

1 INTERPRETATION AND GENERAL MATTERS

1.1 Definitions

- 1.1.1 'Agreement' means these Purchase Order Terms and Conditions which will apply to all Purchase Orders issued to the Supplier.
- 1.1.2 'Associated Persons' means all Persons with whom the Supplier has any relationship in connection with the performance of this Agreement including, without limitation, any Related Body Corporate, employee, representative, agent, contractor, partner or subcontractor.
- 1.1.3 'Background Supplier Material' means all Material owned by, or licensed to the Supplier, that arose independently of this Agreement or Purchase Order.
- 1.1.4 'Contract Material' means all Material developed by the Supplier for the purpose of providing the Goods and/or Services.
- 1.1.5 'Customer' means Great River City Light Rail Pty Ltd (ABN 60 622 239 605) or its Related Bodies Corporate. The Supplier acknowledges that notwithstanding anything else in this Agreement and to the extent permitted by law, each Related Body Corporate of the Customer is solely responsible to the Supplier for any Purchase Orders issued by that entity to the Supplier.
- 1.1.6 'Day' means a calendar day.
- 1.1.7 'DDP' means in relation to the delivery of the Goods, Delivered Duty Paid (Incoterms 2020) and includes the responsibility (and associated costs) for packing, loading, transportation, delivery and insurance (for the full replaced value of the Goods) to the nominated delivery point for the Goods.
- 1.1.8 'Environment' means ecosystems and their constituent parts, including people and communities:
- (a) all natural and physical resources;
 - (b) the qualities and characteristics of locations, places and areas, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest harmony and sense of community; and
 - (c) the social, economic, aesthetic and cultural conditions that affect or are affected by things mentioned in paragraphs (a), (b) and (c).
- 1.1.9 'Force Majeure Event' means any occurrence as a direct result of which the party relying on it is prevented from or delayed in performing any of its obligations (other than a payment obligation) under this Agreement and that is beyond the reasonable control of that party, including forces of nature and action or inaction by a government agency and labour disputes not solely involving a party's personnel, but excluding actions or omissions of a subcontractor or supply chain delays.
- 1.1.10 'Goods' means all goods, equipment, materials, articles, or any other property or parts to be provided to the Customer by the Supplier under the Purchase Order and includes, without limitation all ancillary activities such as design, manufacture, inspection, quality assurance and control, painting, packing and delivery as specified or required hereunder or by a Purchase Order.
- 1.1.11 'Intellectual Property Rights' means all rights in copyright, trademarks (including service marks), trade and service names, designs, circuit layouts, patents, inventions, discoveries and rights of confidence and all other rights or forms of protection of a similar nature or having a similar or equivalent effect to any of them, whether under international convention or otherwise that may subsist anywhere in the world, whether current or future or registered (including applications for any of the above) or unregistered.
- 1.1.12 'Losses' means all direct loss, damage, liability, cost or expense arising naturally from the performance or non-performance (including any negligent or wilful act or omission), any breach or default of parties' obligations under this Agreement or any Purchase Order and includes any direct loss, damage, liability, cost or expense agreed to be paid by way of settlement or compromise.
- 1.1.13 'Material' includes any data, information and other documents (including electronic documents) and software.
- 1.1.14 'Person' means any individual or entity, company, special partnership, joint venture, association, trust, investment fund, companies without legal personality, agencies and any other public or private entity, including any governmental body.
- 1.1.15 'Prohibited Act' means:
- (a) offering, giving, authorising or agreeing to give any gift, commission, consideration or other benefit of any kind:
 - (i) to, or at the direction of, any third party (including any Public Official, company or any other Person) as an improper inducement to make, or an improper reward for making, any decision favourable to the interests of either party to this Agreement;
 - (ii) to any Person, intended to, or which does, influence or reward that Person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept;
 - (iii) to, or for, a Public Official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business; or
 - (iv) which a reasonable Person would otherwise consider to be unethical, illegal or improper,
 - (b) committing any offence under any applicable law, rule or regulation in any relevant jurisdiction creating offences in respect of the matters outlined at clause 13.1.3; or
 - (c) defrauding or attempting to defraud or conspiring to defraud any third party including

