# RMS CONTRACT DOCUMENT C61
## MAJOR SUPPLY AGREEMENT (INFRASTRUCTURE)
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Edition 1 / Revision 9
September 2017
MAJOR SUPPLY AGREEMENT (INFRASTRUCTURE)

BETWEEN

Roads and Maritime Services (ABN 76 236 371 088) of 20-44 Ennis Road, Milsons Point, NSW 2061 (RMS)

AND

Supplier

Name: ……………………………………………………………………………………………………… (Supplier) ABN: …………………………………

Address: ………………………………………………………………………………………………………

…………………………………………Fax: ………………………………………………………………………

Name and position: ……………………………………………………………………………………………

Mobile phone: ……………………Office Phone: ……………………Email: ……………………

FORMAL INSTRUMENT OF AGREEMENT

(a) RMS and the Supplier agree to carry out their respective obligations in accordance with this agreement, which comprises:

(i) this cover page including the execution clause;
(ii) the Agreed Terms; and
(iii) the Supply Details and other schedules to this agreement (together Agreement).

(b) In consideration for the supply and (if relevant) Installation of the Goods, RMS will pay the Charges in accordance with the terms of this Agreement.

(c) Capitalised terms used in this formal instrument of agreement have the meaning given to those terms in the Agreed Terms.

EXECUTED as an agreement on ……………………………20……

Signed by………………………… as delegate of

Roads and Maritime Services in the presence of:

(Witness) ............................................................ (Delegate) ............................................................

(Name printed) ……………………………………… (Name printed) ………………………………………

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

(Witness) ............................................................ (Authorised signatory) ............................................................

(Name printed) ……………………………………… (Name printed) ………………………………………

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

© Copyright Roads and Maritime Services
Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this Agreement:

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

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

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

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

**Completion** means the date when:

(a) the delivery of the Goods to the Site;

(b) where relevant, the Installation of the Goods is complete to the reasonable satisfaction of RMS; and

(c) the Supplier has otherwise done everything which the Supply Details requires it to do.

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

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

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

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

**Documentation** means:

(a) the standard operating manuals, user instructions, technical literature and other documentation ordinarily supplied with the Goods by the Supplier (or the manufacturer or supplier of those Goods);

(b) the operational and technical documentation specifying operator procedures necessary for the use and maintenance of the Goods supplied by the Supplier; and

(c) any other related material supplied to RMS by the Supplier pursuant to this Agreement to assist with the use and application of the Goods,

as modified pursuant to this Agreement.

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

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

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

**Intellectual Property** means any intellectual property including a patent, trade mark or service mark, copyright, registered design, trade secret, know how or confidential information or the right to exploit any
of the foregoing or the right to register any of the foregoing or rights in the registration of any of the foregoing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

where no suitable Australian supplier exists in the market, and

3. value of existing and new non-Contract/Project specific assets apportioned to the Contract/Project, where they are used in delivery of the Contract/Project;
4. property i.e. acquisitions, indirect leasing costs, extra land, adjustments; and
5. non-construction related services;

as agreed between RMS and the Supplier.

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

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

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

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

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

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

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

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

3. Supplier's Warranties
The Supplier warrants that:
(a) the Goods, materials and workmanship supplied to RMS and (if relevant) Installed under this Agreement will:
   (i) comply with the Supply Details;
   (ii) conform to the Specifications (including any specifications of the manufacturer of the Goods) as well as any Documentation supplied with the Goods;
   (iii) comply with the requirements of this Agreement and any other specifications or requirements notified to the Supplier by RMS prior to the signing of the Agreement including any relevant specifications for the Works;
   (iv) comply with relevant industry standards and codes including Australian Standards and the Building Code of Australia;
   (v) be free of Defects; and

(b) the Goods and other materials supplied to RMS under this Agreement will:
   (i) comply, where relevant, with any samples of the Goods provided by the Supplier and any goods previously supplied by the Supplier; and
   (ii) be reasonably suitable and fit for their intended purpose as made known to the Supplier by RMS in the Specifications or otherwise.

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

5. Compliance with Schedules and delivery requirements
(a) The Supplier must supply and (if relevant) Install the Goods in accordance with:
   (i) the directions of the RMS Representative;
   (ii) the specifications and other technical requirements set out in Schedule 2 (Specifications); and
   (iii) the timing set out in Schedule 3 (Delivery Schedule).
(b) The Supplier must:
   (i) liaise with the RMS Representative 7 days prior to the Date for Delivery to confirm progress and arrangements for the delivery and (if relevant) Installation of the Goods;
   (ii) label the Goods as directed by the RMS Representative;
supply all necessary resources for handling, loading and transporting the Goods to the Site; and

deliver the Goods in accordance with the Delivery Schedule.

(c) The RMS Representative may, within 3 Business Days of the original delivery date as specified in the Delivery Schedule, give the Supplier a written direction changing a delivery date in the Delivery Schedule, and the Supplier must comply with this direction.

6. **Compliance with law and policies**

(a) The Supplier must ensure that all Goods supplied under, or incidental to, the Agreement and their manner of delivery and (if relevant) their Installation will comply with all applicable laws and regulations including those regulations relating to product standards and Work Health and Safety Regulation 2017 applying in New South Wales (Legal Requirements).

