION

18.1 Government disclosure

The Contractor:

- (a) acknowledges that the Principal has in place processes for assessing the performance of its contractors and that these processes will apply to this Agreement; and
- (b) authorises the Principal, its employees and agents to make any information concerning the Contractor available to NSW government departments or agencies. Such information may be used by those departments and agencies in considering whether to offer the Contractor future work opportunities.

18.2 Disclosure of Contract Information

The Principal may disclose this Agreement (and information concerning the terms of this Agreement) under or in accordance with any one or more of the following:

- (a) the *Government Information (Public Access) Act 2009* (NSW);

- (b) the *Ombudsman Act 1974* (NSW); and
- (c) to satisfy the disclosure requirements of the NSW Auditor General or Parliamentary accountability.

19. TERMINATION

- (a) Without limiting any other provision of this Agreement, the Principal may terminate this Agreement immediately by giving a Notice to the Contractor if:
 - (i) the Contractor breaches any term of this Agreement and the breach is not capable of being remedied or, if the breach is capable of being remedied, the Contractor does not remedy that breach within 10 Business Days of the date of the Notice to the Contractor specifying the breach;
 - (ii) the Contractor becomes, threatens, resolves to become or in the reasonable opinion of the Principal is likely to become subject to any form of insolvency, including administration, receivership, bankruptcy or liquidation; or
 - (iii) the Contractor enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up.
- (b) The Principal may, for its sole convenience and in its absolute discretion, terminate this Agreement at any time for any reason, by giving a Notice to the Contractor. If the Principal terminates pursuant to this clause 19(b), the Principal:
 - (i) may in its discretion, complete the uncompleted part of the Services itself or by engaging any third party; and
 - (ii) must reimburse the Contractor for the cost of Services performed to the date of termination plus the direct costs reasonably incurred by

the Contractor as a result of the termination. Such payment will be a limitation upon the Principal's liability to the Contractor in connection with the termination of this Agreement.

"electronic communication" that would be determined if section 13A of the *Electronic Transactions Act 2000 (NSW)* were to apply in respect of the email.

(c) Upon the earlier of Completion of the Services or termination of this Agreement and subject to clause 19(d), the Contractor must immediately hand over to the Principal all Documents:

- (i) provided by or on behalf of the Principal in connection with the Services (including the Principal's Material); and
- (ii) prepared by the Contractor or others as part of the Documents to be provided to the Principal in connection with, or as part of, the Services.

(d) The Contractor may retain one copy of its own working notes created in the course of providing the Services to the extent necessary to comply with any Law or to maintain compliance with any recognised quality assurance system, subject to the confidentiality and privacy requirements contained in this Agreement.

20. NOTICES

Any Notice given under this Agreement:

- (a) must be in writing addressed to the intended recipient at the address shown for the recipient in the Contract Particulars or the address last notified by the intended recipient to the sender;
- (b) must be signed by an authorised officer of the sender;
- (c) will be taken to have been delivered:
 - (i) in the case of delivery in person - when delivered to the recipient's address for service;
 - (ii) in the case of delivery by post - within 3 Business Days of posting;
 - (iii) if sent by email, the date for receipt of an

If delivery or receipt of a Notice occurs on a day that is not a Business Day, or occurs later than 5.00 pm (local time) on any day, it will be taken to have occurred at the commencement of business on the next Business Day.

21. DISPUTE RESOLUTION

- (a) The Contractor and the Principal must endeavour to resolve any dispute expeditiously by negotiation. If a dispute between the Contractor and the Principal is not resolved by negotiation, then, subject to the parties' right to seek injunctive or urgent declaratory relief, before either party has recourse to litigation, the dispute must be referred to expert determination. If the Contractor and the Principal do not agree upon an independent expert, either party may request the Chairman of the Resolution Institute to nominate.
- (b) The expert determination will be conducted in accordance with the Expert Determination Rules of the Resolution Institute and the parties must sign such form of engagement as the expert may reasonably require.
- (c) Except where the parties otherwise agree in writing or the Expert Determination Rules of the Resolution Institute otherwise provide:
 - (i) each party must bear its own costs and pay one half of the expert's fees and expenses;
 - (ii) the expert must not act as an arbitrator; and
 - (iii) the determination of the expert will be final and binding on the parties.
- (d) Each party must continue to perform its obligations under this Agreement despite the existence of a dispute.