- any governmental, administrative, regulatory or other official body.
- 1.1.16 'Prohibited Subcontractor' means:
(a) any subcontractor or supplier (including the Supplier):
(i) who has made an admission to the Independent Commission Against Corruption that it has engaged in; or
(ii) in respect of whom the Independent Commission Against Corruption has made a finding that it has engaged in corrupt conduct as defined in the Independent Commission Against Corruption Act 1988 (NSW); or
(b) any subcontractor or supplier (including the Supplier) employing an employee in respect of whom paragraphs 1.1.16(a)(i) or (a)(ii) apply.
- 1.1.17 'Proportionate Liability Scheme' means:
(a) Part 4 of the *Civil Liability Act 2002* (NSW);
(b) Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);
(c) Part 2 of the *Civil Liability Act 2003* (QLD);
(d) Part IVAA of the *Wrongs Act 1958* (VIC);
(e) *Proportionate Liability Act 2005* (NT);
(f) Part 1F of the *Civil Liability Act 2002* (WA); and
(g) Part 9A of the *Civil Liability Act 2002* (Tas), and any equivalent statutory provision in any State or Territory.
- 1.1.18 'Public Official' includes, without limitation, any Person holding (or acting on behalf of a Person holding) a legislative, administrative or judicial office, including any Person employed by or acting on behalf of a public agency, a state-owned or public enterprise, a public international organisation, any federal or regional government department or agency, any political party, any candidate for political office or a relative or associate of any such Person.
- 1.1.19 'Purchase Order' means the purchase order issued by the Customer to the Supplier from time to time.
- 1.1.20 'Purchase Order Form' means the Purchase Order document to be completed by the Customer and issued to the Supplier, which identifies the Supplier and includes but is not limited to a brief description of the Services and/or Goods and a list of the documents comprising the Purchase Order.
- 1.1.21 'Related Body Corporate' has the meaning given in the *Corporations Act 2001* (Cth).
- 1.1.22 'Sanctioned Person' means any Person who is subject of, or with whom dealings are restricted or prohibited by, Sanctions (including without limitation as a result of being:
(a) owned or controlled directly or indirectly by any Person which is a designated target of Sanctions; or
(b) organised under the laws of, or a citizen or resident of, any country or territory that is, or whose government is, subject to general or country-wide Sanctions.
- 1.1.23 'Sanctions' means any economic or financial sanctions (excluding penalties relating to tax, antitrust, anti-corruption or anti-money laundering matters), trade sanctions or similar measures enacted, administered, imposed or enforced by any of the Sanctions Authorities.
- 1.1.24 'Sanctions Authorities' means the relevant sanctioning authorities of:
(a) the United Nations;
(b) the United States of America;
(c) the European Union or any present or future member state thereof;
(d) the United Kingdom of Great Britain and Northern Ireland;
(e) the French Republic;
(f) Australia; or
(g) New Zealand.
- 1.1.25 'Supplier' means the Person performing the Services and/or providing the Goods, as identified in the Purchase Order Form.
- 1.1.26 'Supplier Charter' means the Transdev code of conduct for its suppliers available on Transdev's website <https://www.transdev.com.au/legal-notice/>.
- 1.1.27 'Services' means the services as set out and further detailed in the Purchase Order Form.
- 1.1.28 'Schedules' means the schedules provided to the Supplier with this Agreement.
- 1.1.29 'TfNSW' means Transport for NSW (ABN 18 804 239 602) of 18 Lee Street, Chippendale NSW 2008.
- 1.1.30 'Warranty Period' means:
(a) in relation to the Services, the greater of the period specified in the Schedules and the period commencing on the date of completion of the Services and lasting for a period of 1 year thereafter;
(b) in relation to the Goods, the greater of the period specified in the Schedules and the period of one year commencing on the date of delivery.
- 1.2 Interpretations**
In this Agreement and each Purchase Order (unless the context otherwise requires):
- 1.2.1 Words importing the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and must not be used to interpret the text.
- 1.2.2 Rights and remedies under this Agreement and any Purchase Order are in addition to rights or remedies available at law (including under statute).
- 1.2.3 All references to Persons include their successors, transferees and permitted assignees.
- 1.2.4 A reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time.
- 1.2.5 Wherever 'include' or any form of that word is used, it must be construed as if it were followed by '(without being limited to)'.
- 1.3 Order of Precedence**