(b) The Supplier must comply with the chain of responsibility provisions of the Heavy Vehicle National Law (NSW) (2013). Where required by Item 15 of the Supply Details the Supplier must, before commencing Delivery of the Goods, submit to the RMS Representative a Chain of Responsibility (CoR) Management Plan, satisfying the requirements set out in Schedule 6. The Supplier must comply with the CoR Management Plan at all times.

(c) Where required in Item 16 of the Supply Details, the Supplier must comply with the NSW Government Policy on Aboriginal Participation in Construction. Where applicable, the Targeted Project Spend (TPS) on Aboriginal participation is stated in Item 16 of the Supply Details.

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

(i) to the RMS Representative and NSW Procurement Board (nswbuy@finance.nsw.gov.au):

   (A) Aboriginal Participation Plan within 60 days after the Date of Agreement, showing how the Supplier intends to direct the TPS to appropriate Aboriginal education and employment opportunities; and

   (B) Aboriginal Participation Report at 90% completion of the Delivery of the Goods and, where relevant, the Installation of the Goods, which explains how the Aboriginal Participation Plan has been implemented and what outcomes have been achieved.

(ii) to the RMS Representative only:

   (A) if requested, a draft Aboriginal Participation Plan referred to in clause 6.(c)(i)A, within 20 days after the Date of Agreement;

   (B) quarterly, its Aboriginal Participation Report in the form set out in Schedule 7, providing details of the implementation of the Policy and achievement of targets; and

   (C) final Aboriginal Participation Report, at the end of 12 months period after the date of actual Completion. Details included in the final Aboriginal Participation Report must explain how the Aboriginal Participation Plan has been implemented within the specified period and what actual outcomes have been achieved.

The Aboriginal Participation Plans and the Aboriginal Participation Reports (except the reports referred to in clause 6(c)(ii)(B)) must be prepared in accordance with the NSW Government Policy on Aboriginal Participation in Construction and in the format prescribed by the NSW Procurement Board. Templates are available at: (https://www.procurepoint.nsw.gov.au/aboriginal-participation-construction-information-contractors).
7. **Packing**
The Supplier must ensure that all Goods are suitably packed and prepared for shipment so as to secure the Goods against damage.

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

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

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

11. **Variations**
   (a) The RMS Representative may direct the Supplier to carry out a variation to the Work under the Agreement by a written variation order or an oral instruction confirmed by a written variation order (Variation Direction).
   (b) The Supplier must comply with the Variation Direction.
The Charges will be adjusted for all variations to the Supply Details which have been the subject of a Variation Direction, and which result in increased or decreased cost to the Supplier, by a reasonable amount:

(i) as agreed between the parties; or

(ii) failing agreement, as determined by the RMS Representative acting reasonably, having regard to:

(A) the rates and prices used to price similar goods or work under the Agreement; or

(B) if there is no similar goods or work under the Agreement, the cost to the Supplier of supplying and (if relevant) Installing the works and goods.

In calculating an adjustment to the Charges under clause 11(c), the Supplier will be entitled to a percentage for profit and attendance shown in Item 8 of the Supply Details.

12. Charges all inclusive

(a) Subject to clause 11(c), the Charges are the maximum amount RMS will pay for the Goods to be supplied and (if relevant) Installed.

(b) The Charges are inclusive of GST and all charges including, without limitation, freight, taxes, duty, packaging, insurance, delivery charges and other expenses incurred by the Supplier.

13. Invoicing and Payment

13.1 Invoice

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

(a) the invoice is a Tax Invoice which includes the Supplier’s Australian Business Number;

(b) the amount claimed in the invoice is due for payment;

(c) the amount specified in the invoice is correctly calculated in accordance with this Agreement;

(d) the invoice includes RMS’ reference number and is set out in a manner that identifies the Goods which the invoice covers and itemises each amount claimed to a level of detail satisfactory to RMS acting reasonably;

(e) the invoice is accompanied by documents that adequately demonstrate to RMS the services that were performed; and

(f) the invoice is accompanied by a completed Contractor Statement in the form set out in Schedule 5.

13.2 Payment

(a) RMS must pay an invoice rendered correctly in accordance with clause 13.1, within 15 Business Days after receipt of that invoice.

(b) Where RMS considers that an invoice is not correctly rendered, RMS will issue to the Supplier within 10 Business Days after receipt of the Supplier’s invoice a notice:

(i) setting out the reasons why RMS considers that the invoice is not correctly rendered; and

(ii) identifying any amounts which are in dispute and giving reasons why payment is being withheld in respect of those amounts.

14. Responsibility for delivery

The Supplier agrees that it is responsible for all aspects of supply of the Goods (except those aspects of the delivery of the Goods expressly reserved to RMS in Schedule 3 (Delivery Schedule)). The Supplier
will oversee the supply of the Goods and their Installation (where relevant) in accordance with the Agreement.

15. **Responsibility for the Goods**

(a) The Supplier agrees that care for and risk in the Goods remains with the Supplier until the Goods have been accepted by RMS.

(b) The parties agree that the Goods will only be deemed to have been accepted by RMS after the Goods have actually been unpacked, (if relevant) Installed, inspected and not rejected by RMS, regardless of when this may occur (**RMS Acceptance**).