22. GENERAL

22.1 Governing Law

This Agreement is governed by and must be construed according to the law applying in New South Wales.

22.2 Amendments

This Agreement may only be varied by a document signed by or on behalf of each party.

22.3 Entire agreement

To the extent permitted by law, in relation to its subject matter, this Agreement:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

22.4 Severance

If at any time a provision of this Agreement is or becomes illegal, void, invalid or unenforceable in any respect under the law of any jurisdiction that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

22.5 Publicity

The Contractor must obtain the written approval of the Principal before publishing or publicising any information associated with the Project, the Principal or the Services or seeking to use the Principal's name as a reference.

Annexure A – Services

[insert]

[Guidance Note: Insert or attach full details of all TfNSW's applicable requirements for the Services: Scope of Works or Brief; Australian Standards; and TfNSW specifications. Do not attach the Contractor's response to the RFT or the Contractor's brief.]

Annexure B – Insurances

Table 1: Table of Insurances

[Guidance Note: Amounts and types of insurance required to be reviewed for each engagement.]

	TYPE OF INSURANCE	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
Principal Arranged Insurance				
The details of the policies below are provided in the certificate of currency issued by the Principal's Insurer. A copy of the Public and Products Liability policy may be inspected by appointment at the offices of the Principal's Insurer.				
1	Public and Products Liability	\$20m	Until the expiry of the Term	The Principal, the Contractor, the Subcontractors and any other parties required by the Principal.
Excess for Public and Products Liability	<p>The Contractor is responsible for meeting the amount of any excess payable under the Principal Arranged Insurance in respect of any claim made by it. The excess amounts current at the Date of Contract are:</p> <p style="padding-left: 40px;">Injury to Contractors – excess is \$100,000 per Event/Occurrence</p> <p style="padding-left: 40px;">Products Liability – excess is \$50,000 per Event/Occurrence</p> <p style="padding-left: 40px;">Underground Services – excess is \$50,000 per Event/Occurrence</p> <p style="padding-left: 40px;">Any other claim – excess is \$10,000 per Event/Occurrence</p> <p>The Contractor may effect insurance to cover the amount of that excess.</p>			
Contractor Arranged Insurances				
2	Motor Vehicle Comprehensive or Third Party Property Damage effected with an approved insurer as defined in Definitions and Notes clause 1 below	<p>\$20 million for any single occurrence.</p> <p>[Guidance note: Insurance amount to be reviewed for each Agreement]</p>	Annual until the later of the Contractor ceasing to perform the Services and expiry of the Term.	<p>(a) Motor Vehicles owned or used by the Contractor or subcontractors directly or indirectly engaged in performance of the Services.</p> <p>(b) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 2 below.</p> <p>(c) If applicable to this Agreement – all plant and equipment owned or used by the Contractor or subcontractors directly or indirectly engaged in the performance of the Services.</p>

	TYPE OF INSURANCE	MINIMUM SUM INSURED			PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
3	Workers Compensation effected with an approved insurer as defined in Definitions and Notes clause 1 below	As per the relevant Workers Compensation legislation			Annual until the later of the Contractor ceasing to perform the Services and expiry of the Term.	As per State Workers Compensation legislation.
4	Professional Indemnity Insurance	Category	Minimum level of Professional Indemnity Insurance	Example of services relevant to the level of Professional Indemnity Insurance	6 years from the later of date of Completion and expiry of the Term.	The Contractor, its Subcontractors and anyone else who is involved in providing the Services for or on behalf of the Contractor.
		PI-1	\$1M	<ul style="list-style-type: none"> • REF preparation and specialist environmental studies. • Route Studies. • Environmental Monitoring. • Site Management - contract value up to \$2M. • Technical advice. • Laboratory Testing (NATA Accredited Laboratory). • Survey. 		
		PI-2	\$2M	<ul style="list-style-type: none"> • Traffic Modelling. 		
5	Additional Insurance	As specified in the Contract Particulars.				

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 listed in Note 1(a) or 1(b).

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

3. The Principal's Insurer is:

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

[Guidance Note: TfNSW staff to contact the TfNSW Insurance Team where any insurance submissions or provisions are not complying with this document or where additional specific insurances may be required.]

Notes for Contractor Statement

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

Generic Version of Statement

This form has been specially adapted for use specifically for Contractors working for the Principal. Generic versions of this Statement for non-Principal 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

The Principal 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/rprt59.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.

Part II

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 Regulations 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.