- 1.3.1 Unless otherwise stated, the order of precedence of any of the following documents listed in the Purchase Order, will be as follows:
- (a) this Agreement;
 - (b) the Purchase Order;
 - (c) the Schedules;
 - (d) Specification(s); and
 - (e) Drawing(s).
- 1.4 No Exclusivity or Volume Commitment**
- 1.4.1 The Supplier acknowledges and agrees that:
- (a) it is not, and will not be, the exclusive contractor to the customer for the performance of any or all of the Services and/or the supply of the Goods;
 - (b) the Customer is not under any obligation to issue to, or direct the Supplier to perform any minimum volume of Services or supply a minimum quantity of the Goods under this Agreement;
 - (c) no representation has been made by the Customer as to the number, volume or value of Services or Goods that it may direct or require the Supplier to perform or supply under this Agreement or otherwise.
- 2 SUPPLIER OBLIGATIONS**
- 2.1 Supplier to Inform Itself**
- 2.1.1 The Supplier shall be deemed to have carefully examined all documents furnished by the Customer and be fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the performance of the Services and/or the supply of the Goods. No increase in the Purchase Order price will be allowed for the Supplier's failure to ensure that it is fully informed regarding such circumstances.
- 2.2 Purchase Orders**
- 2.2.1 The Customer may issue from time to time a written Purchase Order to the Supplier.
- 2.2.2 Upon receipt of an authorised Purchase Order, the Supplier will undertake the performance of the Services and/or Supply of the Goods requested within the Purchase Order unless the Supplier notifies the Customer in writing within 24 hours from receipt of the Purchase Order that the Supplier is unable to perform the Services and/or supply the Goods. A separate contract shall be formed between the parties for each such Purchase Order which will remain subject to this Agreement.
- 2.3 Confidentiality**
- 2.3.1 The Supplier must not disclose any information about, or documentation provided by, the Customer to any other party without the prior written consent of the Customer. The obligations under this clause shall be continuing obligations and shall survive the completion or termination of a Purchase Order.
- 2.3.2 Unless where required by law, the Supplier must not issue any information which includes details about this Agreement, the Services and/or the Purchase Order, for any publication in any news or communication media, without the prior written approval of the Customer.
- 2.3.3 On request by the Customer, the Supplier must execute (and procure that each of its subcontractors execute) a confidentiality undertaking in favour of TfNSW in such form as is reasonably required by the Customer.
- 2.4 Waiver**
- 2.4.1 No failure or delay on the part of the Customer in exercising any of its rights under this Agreement or a Purchase Order shall be construed as constituting a waiver of any such rights.
- 2.5 Subcontracting and Assignment**
- 2.5.1 The Supplier must not subcontract nor assign all or any part of this Agreement or a Purchase Order without the prior written approval of the Customer (in its absolute discretion). The Supplier must provide for the approval of the Customer full particulars or any work to be subcontracted together with details of the proposed subcontractor prior to entering any subcontract.
- 2.5.2 Approval of the Customer to any subcontract will in no way relieve the Supplier of any of its obligations under the Purchase Order.
- 2.5.3 Whenever requested by the Customer, the Supplier must give to the Customer details of each of its approved subcontracts, including the name and address of the subcontractor (and its subcontractors), and the works, goods or services being provided under the subcontract. The Supplier acknowledges that this information may be disclosed to TfNSW by the Customer.
- 2.5.4 The Customer may assign this Agreement or a Purchase Order to any Related Body Corporate or any successor operator of the Customer's relevant business activities.
- 2.6 Prohibited Subcontractor**
- 2.6.1 The Supplier and any approved subcontractors, must not be a Prohibited Subcontractor.
- 2.6.2 In the event that the Supplier is (or at any time during the term of this Agreement or any Purchase Order, becomes) a Prohibited Subcontractor, it must immediately advise the Customer of such circumstances.
- 2.6.3 The Supplier acknowledges and agrees that if it is (or becomes) a Prohibited Subcontractor, this will constitute a material breach under the Agreement, and such a breach will trigger the termination of this Agreement and all Purchase Orders under clause 6.1 of this Agreement.
- 2.7 Entire Agreement**
- 2.7.1 This Agreement and each Purchase Order constitutes the entire agreement between the Customer and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of issuing a Purchase Order has any effect on the Purchase Order unless specifically incorporated herein.

2.7.2 Without limitation, no quotation or Supplier standard terms and conditions of supply or equivalent shall apply to this Agreement or any Purchase Order unless otherwise agreed in writing by an authorised representative of the Customer.

2.8 Communications

2.8.1 Any notice or other communication required under the Purchase Order shall be delivered in writing. The notice shall take effect from the time when it is delivered to or received at the nominated address of the parties (being the address specified on the Purchase Order Form).

2.9 Licenses and Laws

2.9.1 The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, reasonable directions received from the Customer, orders and rules and with the lawful requirements of public authorities and other authorities in any way related to the supply of the Goods and/or the performance of Services including without limitation all occupational health and safety laws. No change in law will affect the Purchase Order price unless otherwise stated in the Purchase Order.