(c) RMS may reject any Goods which, in its reasonable opinion, do not conform with the Specifications or the requirements of this Agreement (**Rejected Goods**).

(d) The Supplier agrees that RMS is not liable to pay for any Rejected Goods.

(e) If loss or damage occurs to the Goods prior to RMS Acceptance, the Supplier must promptly make good the loss or damage at its own expense and in doing so must consult with RMS and take such action as may reasonably be required by RMS to ensure that the Project proceeds with minimal impact or disruption.

(f) Payment of any invoice relating to particular Goods does not constitute acceptance of Goods by RMS. The Supplier must promptly refund payment to RMS for any Goods subsequently found to be Rejected Goods although payment has been made.

16. **Co-operation**

(a) The Supplier must fully co-operate, at its cost, with all other contractors engaged by RMS (**Other Contractors**).

(b) The Supplier must:
   
   (i) co-ordinate and integrate the supply and (if relevant) Installation of Goods with the services and works being carried out by Other Contractors; and

   (ii) avoid interfering with, disrupting or delaying the services or works being carried out by the Other Contractors.

17. **Conduct on Site**

(a) When supplying and (if relevant) Installing the Goods to a Site, the Supplier must minimise the disruption or inconvenience caused to RMS, any Other Contractors, occupiers, tenants and potential tenants of the Site in their occupation or use of, or attendance upon, any part of the Site.

(b) The Supplier must at all reasonable times give the RMS Representative, RMS and any authorised person (including the Other Contractors) access to the Site or (where access is required for the purposes of the Project) any areas off-Site where the Supplier is supplying and (if relevant) Installing the Goods.

(c) The Supplier must ensure that it keeps the areas of the Site where the Supplier is supplying or (if relevant) Installing the Goods clean, tidy and free of refuse.

18. **Supplier’s vehicles, plant and equipment**

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

(a) the Supplier is responsible for the care of such vehicles, plant or equipment;

(b) the Supplier must ensure that such plant and equipment is in accordance with the manufacturers’ specifications and is in good repair; and
19. Work Health and Safety

(a) The Supplier acknowledges that the Other Contractor identified at Item 9 of the Supply Details has been appointed as ‘principal contractor’ within the meaning of Chapter 8 of the Work Health and Safety Regulations 2017 (NSW) in respect of work forming part of the Project (Principal Contractor).

(b) Whenever the Supplier is supplying or (if relevant) Installing the Goods at a Site the Supplier must strictly comply with the directions of the Other Contractor in its capacity as Principal Contractor.

(c) Where the Other Contractor has not been appointed as Principal Contractor, the Supplier:
   (i) accepts its appointment by RMS as Principal Contractor in respect of the supply and (if relevant) Installation of the Good at the Site; and
   (ii) will strictly comply with its obligations as Principal Contractor under the Work Health and Safety Regulations 2017 (NSW).

(d) The Supplier must at all times comply with work health and safety laws and with the security and work health and safety procedures of RMS as are reasonably determined by RMS and notified to the Supplier from time to time.

20. Conflict of Interest

(a) The Supplier warrants that, at the date of this Agreement, no conflict of interest exists or is likely to arise in the performance of the Supplier’s obligations under this Agreement.

(b) If a conflict of interest or risk of such conflict of interest arises in the performance of the Supplier’s obligations, the Supplier must notify the RMS Representative immediately in writing, with sufficient details, of that conflict or risk.

21. Assignment

(a) If RMS requests the Supplier to do so, the Supplier must assign to RMS the benefit of all manufacturer’s warranties and/or service warranties granted to the Supplier by suppliers and manufacturers of the Goods without need for further consideration.

(b) The Supplier must not:
   (i) assign its rights under this Agreement; or
   (ii) otherwise encumber or grant any right or interest in any of the Goods in favour of any third party,

without the prior written consent of RMS.

(c) The Supplier must not consult with any other person or body for the purposes of entering into an arrangement which will require novation of this Agreement without first consulting RMS.

(d) Subject to clause 21(e), RMS may assign this Agreement in whole or in part by notice in writing to the Supplier, only with the prior consent of the Supplier, which must not be unreasonably withheld or delayed.

(e) Despite clause 21(d), RMS may novate this Agreement, in whole or in part, without the consent of the Supplier to any government department, to any other body created by or pursuant to a statute or ministerial direction of the State of New South Wales for the purpose of administering the functions or discharging the role of RMS as described in this Agreement or to any ‘government sector agency’ within the meaning given to that term in section 3 of the Government Sector Employment Act 2013. The Supplier must execute all documents necessary to give effect to such a novation.
22. **Subcontracting**

(a) The Supplier may only subcontract the supply and Installation of Goods under this Agreement:

(i) with the prior written consent of RMS; and

(ii) on such conditions as RMS may impose.

(b) RMS is not liable for refusing consent under this clause 22.

(c) Despite any consent given by RMS under clause 22(a), the Supplier is responsible for ensuring:

(i) the suitability of a sub-contractor for the work proposed to be carried out by that sub-contractor; and

(ii) the work performed by a sub-contractor or goods supplied by a sub-contractor meet the requirements of this Agreement.

(d) The Supplier is liable to RMS for the acts, omissions, defaults and neglects of all of its sub-contractors which cause loss or damage to RMS or which place the Supplier in breach of this Agreement.