2.9.2 The Supplier will ensure all stages of the supply chain within its control are compliant with the *Heavy Vehicle National Law Act 2012 (QLD)* (HVNL) (as amended from time to time). All deliveries by the Supplier must be in accordance with the HVNL and any other relevant legal requirements. The Supplier must bring to the Customer's attention any delivery requirements (including but not limited to delivery timing, load capacity and unloading requirements) which may encourage breaches of the HVNL and the Customer will (acting reasonably) discuss varying these requirements.

2.9.3 The Supplier and any Person engaged in the provision of the Goods and/or Services must:

- (a) comply with the Supplier Charter;
- (b) not engage in unethical work practices; and
- (c) not engage employees or subcontracted workers upon terms and conditions that are in breach of any human rights legislation, including but not limited to the:
 - (i) *Modern Slavery Act 2018 (Cth)*;
 - (ii) *International Covenant on Civil and Political Rights*;
 - (iii) *International Bill of Human Rights*;
 - (iv) *ILO Declaration on Fundamental Principles and Rights at Work*;
 - (v) *United Nations Guiding Principles on Business and Human Rights*; and
 - (vi) relevant State legislation such as the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

3 PERFORMANCE AND QUALITY

3.1 Materials and Workmanship

3.1.1 All Services and/or Goods shall be fit for their intended purpose as such purpose is stated in, or reasonably inferred from, this Agreement or the

Purchase Order. The Services must be carried out and the Goods must perform in accordance with all applicable Australian standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation, all statutory obligations in relation to occupational health and safety.

3.2 Supplier Qualifications and Personnel

3.2.1 The Supplier represents and warrants to the Customer that it has the necessary skills, resources, experience and all applicable licenses to successfully perform the Services (including the provision of any equipment necessary to perform the Services) and/or supplier the Goods in accordance with the requirements of the Purchase Order.

3.2.2 The Supplier must at no cost to the Customer, promptly remove from the Customer's site any employee or agent of the Supplier (or employee of any subcontractor of the Supplier), performing the Services, as directed by the Customer where the Customer reasonably considers that such employee or agent has not complied with this Agreement or a Purchase Order.

3.2.3 If requested by the Customer, the Supplier must provide evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Customer (acting reasonably), before the Supplier or a subcontractor of the Supplier (as the case may be) provides such Goods and/or Services.

3.3 Testing and Inspection

3.3.1 The Goods and/or Services must be tested in accordance with the requirements of the Purchase Order, including any Specifications. Unless otherwise stated in the Purchase Order, any tests and the costs thereof will be the responsibility of the Supplier. The results of tests shall be promptly supplied to the Customer in writing upon request.

3.3.2 The Customer will have the right to inspect and monitor performance of the Services and/or the delivery of the Goods and the Supplier must give the Customer access to the Supplier's premises for such purpose during its normal working hours. The Services and/or Goods will not be accepted by the Customer until inspected and approved in writing by the Customer. Any inspection by the Customer will not relieve the Supplier from its obligations to comply with the requirements of this Agreement and any Purchase Order.

3.4 Defects, Warranties and Representations

3.4.1 The Supplier warrants that the Goods:

- (a) unless otherwise agreed with the Customer, shall be new;
- (b) are free from liens, charges, encumbrances, mortgages or other defects in title;
- (c) are prepared or manufactured with due care and skill and using high quality materials,

- techniques and standards and in accordance with all applicable laws;
- (d) are fit for the stated purpose or purposes reasonable inferred from this Agreement or the Purchase Order;
- (e) comply in all material respects with the specifications or product description for the Goods provided by the Supplier and specified in the Purchase Order. If no specifications have been published or agreed, the Goods shall be of the best quality appropriate for their intended purpose.
- 3.4.2 The Supplier warrants that the Services shall conform:
- (a) to the conditions and specifications of the Purchase Order;
- (b) to all applicable laws and regulations to which the Services are subject; and
- (c) with any performance standard specified in the Purchase Order (or included in related specifications or drawings provided by the Supplier and agreed with the Customer).
- 3.4.3 The Supplier acknowledges that the Customer adheres to certain values and principles designed to ensure conduct of business in a socially responsible manner by promoting sustainable business development through commitments towards its principal stakeholders as more fully set forth in the following documents (available at Transdev Group website www.transdev.com):
- (a) Human Rights Group Statement, dated 21 December 2018;
- (b) Code of Ethics, dated July 2019; and
- (c) Anti-corruption, money laundering and terrorism financing (ACMF) Code of conduct (as updated from time to time).
- 3.4.4 The Supplier warrants that it will comply with any of the Customer's policies referenced in the Purchase Order or as notified by the Customer to the Supplier relating to the Customer's privacy or occupational health and safety policies (including drug and alcohol policies and the documents listed at clause 3.4.3).
- 3.4.5 The warranties noted in this clause 3.4 are in addition to any statutory warranties applicable to the Services and/or Goods.
- 3.4.6 During the Warranty Period, the Customer may give written notice to the Supplier of any failure or defect in the Services and/or Goods. The Supplier must without delay and at no cost to the Customer:
- (a) correct any defect in the Services covered by the warranty, by way of re-performance of the Services in a manner acceptable to the Customer; or
- (b) correct any defect or failure in the Goods covered by the warranty, by way of repair, or replacement unless otherwise agreed by the Customer.
- 3.4.7 If the Supplier fails to correct any defects and failures, or which it has been notified by the Customer, within the time specified in the notice (which must not be less than five (5) Business Days), the Customer will have the right to rectify the Services and/or Goods itself or have the rectification undertaken by a third party at the Supplier's cost.
- 3.4.8 Where the Supplier is not the original equipment manufacturer of the Goods, the Supplier must obtain for the Customer's benefit such standard warranties, indemnities and rights as those outlined in this Agreement and any Purchase Order and where more are offered then the Supplier must provide such additional warranties, indemnities and rights to the Customer at no additional cost.
- 3.4.9 The Goods shall be at the Supplier's risk until delivery has been accepted by the Customer (acting reasonably) notwithstanding that payment may have already been made and title passed to the Customer.
- ## 4 DELIVERY AND DELAY
- ### 4.1 Standards of Performance
- 4.1.1 Unless otherwise specified in the Purchase Order, Goods must be delivered DDP (adequately packaged and protected to ensure safe delivery) to the delivery point and by the delivery date(s) specified in the Purchase Order.
- 4.1.2 The Supplier will be required to comply with all occupational health and safety requirements of the Customer (including completion of site induction processes) prior to it, its agents or contractors delivering the Goods in accordance with this Agreement and the Purchase Order.
- 4.1.3 The Supplier must take all reasonable steps to minimise or prevent any delay in the performance of the Services or the delivery of the Goods. The Customer may grant an extension of time to the nominated delivery date provided or in the performance of the Services provided:
- (a) the delay is caused by any breach or act of prevention by the Customer, (without fault of the Supplier); and
- (b) the Supplier has notified the Customer in writing within 10 (10) days of the delay occurring (or such other time as may be specified in the Purchase Order) of its claim for an extension of time. The Customer shall not be liable for any extension of time claim that is not lodged in writing with the Customer within ten (10) days of the delay occurring.
- 4.1.4 The Customer may, in its absolute discretion (and with no obligation to do so) extend the time for performance or delivery for any other reason at any time.
- ### 4.2 Failure to Perform
- 4.2.1 If the Supplier fails to deliver the Goods by the specified delivery date(s) (except where the Supplier is granted an extension of time in accordance with this Agreement or where due to a force majeure event in accordance with clause 6.4 of this Agreement), the Customer may:

- (a) terminate the Purchase Order either in whole or in part for default, in accordance with the provisions of clause 6.1; or
- (b) claim from the Supplier, liquidated damages and the Supplier will be immediately liable to pay the Customer liquidated damages at the applicable rate specified in the Purchase Order. The Supplier will not be liable for liquidated damages to the extent that the delay is due to a breach of this Agreement or a Purchase Order by the Customer or any negligent act or omission of the Customer; and
- (c) the parties agree (which is acknowledged by the acceptance by the Supplier of the Purchase Order) that the amount of liquidated damages referred to in the Purchase Order and agreed by the Supplier constitutes a reasonable and good faith pre-estimate of the anticipated or actual loss or damage that will be incurred by the Customer as a result of the Supplier's failure to complete a Purchase Order by the delivery dates required by such Purchase Order and are reasonable and do not constitute and are not intended to be a penalty.

5 VARIATIONS

5.1 Variation Validity

- 5.1.1 The Customer and Supplier may agree to vary work under the Purchase Order or any condition thereof and the Supplier must carry out any such variation where agreed in writing. In the event of any such variation, the Supplier's price (addition or reduction) will be varied together with the delivery date(s) for the Services and/or Goods. Any variation to the price will be consistent with prices charged by the Supplier in accordance with the Purchase Order. If agreement cannot be reached in relation to a revised price or delivery date(s), the parties will seek to resolve the dispute by escalation to senior management.
- 5.1.2 The Supplier must not vary the work under the Purchase Order of any condition thereof, without the prior written consent of the Customer which must specifically refer to the variation to this Agreement or a Purchase Order.