(e) RMS may at any time and without liability withdraw, limit or suspend its approval of the Supplier’s sub-contractor. If RMS does so, it must notify the Supplier (giving reasons) and the Supplier must propose another sub-contractor for approval within a reasonable time if required by RMS and without inconvenience or additional cost to RMS.

(f) The Supplier must ensure that every Subcontract, regardless of the subcontract value, includes provisions of clause 6(b) and a clause to the same effect as this clause 22(f) which is binding on the Subcontractor, and provide evidence of this to RMS when requested by RMS.

23. **Exclusions and Indemnities**

23.1 **Civil Liability Act 2002 (NSW)**

The parties agree that:

(a) Part 4 of the Civil Liability Act 2002 (NSW) does not apply to this Agreement; and

(b) their respective rights, obligations and liabilities will be those which would exist if Part 4 of the Civil Liability Act 2002 (NSW) did not apply.

23.2 **Supplier Indemnity**

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

(a) any breach of this Agreement by the Supplier (including where RMS exercises a right to terminate the Agreement as a result of a breach of the Agreement by the Supplier); or

(b) any act, error, omission or neglect of the Supplier, its personnel, agents or subcontractors (of any tier).

24. **Insurance**

24.1 **RMS Insurance**

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

24.2 **Supplier Insurance**

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

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

24.4 Supplier notification

The Supplier must notify RMS within two Business Days of:

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

24.5 Failure to provide evidence of insurances

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

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

24.6 Claims

The Supplier must:

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

24.7 Principal Arranged Insurance Excess

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

25. Testing

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

(ii) the Test results show that the Goods or Work under the Agreement are not in accordance with the Agreement;

(iii) the Tests resulted from Work under the Agreement which was covered up without RMS’ prior approval where such approval was required or otherwise requested by the RMS Representative in advance of the Test being undertaken; or

(iv) the Tests show that the Supplier failed to comply with a requirement of this Agreement, in respect of the Goods the subject of the Test.

26. **Non-compliance of Goods**

(a) If any of the Goods as supplied or (if relevant) Installed do not comply with the Specifications, or are otherwise not in accordance with this Agreement, RMS may, at its election:

(i) require that any relevant Defect be rectified by the Supplier;

(ii) return the Goods to the Supplier and require their immediate repair or replacement;

(iii) require that RMS be credited in respect of any Charges that RMS has paid for the supply and (if relevant) Installation of such Goods; or

(iv) return all of the Goods to the Supplier and cancel the balance of any other orders not yet supplied.

(b) The Supplier indemnifies RMS for any cost, loss, damage or expense arising out of or in connection with the return or cancellation of Goods pursuant to subclauses 26(a)(ii) and (a)(iv), including the cost of freight and packaging.

27. **Warranty Period**

(a) RMS acknowledges that Goods may be supplied subject to the warranties given by the manufacturer of those Goods (Manufacturers’ Warranties). The Supplier must ensure that RMS obtains the full benefit of the Manufacturers’ Warranties.

(b) Without limiting clause 25(a), during the Warranty Period, the Supplier must rectify all Defects at its cost so as to ensure that the Goods comply with the Supply Details.

(c) Where the Supplier carries out work to rectify Defects, any Goods the subject of rectification work will be subject to an additional Warranty Period commencing on completion of such rectification works or (if relevant) Installation of such rectified Goods, whichever is later.

28. **Intellectual Property Warranty**

(a) The Supplier warrants that the Supplier is the owner or valid licensee of all Intellectual Property in the Goods and that the supply of the Goods in accordance with this Agreement, and the use of the Goods by RMS as contemplated by this Agreement, does not and will not infringe any Intellectual Property of any third party.

(b) In the event that either party receives notice of a claim that the Goods or their supply or use in accordance with this Agreement infringes any Intellectual Property rights of any third party (IPR Claim), the party receiving such notice must notify the other party of the IPR Claim in writing as soon as practicable.

(c) If an IPR Claim is made, the Supplier must, at its expense, promptly defend or settle such IPR Claim and must pay any sums of money arising from any judgments awarded or settlements entered into as a consequence of the IPR Claim, and the Supplier must at the Supplier’s expense but at the RMS’s option:
modify the Goods so that the use of them ceases to infringe the rights of the claimant of any IPR Claim;

(ii) procure promptly and without additional cost for RMS the right to use the Goods free of any claim or liability for infringement; or

(iii) replace the Goods promptly with non-infringing substitute goods or material that comply with the requirements of this Agreement.

(d) The Supplier indemnifies RMS against all cost, loss, damage or expense suffered or incurred by RMS arising out of or in connection with all IPR Claims.

29. Suspension

(a) The RMS Representative may in his or her absolute discretion direct the Supplier to suspend or, if a suspension has already been directed, to recommence performance of all or a part of the Supplier’s obligations under this Agreement.

(b) If a suspension under this clause 29 arises as a result of the Supplier’s failure to perform its obligations in accordance with this Agreement, the Supplier will have no right:

(i) to be paid for any cost, loss, damage or expense; or

(ii) to any extension of time for Completion,

arising out of or in connection with the suspension.