6 TERMINATION

6.1 Termination by Default

- 6.1.1 Without limiting any other rights it may have, a party (the 'notifying party') may give a written notice stating its intention to terminate this Agreement or Purchase Order pursuant to this clause 6.1 to the other party (the 'defaulting party') in the event that the defaulting party:
 - (a) abandons or repudiates the Purchase Order;
 - (b) becomes insolvent or upon the appointment of a liquidator, administrator or receiver;
 - (c) suspends performance of this Agreement or a Purchase Order for a significant time or fails to pay monies due under the Purchase Order, without reasonable cause;

- (d) breaches any of the terms and conditions of this Agreement or a Purchase Order which is not remedied within seven (7) days of notice to do so; or
- (e) is in material breach of any of the terms and conditions of this Agreement or any Purchase Order.

6.2 Suspension and Termination for Ethics and Compliance violations

- 6.2.1 If the Supplier or any Associated Persons breaches clauses 13.1.3, 13.1.3, it shall notify the Customer in writing within five (5) days of such breach.
- 6.2.2 Notwithstanding and without prejudice to any other provisions of this Agreement:
 - (a) if a reasonable suspicion arises that any provision of clauses 13.1.3, 13.1.5 and/or Customer policies in respect of the fight against corruption and influence peddling, embargoes, arms, drug trafficking and/or terrorism have not been complied with by the Supplier or an Associated Person, the Customer may suspend and/or terminate this Agreement on grounds of material breach with immediate effect. In such circumstances, no compensation shall be due to the Supplier (other than for Services and Goods supplied up until the date of the breach) and the Supplier shall indemnify the Customer or any Related Body Corporate from and against all damages, losses, costs (including legal fees), expenses and liabilities arising out of, or in connection with, any such non-compliance and/or related suspension or termination of this Agreement; and
 - (b) in the event the Customer reasonably suspects that a breach of internationally recognised human rights or any other ethics and compliance rules (with the exception of those mentioned in clause 13.1.3) has occurred by the Supplier or an Associated Person, the Customer may terminate this Agreement if such a breach has not been remedied in accordance with a notice given by the Customer specifying the breach and requiring its remedy within a specified period of time.

6.3 Termination at Customer's Convenience

- 6.3.1 Notwithstanding any other provisions of this Agreement or a Purchase Order, the Customer may terminate a Purchase Order by giving seven (7) days written notice to the Supplier. In the event of termination by the Customer under this clause, and provided the Supplier is not in default, the Customer shall pay the Supplier for work carried out prior to termination and all direct costs incurred and associated directly with the cancellation of any orders placed by the Customer prior to termination. The Customer shall not otherwise be liable for any other costs, losses, damages or expenses of any kind whatsoever of the Supplier in respect of the termination (including any loss or revenue or profit).

6.4 Force Majeure Events

- 6.4.1 Neither party will be liable for any delay or failure to perform its obligations required by this Agreement to the extent such delay or failure is directly due to a Force Majeure Event.
- 6.4.2 If a party is affected by a Force Majeure Event, it must promptly notify the other party providing full details of the Force Majeure Event, its likely duration and impact on the affected party's performance under this Agreement and/or Purchase Orders and its plans or proposals for overcoming or minimising the impact of the Force Majeure on its performance.
- 6.4.3 If the performance of either party is delayed by a Force Majeure Event longer than one (1) month, either party may terminate this Agreement by providing written notice to the other party.

7 PRICE AND PAYMENT**7.1 Price**

- 7.1.1 Unless otherwise stated in the Purchase Order, prices shall be fixed and not subject to any variation, including but not limited to variation in the cost of labour, materials or exchange rates.

7.2 Payment

- 7.2.1 The Supplier shall be responsible for the payment of all relevant Australian (Federal, State and local Government) and overseas taxes, goods and services taxes, PAYG taxes applicable to the Supplier, duties and charges payable with respect to the Goods and/or Services. The Purchase Order price will be deemed to be inclusive of all such taxes, duties and charges.
- 7.2.2 Unless otherwise specified in the Purchase Order, invoices for payment must be submitted to the Customer for payment following delivery and acceptance by the Customer of the Goods or following performance of the Services, and payment of the approved amount will be made by the Customer no later than thirty (30) days from receipt of a valid invoice.
- 7.2.3 All claims for payment made by the Supplier must specify:
- the purchase order number to which the invoice relates;
 - the Goods (including quantity and description) which have been delivered and accepted by the Customer or description of the Services which have been completed;
 - provide evidence of the amount due to the Supplier;
 - attach a statutory declaration in the relevant form required by the Customer (if requested) confirming payment of employees and subcontractors; and
 - include such other information as the Customer may reasonable require.
- 7.2.4 Without limiting the Customer's rights under any other provision of this Agreement, any debt due under this Agreement or a Purchase Order from the Supplier to the Customer may be deducted by the Customer from

any monies which may be or subsequently become payable to the Supplier by the Customer.