(c) If a suspension under this clause 29 arises other than as a result of the Supplier’s failure to perform its obligations in accordance with this Agreement, RMS:

(i) will pay the reasonable costs incurred by the Supplier, arising out of that suspension, provided however that the Supplier takes all reasonable steps to mitigate such costs arising from that suspension; and

(ii) will grant an extension of time to the Date for Completion equivalent to the period of duration of the suspension under this Agreement.

30. Termination for default or insolvency

(a) Without limiting its other rights under this Agreement and at law, RMS may terminate the Supplier’s employment under this Agreement, by written notice, if:

(i) the Supplier breaches this Agreement and fails to remedy such breach within the time period reasonably specified (and in any case no later than 10 Business Days) by written notice from RMS requiring remedy of the breach;

(ii) any item of the Goods is rejected by RMS under clause 26; or

(iii) if any of the following occurs:

(A) the Supplier becomes insolvent or bankrupt;

(B) the Supplier has a receiver or liquidator appointed;

(C) an application is made to a court for the appointment of a receiver or liquidator to the Supplier;

(D) the Supplier ceases or threatens to cease carrying on business in the Goods; or

(E) the Supplier’s business is sold or otherwise comes under the control of any other person and RMS has not provided its prior written consent in accordance with clause 21.
31. **Termination for convenience**

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

32. **Consequences of Termination**

(a) If RMS terminates the Supplier’s employment under this Agreement in accordance with clause 30:

(i) RMS will not be obliged to make any further payments to the Supplier; and

(ii) RMS will be entitled to recover from the Supplier all cost, loss, damage or expense which RMS suffers or incurs arising out of or in connection with such termination.

(b) If RMS terminates the Supplier’s employment under this Agreement in accordance with clause 31, RMS shall pay the Supplier:

(i) the cost of the Goods delivered in accordance with this Agreement prior to the date of termination;

(ii) the reasonable cost of materials and goods reasonably ordered by the Supplier for the Work under the Agreement, provided that:

   (A) such materials and goods are:

   (I) delivered to a place directed by the RMS Representative;

   (II) labelled as directed by the RMS Representative; and

   (III) free from any liens, charges, claims and other encumbrances, and

   (B) ownership of the materials and goods passes to RMS upon their delivery to and acceptance by RMS.

(c) Where RMS terminates the Supplier’s employment whether under clause 30 or 31:

(i) the Supplier must:

   (A) cease work on the day the termination becomes effective; and

   (B) vacate the Site; and

(ii) RMS may require the Supplier:

   (A) to novate to RMS or RMS’ nominee any or all subcontracts between the Supplier and its subcontractors relating to the Goods and the Work under the Agreement;

   (B) to provide all reasonable assistance to RMS in dealing with such subcontractors to ensure supply of the Goods and (if relevant) their Installation to RMS or its nominee; and

   (C) to deliver promptly to RMS:

   (I) all confidential information of RMS in the Supplier’s possession;

   (II) all Documentation relevant to the Goods already supplied and (if relevant) Installed at the date of termination; and

   (III) all Goods in their then current state of completion.

33. **Building Code 2013 Compliance**

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

34. GST

(a) All prices in this Agreement will be inclusive of GST unless otherwise expressly stated.

(b) The Supplier warrants to RMS that, if required under Australian law, it is registered for GST purposes.

(c) In respect of any supply of Goods under this Agreement in respect of which GST is payable (Affected Supplies):

(i) the Supplier must, within the time required by law (and in any event within 20 Business Days of a request by RMS), issue a tax invoice in respect of such GST which will enable RMS, where entitled under the GST law, to claim an input tax credit in respect of such GST; and

(ii) RMS will (subject to clause 36.3) pay to the Supplier the amount shown on such tax invoice at the same time and in the same manner as the amounts otherwise payable under this Agreement for the affected supplies,

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

35. Notices and other communications

35.1 Service of notices

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

(a) in writing, in English and signed by a person duly authorised by the sender; and

(b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified on the cover page of this Agreement, as varied by any Notice given by the recipient to the sender.

35.2 Effective on receipt

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

(a) if hand delivered, on delivery;

(b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);

(c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

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

36. Miscellaneous

36.1 Alterations

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

36.2 Approvals and consents

Except where this Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.
36.3 Set-off
RMS may at any time retain, deduct, withhold or set-off from any moneys otherwise due to the Supplier from RMS any debt or other moneys due from the Supplier to RMS or any other claim which RMS may have against the Supplier.

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

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

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

36.7 No merger
The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

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

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

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

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

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

36.13 Confidentiality
A party may only use confidential information of another party for the purposes of this Agreement, and must keep the existence and the terms of this Agreement and any confidential information of another party confidential except where:
(a) the information is public knowledge (but not because of a breach of this Agreement) or the party has independently created the information;
(b) disclosure is required by law or a regulatory body (including a relevant stock exchange); or
(c) disclosure is made to a person who must know for the purposes of this Agreement on the basis that the person keeps the information confidential.
36.14 Announcements
(a) The Supplier must seek RMS’ prior written approval to:
   (i) any press release or advertisement, or
   (ii) the release for publication in any media of any information, publication, document or article, concerning this Agreement, RMS, the Goods or the Work under the Agreement.
(b) The Supplier must refer any media enquiries concerning this Agreement, RMS, the Goods or the Work under the Agreement to the RMS Representative.
(c) The Supplier must ensure that all consultants, subcontractors and suppliers engaged by RMS for the performance of this Agreement or the Work under the Agreement comply with the requirements of this clause.