- 7.2.5 To the extent that any Taxable Supply occurs under the Purchase Order then:
- the party who is the supplier will be entitled to increase the consideration for the Taxable Supply identified in the Purchase Order ("net consideration") by the amount of any applicable GST calculated in accordance with the Act;
 - the recipient shall pay such increase consideration;
 - the supplier must in a situation such as described in clause 7.2.5, issue to the recipient at the time of claiming payment, a valid tax invoice (in accordance with the Act) for the purpose of obtaining an input tax credit for any GST so paid;
 - in clause 7.2, "**Act**" means *New Tax System (Goods and Services Tax) Act 1999 (Cth)* and its associated legislation and regulations, "**GST**" means the goods and services tax imposed by the Act and "**Taxable Supply**" means a taxable supply under the Act.

8 RELATIONSHIP**8.1 Independent Parties**

- 8.1.1 In relation to the performance of Services, the Supplier will provide the Services as an independent contractor and nothing in this Agreement or the Purchase Order will be construed so as to constitute the Supplier as an employee of the Customer or constitute a partnership between the parties or an agent or legal representative of the other party.

9 FINANCIAL ASSESSMENT

- 9.1.1 The Supplier agrees that the Customer and/or TfNSW may, at any time prior to the expiry of the Agreement, either itself or through a third party, undertake a financial assessment of the Supplier and any of its subcontractors. The Supplier must assist the Customer with such assessment, including by providing any documents, information and evidence and providing access to the Supplier's records and books of account, as is reasonably necessary to enable the performance of the assessment.

10 INTELLECTUAL PROPERTY**10.1 Rights**

- 10.1.1 The Supplier assigns to the Customer all Intellectual Property Rights in all Contract Material on creation, other than in respect of Intellectual Property owned by third parties. This does not prevent the Supplier from using the Contract Material to provide the Goods and Services. This use is on a non-exclusive, non-transferrable, royalty-free basis for the term of the Purchase Order and does not allow any further distribution or exploitation by the Supplier unless the Customer agrees otherwise.
- 10.1.2 The Supplier grants the Customer a perpetual, irrevocable, non-exclusive, royalty-free licence to use, copy, modify and create derivative works from all Background Supplier Material incorporated into the

Contract Material for the purpose of exercising its rights in relation to the Contract Material.

- 10.1.3 Where the Contract Material or Background Supplier Material contains Intellectual Property owned by, or licensed from, a third party, the Supplier will obtain the best available commercial terms from such third party to permit the Customer to exercise its rights in a manner consistent with this Agreement.

10.2 Intellectual Property Indemnity

- 10.2.1 The Supplier shall indemnify the Customer against all damages and costs awarded against the Customer for infringement of any Intellectual Property Rights granted or registered at the date of Purchase Order and resulting from the use, sale or supply of the Goods or Services but this indemnity shall not apply to any infringement which is due to the association or combination of the Goods with any other article, apparatus or device by the Customer or to any goods or parts thereof made to designs supplied by the Customer.

- 10.2.2 The indemnity in clause 10.2 is conditional on the Customer giving the Supplier prompt written notice of any claim for infringement and consulting with the Supplier prior to settling or compromising any such claim.

11 INDEMNITIES AND INSURANCE

11.1 Indemnity

- 11.1.1 The Supplier indemnifies the Customer in respect of all direct Losses arising out of personal injury or death (including disease or illness), third party property damage, breach of a third party's Intellectual Property Rights and breach of confidence arising from the acts or omissions of the Supplier.

- 11.1.2 The liability of the Supplier arising under the indemnity in clause 11.1.1 is unlimited, however the liability of the Supplier for a breach of this Agreement is limited to an amount equal to the amounts paid or payable by the Customer to the Supplier during the previous 12 month period, except that this limitation of liability will not apply in respect of insurance proceeds recovered, or recoverable, by the Supplier which shall be paid in full to the Customer up to the value of the direct Losses suffered or incurred by the Customer.