36.15 Governing law and jurisdiction
This agreement is governed by the law of New South Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.
## Schedule 1 – Supply details

<table>
<thead>
<tr>
<th>Item</th>
<th>Issue</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Charges (Clause 1.1)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Insert amounts payable for supply and installation of goods or if relevant how such Charges will be calculated. Charges shown are inclusive of GST.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Date for Completion (Clause 1.1)</td>
<td>Insert</td>
</tr>
<tr>
<td>3.</td>
<td>Goods (Clause 1.1)</td>
<td>Insert details of all Goods to be provided under this Agreement.</td>
</tr>
<tr>
<td>4.</td>
<td>Liquidated Damages (Clauses 1.1 and 9)</td>
<td>Insert week or part thereof.</td>
</tr>
<tr>
<td></td>
<td>(If Liquidated Damages are not to apply insert ‘N/A’)</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Project (Clause 1.1)</td>
<td>Insert general description of the overall project to which this Agreement relates.</td>
</tr>
<tr>
<td>6.</td>
<td>Site (Clause 1.1)</td>
<td>Insert site or sites nominated where Goods are to be delivered and (if relevant) Installed.</td>
</tr>
<tr>
<td>7.</td>
<td>Works (Clause 1.1)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>If the Supplier is required to supply the Goods in accordance with specifications for the overall Works of the Project, insert general description of the works that form part of the Project in relation to which the Goods are being supplied.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(If specifications for the Works are not relevant to this Agreement insert ‘N/A’)</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Variations (Clause 11(d))</td>
<td>Percentage for profit and attendance: Insert</td>
</tr>
<tr>
<td></td>
<td>(If no percentage is inserted, the percentage is 5%)</td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Work Health and Safety (Clause 19)</td>
<td>The person appointed as Principal Contractor is: Insert</td>
</tr>
<tr>
<td></td>
<td>(If no other person is appointed as Principal Contractor insert ‘Supplier to act as Principal Contractor’. )</td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Warranty Period (Clause 1.1 and 25(a))</td>
<td>The warranty period is: Insert days</td>
</tr>
<tr>
<td></td>
<td>(If no period is inserted the warranty period is 90 days.)</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Building Code 2013 Compliance (Clause 33)</td>
<td>Project has/will receive funding from the Australian Government: Insert</td>
</tr>
<tr>
<td></td>
<td>(Insert ‘Yes’ or ‘No’. If ‘Yes’ is inserted or the item is left blank the Project is deemed to have Federal Government funding for the purpose of clause 33.)</td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>RMS Representative (Clause 1.1)</td>
<td>Name: Insert Address: Insert Fax: Insert</td>
</tr>
<tr>
<td>13.</td>
<td>Installation (Clause 4)</td>
<td>Installation forms part of the Agreement: Insert</td>
</tr>
<tr>
<td></td>
<td>(Insert ‘Yes’ or ‘No’. If ‘Yes’ is inserted or the item is left blank Installation forms part of the Agreement.)</td>
<td></td>
</tr>
<tr>
<td>14.</td>
<td>Insurance (Clause 24.1)</td>
<td>Principal Arranged Insurance applicable: Insert</td>
</tr>
<tr>
<td></td>
<td>(Insert ‘Yes’ or ‘No’ if it is a supply only Contract)</td>
<td></td>
</tr>
<tr>
<td>15.</td>
<td>Chain of Responsibility (Clause 6(b))</td>
<td>Chain of Responsibility Management Plan required: Insert</td>
</tr>
<tr>
<td></td>
<td>(‘No’ applies if item is left blank)</td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>Issue</td>
<td>Details</td>
</tr>
<tr>
<td>------</td>
<td>-------</td>
<td>---------</td>
</tr>
</tbody>
</table>
| 16   | Aboriginal Participation (Clause 6(c)) | NSW Government *Policy on Aboriginal Participation in Construction* applicable: [Insert]

((Insert ‘Yes’ or ‘No’. ‘No’ applies if item is left blank))

The Aboriginal Participation Project Category is: [Insert Category]

Is the Contractor required to submit an Aboriginal Participation Plan and Participation Reports? [Insert]

((Insert ‘Yes’ or ‘No’. ‘No’ applies if item is left blank))

The Targeted Project Spend (TPS) at the Date of Agreement is: $[Insert amount] (excl GST)
Schedule 2 – Specifications

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

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

The Supplier will provide the following Training: [Insert] (If no Training is required insert ‘N/A’)
Schedule 3 – Delivery Schedule

[Include:

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

Where RMS has responsibility for the delivery of the Goods, or aspects of the delivery, this should be stated here.]
NOTES TO RMS STAFF AND TENDER DOCUMENTER: (delete this boxed text after drafting RMS C61):

Contact the RMS’ Insurance Team where any insurance submissions or provisions are not complying with this document or where additional specific insurances may be required.

All enquiries are to be directed to RMS’ Insurance team (Ph: (02) 9462 6150).

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

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### Principal Arranged Insurance - Insurance Schedule

<table>
<thead>
<tr>
<th>TYPES OF INSURANCES</th>
<th>MINIMUM SUM INSURED</th>
<th>PERIOD OF INSURANCE</th>
<th>INSURANCE COVER IS TO INCLUDE THE FOLLOWING</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Principal Arranged Insurance (RMS)</strong></td>
<td></td>
<td></td>
<td>RMS has arranged standard policies of insurance for contract works insurance (reinstatement cost) insurance under its principal arranged insurance program.</td>
</tr>
<tr>
<td>1</td>
<td>Contract Works</td>
<td>Contract Works – as per Declared Value</td>
<td>Duration of the Works – covering RMS, Construction Manager and subcontractors and other parties as specified in the works contract</td>
</tr>
<tr>
<td>Excess for Contract Works</td>
<td>The Contractor is responsible for meeting the amount of any excess payable under the principal-arranged insurance. The excess amounts current at the date of the Contract are:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Contract Works Value (up to $5m) – excess is $15,000 per Event/Occurrence (4.7(a))</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Contract Works Value (between $5m &amp; $20m) – excess is $50,000 per Event/Occurrence (4.7(a))</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Contract Works Value (between $20m &amp; $100m) – excess is $100,000 per Event/Occurrence (4.7(a)), other than:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Water Damage – excess is $250,000 per Event/Occurrence (4.7(a))</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Wet Works – excess is $350,000 per Event/Occurrence (4.7(a))</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Tunnelling Contracts – excess is $250,000 per Event/Occurrence (4.7(a)) (where applicable)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>The Contractor may effect insurance to cover the amount of that excess.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Public and Products Liability</td>
<td>Public and Products Liability $200m</td>
<td>Duration of the Works – covering RMS, Construction Manager and subcontractors and other parties as specified in the works contract</td>
</tr>
<tr>
<td>Excess for Public and Product Liability</td>
<td>The Contractor is responsible for meeting the amount of any excess payable under the principal-arranged insurance. The excess amounts current at the date of the Contract are:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Worker to Worker Liability – excess is $100,000 per Event/Occurrence (4.2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Products Liability – excess is $50,000 per Event/Occurrence (4.2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Underground Services – excess is $50,000 per Event/Occurrence (4.2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Any other claim – excess is $10,000 per Event/Occurrence (4.2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TYPES OF INSURANCES</td>
<td>MINIMUM SUM INSURED</td>
<td>PERIOD OF INSURANCE</td>
<td>INSURANCE COVER IS TO INCLUDE THE FOLLOWING</td>
</tr>
<tr>
<td>---------------------</td>
<td>---------------------</td>
<td>---------------------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td>The Contractor may effect insurance to cover the amount of that excess.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Professional Indemnity</td>
<td>RMS has affected a Principal Professional Indemnity policy for its own benefit.</td>
<td></td>
</tr>
<tr>
<td><strong>Contractor Arranged Insurances</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 4                    | Motor Vehicle Comprehensive or Third Party Property Damage effected with an approved insurer as defined in Definitions and Notes clause 1 below | $20 million for any single occurrence | (a) Motor Vehicles owned or used by the Contractor or subcontractors directly or indirectly engaged in performance of the Services,  
(b) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 2 below.  
(c) If applicable to the contract – all plant and equipment owned or used by the Contractor or subcontractors directly or indirectly in the performance of the Services. |
| 5                    | Workers Compensation effected with an approved insurer as defined in Definitions and Notes clause 1 below | As per the relevant Workers Compensation legislation | As per State Workers Compensation legislation. |
| 6                    | Professional Indemnity | RMS will not set any requirements for the minimum sum insured for professional indemnity in the Contract. The contractor / consultant / supplier should make their own independent decision regarding their own Professional Indemnity requirements. |

(a) **Definitions and Notes:**

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

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

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

3. **References in this Insurance Schedule to the “contractor” and the “contract” are to be interpreted to harmonise with the terminology used in the contract in which this Insurance Schedule is used (eg “Service Provider” and “Agreement” or as the case may be).**

4. **RMS’ Insurer is:**
   - Self Insurance Corporation of NSW
Contractor Statement
Payment of Workers, Worker's Compensation Premiums & Payroll Tax

This Statement must be provided whenever payment is sought for any work carried out for Roads and Maritime Services (RMS) by a Contractor (see Notes 1 & 5 overleaf). RMS is entitled to withhold payment until this Statement is provided (see Note 2).

Details
Contractor's Legal Name
Contractor's Trading / Business Name
Contractor's ABN
Contractor's Address
Name or description of Contract or Works

Period of Work this Statement applies to
From
To

Invoice or Payment Claim Numbers this applies to

Invoice or Payment Claim Dates this Statement applies to

Statement Validity Period
This Statement applies to all work performed by the Contractor for RMS in respect of the above Contract/ Works for the period stated above (see Notes 3 & 4).

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

- All workers engaged by the Contractor in respect of the works have been paid (see Note 6);
- All workers compensation insurance premiums have been paid and attached is a true copy of a Certificate of Currency for workers compensation insurance valid for the period covered by this Statement; or
- the Contractor is an exempt employer for workers compensation purposes (see Note 7);
- The Contractor is registered as an employer under the Payroll Tax Act 2007 and has paid all payroll tax due in respect of employees; or
- the Contractor is not required to be registered;
- The Contractor has not engaged any subcontractors for the works, or
- The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors (and believes it to be true)
- I am authorised to make this declaration and I am in a position to know the truth of its contents

Signature of Authorised Person
Name of Signatory (print)
Date
Position / Job Title of Signatory (print - see Note 4)

(see Notes on page 2)
Notes
1. A Contractor is any person or company who carries out work under a contract of any kind for any business of RMS. References to “Subcontractor” and “Principal Contractor” in the legislation mentioned below have been changed in this Statement to “Contractor” and “RMS” 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 RMS to withhold payment from a Contractor without any penalty unless and until the Contractor provides to RMS a Statement declaring that:

   a. All workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid; and

   b. all remuneration payable to relevant employees for work under the contract has been paid; and

   c. all payroll tax payable relating to the work undertaken has been paid.

3. Section 127 of the IRA says that the Statement must state the period to which it relates. For sequential statements ensure that the dates provide continuous coverage.

4. The person signing this declaration must be a person who is authorised by the Contractor either to sign this Statement (or to sign statements of this kind) and must be a person who is in a position to know the truth of the statements. The Contractor’s principal accounting/financial officer may be appropriate. An individual project manager will normally not be appropriate. If the Contractor is a company then the person signing should be a director unless the company has delegated the power to sign such statements to another person (eg the principal accounting officer).

5. A Statement is not required where RMS 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

Record Retention
RMS 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
1. COR MANAGEMENT PLAN

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

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

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

As a minimum, the CoR Management Plan must address:

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

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

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

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

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

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

   a.1) driver fatigue and speeding; and (or)
   
   a.2) fleet maintenance.

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

(a) Reporting required by the CoR Management Plan.
# Schedule 7 - Aboriginal Participation in Construction - Quarterly Report

## PROJECT DETAILS

<table>
<thead>
<tr>
<th>Contract No and Description</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor:</td>
<td></td>
</tr>
<tr>
<td>Contract Award Value (or Project Value, where relevant) (excl GST)</td>
<td></td>
</tr>
<tr>
<td>Project APiC Category:</td>
<td></td>
</tr>
<tr>
<td>Targeted Project Spend (TPS) $ (excl GST)</td>
<td></td>
</tr>
<tr>
<td>Date of APiC report:</td>
<td></td>
</tr>
</tbody>
</table>

## PROJECT PARTICIPATION

<table>
<thead>
<tr>
<th>Total number of people (all) employed on the project:</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Total number of hours worked by all employees on this project:</td>
<td></td>
</tr>
<tr>
<td>Total number of sub-contractors on the project:</td>
<td></td>
</tr>
<tr>
<td>Total number of people employed by sub-contractors on project:</td>
<td></td>
</tr>
</tbody>
</table>

## ABORIGINAL PARTICIPATION

<table>
<thead>
<tr>
<th>Total number of Aboriginal people employed on the project:</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Total number of hours worked by Aboriginal people employed on this project:</td>
<td></td>
</tr>
<tr>
<td>Total number of Aboriginal people employed by sub-contractors on project:</td>
<td></td>
</tr>
</tbody>
</table>
## ABORIGINAL PARTICIPATION – DIRECT EXPENDITURE

<table>
<thead>
<tr>
<th>Type of expenditure</th>
<th>Recipients (if known)</th>
<th>Actual Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Direct employment (employees, apprentices)</td>
<td></td>
<td></td>
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<tr>
<td>b) Other employment (contractors, group training)</td>
<td></td>
<td></td>
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<tr>
<td>c) Goods/services bought from Aboriginal businesses</td>
<td></td>
<td></td>
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<tr>
<td>d) Education expenses</td>
<td></td>
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<tr>
<td>- Apprentices</td>
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<td>- Trainees</td>
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<td>- Cadets</td>
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<tr>
<td>- Other</td>
<td></td>
<td></td>
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<tr>
<td>e) Payments to Aboriginal business/community organisations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>f) Other type of expenditure approved by RMS</td>
<td></td>
<td></td>
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</tbody>
</table>

**Total Direct Expenditure Amount ($)**

**Proposed expenditure in participation plan ($)**

## ABORIGINAL PARTICIPATION – INDIRECT EXPENDITURE

<table>
<thead>
<tr>
<th>Proposed expenditure amount ($) in participation plan</th>
<th>Actual expenditure amount ($)</th>
</tr>
</thead>
</table>

*Description of activities (include participating business/community group details) and outcomes*
ABORIGINAL PARTICIPATION – ACTUAL SPEND

<table>
<thead>
<tr>
<th>Actual spend on APiC in reporting Quarter: $ (excl GST)</th>
<th>$</th>
<th>Total Actual spend on APiC (Cumulative): $ (excl GST)</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actual spend on APiC in reporting Quarter: as % of TPS</td>
<td>%</td>
<td>Total Actual spend on APiC (Cumulative): as % of TPS</td>
<td>%</td>
</tr>
</tbody>
</table>

Number of Aboriginal businesses invited to tender/supply who were unsuccessful and reasons for rejection (e.g. price, inability to meet required timeframe, did not respond)

<table>
<thead>
<tr>
<th>Tender details</th>
<th>No.</th>
<th>Reason</th>
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Comments:

Approved by (Name and Position in the Organisation):