- 11.1.3 The Supplier further indemnifies the Customer in respect of all Loss arising from:
- fraud or fraudulent misrepresentation;
 - unlawful act(s); or
 - wilful default, meaning an act or failure to act by the Supplier that was intended to cause, or was in reckless disregard of or wanton indifference to, harmful consequences, excluding any innocent act, omission, mistake or error of judgement.

- 11.1.4 The Supplier must comply with all requirements of Law and this Agreement for protection of the Environment. The Supplier indemnifies the Customer for all Losses arising from damage to the Environment caused by the Supplier's negligent acts

or omissions arising from, or in connection with, this Agreement.

- 11.1.5 To the extent permitted by law, a Proportionate Liability Scheme is excluded in relation to all and any rights, obligations or liabilities for either party under this Agreement whether those rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise. To the extent permitted by law, the Supplier must not seek to apply a Proportionate Liability Scheme in relation to any claim by the Customer against the Supplier (whether in contract, tort or otherwise). If any of the provisions of a Proportionate Liability Scheme are applied to any claim by the Customer against the Supplier (whether in contract, tort or otherwise), the Supplier will indemnify the Customer against any Losses that forms part of a claim by the Customer against the Supplier which the Customer cannot recover from the Supplier because of the operation of the relevant Proportionate Liability Scheme.

11.2 Insurance

- 11.2.1 The Supplier must maintain the insurances specified below for the term of this Agreement and all Purchase Orders:

- Public and Products Liability Insurance for an amount of not less than \$20,000,000;
 - If professional services are included in the Services, Professional Indemnity insurance for an amount not less than \$5,000,000 for any one occurrence and in the aggregate;
 - where applicable, Goods in Transit/Marine Cargo insurance (for the total replacement value of the Goods);
 - workers' compensation insurance to the statutory limit; and
 - third party damage motor vehicle insurance.
- The Supplier must give evidence of the insurances and their currency, acceptable to the Customer on request.

12 RESTRICTIONS ON RELATED PARTY CONTRACTS

- 12.1 The Supplier must not (and must ensure that its approved subcontractors do not) enter into any contract relating to the Services with a Related Body Corporate (other than on arm's length commercial terms) without the Customer's prior approval.

13 APPLICABLE LAW

- 13.1.1 Unless otherwise specified, the Purchase Order will be governed and construed in accordance with the laws in place in the State stated in the Purchase Order or if no State is specified, New South Wales. The Customer and the Supplier submit to the non-exclusive jurisdiction of the courts of the said State.
- 13.1.2 The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Purchase Order.
- 13.1.3 The Customer and Supplier agree to conduct themselves (including under this Agreement and all Purchase Orders as the case may be) in accordance

with high ethical standards and in compliance with all applicable laws, including without limitation local and international laws (with local laws to prevail in the event of any inconsistency):

- (a) prohibiting bribery and other forms of corruption;
- (b) in relation to competition/antitrust;
- (c) in relation to embargoes, arms and drug trafficking and terrorism;
- (d) in relation to trade, import and export licences and customs requirements;
- (e) in relation to environmental protection; and
- (f) in relation to privacy and data protection.

13.1.4 Each party warrants neither it nor any of its officers, employees, directors or agents has in relation to this Agreement committed or will in performing its obligations under this Agreement, commit any Prohibited Act. A party may immediately terminate this Agreement for default if the other party breaches the Supplier Charter or commits a Prohibited Act.

13.1.5 The Supplier shall not (i) directly; or (ii) knowingly and indirectly, act in any manner that could result in the Customer being subject to, or at risk of being subject to, Sanctions. The Supplier shall:

- (a) not fund any payment due to the Customer out of proceeds knowingly derived from any activity or transaction with a Sanctioned Person or which would otherwise be prohibited by any Sanctions;
- (b) procure that each of its affiliates will, promptly upon becoming aware of the same, supply to the Customer details of any claim, action, suit, proceedings or investigation against it with respect to any Sanctions; and
- (c) ensure that neither the Supplier or any of its Associated Persons is a Sanctioned Person.

13.1.6 Clauses 10, 11 and 13 survive the termination or expiry of this Agreement and all Purchase Orders as do any other provisions that by implication from their nature are intended to survive the termination or expiry, and any rights and remedies accrued prior to termination survive.

13.1.7 All terms and conditions of this Agreement are incorporated into and govern each Purchase Order except where expressly agreed in writing by an authorised representative of the Customer.

Executed by Supplier:

ABN:

Date:

Signature of
Authorised Representative:

Full Name of
Authorised Representative: