## ROADS AND MARITIME SERVICES (RMS)

**CONTRACT DOCUMENT C71**

**PROFESSIONAL SERVICES CONTRACT**

**(CONSTRUCTION INDUSTRY)**

## REVISION REGISTER

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<td>Ed 2/Rev 21</td>
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<td>Manager, Contracts Administration</td>
<td>15-03-17</td>
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<td>Cl 2.3</td>
<td>Inserted provisions allowing the Services to be staged.</td>
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<td>Cl 2.7</td>
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<td>Cl 5</td>
<td>Updated standards applicable in relation to the Services.</td>
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<td></td>
<td>Cl 5.4</td>
<td>Inserted regime giving RMS the right (both not obligation) to comment on documents submitted by the Contractor.</td>
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<td></td>
<td>Cl 5.14</td>
<td>Included option allowing RMS to engage the Contractor as the principal contractor where the Services involve construction work.</td>
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<td>Cl 5.20</td>
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<td>Cl 5.22</td>
<td>Included mechanism for RMS to request rectification of non-compliant Services at the Contractor’s expense.</td>
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<td></td>
<td>Cl 10.4</td>
<td>Included provisions allowing provisional sum work.</td>
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<td>Cl 11.3</td>
<td>Amended to require the Contractor to take reasonable measures to mitigate delay.</td>
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<td></td>
<td>Cl 11.4</td>
<td>Included a right for RMS to review the level of resources used by the Contractor.</td>
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<td></td>
<td>Cl 11.7</td>
<td>Included a right for RMS to recover the costs of having Call Back work performed where the Contractor fails to perform the work.</td>
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<td></td>
<td>Cl 12.6</td>
<td>Included a right for RMS to omit Services through the Variation mechanism.</td>
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<td>Cl 14.2</td>
<td>Amended limit of liability provision to specify a fixed cap subject to listed carve outs (including insurance proceeds).</td>
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<td></td>
<td>Cl 14.3</td>
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<td></td>
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<td>Removed change of control restriction.</td>
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<td>Ed 2/Rev 21 (Cont.)</td>
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<td>Date of Contract replaces Start Date in subclause (d).</td>
<td>Director Commercial Services</td>
<td>29-09-17</td>
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<td></td>
<td>Cl 22.4</td>
<td>Included ability for RMS to take work out of the Contractor’s hands following a default regime.</td>
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<td></td>
<td>Cl 22.7</td>
<td>Deleted Contractor’s right to be paid a specified amount for future profit foregone following termination.</td>
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<td></td>
<td>Cl 25</td>
<td>Updated dispute provisions, including to incorporate time limits for referring disputes to the next stage and an option for litigation.</td>
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<td></td>
<td>Cl 26.5</td>
<td>Updated notice clause to permit email.</td>
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<td></td>
<td>Annexure C</td>
<td>Updated insurance requirements to clarify Contractor must take out its own PI insurance.</td>
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<td>Ed 2/Rev 22</td>
<td>Cl 1.1, 5.14</td>
<td>Revised to reflect the introduction of the Work Health and Safety Regulation 2017, replacing the 2011 Regulation</td>
<td>Director Commercial Services</td>
<td>29-09-17</td>
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<td></td>
<td>Cls 1.1, 3(b), 13.1, 13.3 &amp; Annexure C</td>
<td>Revised to reflect change from insurance broker (AON) to insurer (iCare)</td>
<td></td>
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<td></td>
<td>Schedule 1 Item 19 and Cl 5.20</td>
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(CONSTRUCTION INDUSTRY)
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(Construction Industry)

AGREEMENT FORM

Date:  

..../....../.....

Parties:  
ROADS AND MARITIME SERVICES ABN 76 236 371 088 of 20-44 Ennis Road, Milsons Point, New South Wales 2061 (RMS)

The entity specified in Item 1 of the Reference Schedule (Contractor)

Agreement:  
The parties agree to enter into and comply with the terms of this Agreement.

This Agreement comprises the Letter of Acceptance, this document and the following schedules (and all schedules and annexures to them):

Schedule 1 – Reference Schedule
Schedule 2 – Fees
Schedule 3 – Conditions of Contract
Schedule 4 – Description of Services

EXECUTED by the parties as an agreement.

SIGNED by  
ROADS AND MARITIME SERVICES
on  ..../....../.....

by its authorised delegate

in the presence of:

Witness

Delegate

Name printed  
Name printed

SIGNED by the CONTRACTOR
on  ..../....../.....
in accordance with section 127 of the Corporations Act

Secretary (or additional Director)  
Director

Name printed  
Name printed
Professional Services Contract  
(Construction Industry)  
SCHEDULE 1– REFERENCE SCHEDULE

Note for internal RMS use: This schedule is to be completed by filling in the boxes with details relevant to the specific PSC engagement. Where suggested wording have been included, you are free to delete or amend it after careful consideration. If you make any changes (other than completing default items), please ensure you read each schedule item against the clauses listed for that item and check that the changes work in context. These notes may be deleted before this document is issued. Do not change any wording which is outside a bordered box unless the wording change has been approved by RMS Legal through Commercial Branch, Infrastructure Development Division.

**Item 1 - Contractor**  
*(clause 1.1 Conditions of Contract)*

The Contractor is:  
Name: [Insert Contractor's full legal title]  
ABN / ACN: [Insert ABN or ACN]  
Address: [Insert address]

**Item 2 - Commencement Date**  
*(clause 1.1 Conditions of Contract)*

The Commencement Date is:  
[Insert date the Contractor is to commence the Services] or such other date as RMS directs the Contractor in writing to commence the Services.

**Item 3 - Date for Completion**  
*(clause 11.3 Conditions of Contract)*

The Date for Completion is:  
[Insert specific date or number of days / weeks / months from the Commencement Date]

**Item 4 - RMS Approvals**  
*(clause 2.5(b) Conditions of Contract)*

Approvals to be obtained by RMS are:  
[Insert details, if none then specify "Nil"]

**Item 5 - Project**  
*(clause 1.1 Conditions of Contract)*

The Project is:  
[Insert description]

**Item 6 - Nominated Personnel**  
*(clause 5.6(b) Conditions of Contract)*

The Nominated Personnel are:  
[Insert names and roles]

**Item 7 - Contractor's Representative**  
*(clause 5.12 Conditions of Contract)*
The Contractor's Representative is: [Insert name, title, email address and phone number]

**Item 8 - Principal Contractor**  
*(clause 5.14 Conditions of Contract)*

Will the Contractor be the Principal Contractor?  
Yes / No / No Principal Contractor is required.  
[Select one.]

A Principal Contractor is required for construction work (eg: geotechnical drilling) over a specified value ($250,000 as at September 2016).

Select “Yes” if the Contractor would be the Principal Contractor where one is required.

Select “No” if RMS or another RMS contractor (eg: head contractor) would be the Principal Contractor where one is required.

Select “No Principal Contractor is required” if you are sure no Principal Contractor is required (eg: Services do not include any construction work).]

**Item 9 - Expenses**  
*(clauses 8.1 and 8.2 Conditions of Contract)*

Expenses items are: [Insert details]

**Item 10 - Payment Claim Date or Milestones**  
*(clauses 10.1 and 10.3 Conditions of Contract)*

The Payment Claim Dates or Milestones for lodgement of Payment Claims are:  
[Select either monthly payment claims or milestones as required.]  

The first Business Day of every month. / At the following Milestones:  
[Insert if applicable]

**Item 11 – Margin for Provisional Sum work**  
*(clause 10.4 Conditions of Contract)*

The margin for Provisional Sum work is:  
[Insert %]

**Item 12 - Liquidated damages**  
*(clause 11.6 Conditions of Contract)*

Are liquidated damages required: Yes / No. [Select one]
Liquidated damages are calculated as follows:

\[
\text{\$[Insert] per week (pro rata for less than a week). [Leave this box empty if “No” is selected above.]}\]

Item 13 - Program
*(clause 11.2 Conditions of Contract)*

Is a Program required? Yes / No. [Select one]

Item 14 - Grounds for extension of Date for Completion
*(clause 11.3 Conditions of Contract)*

The specified causes of delay are:

1. Lightning, flood, earthquake, cyclone, or other physical natural disaster but excluding inclement weather.
2. Riots, civil commotion, act of public enemy, war, or invasion by foreign enemies.
3. State-wide or nation-wide industrial action or strikes not caused or contributed to by the Contractor.

Item 15 - Call Back Period
*(clause 11.7(a) Conditions of Contract)*

The Call Back Period is: [Insert number of weeks/months] from the date of Completion.

Item 16 - RMS Representative
*(clause 20 Conditions of Contract)*

RMS Representative is: [Insert name, title, email address and phone number]

Item 17 - Notices
*(clause 26.5 Conditions of Contract)*

Notices to RMS:
- Address: [Insert]
- Email: [Insert]

Notices to the Contractor:
- Address: [Insert]
- Email: [Insert]

Item 18 - RMS policies
*(clause 5.18 Conditions of Contract)*

The Contractor must comply with the following policies:

[List RMS policies with which the Contractor must comply]
Item 19 - Limit of liability
(clause 14.2 Condition of Contract)
The liability limit for the purposes of clause 14.2 is:
No limit.
[May be limited to a fixed $ amount – refer to guidance in ECM6]

Item 20 - Contractor Professional Indemnity Insurance Amount
(Annexure C)
The amount of insurance for the purposes of item 5 in Annexure C is:
$[Insert].
[Insurance amount to be reviewed for each engagement.]

Item 21 - Contractor Motor Vehicle Insurance Amount
(Annexure C)
The amount of insurance for the purposes of item 3 in Annexure C is:
$20 million for any single occurrence.
[Insurance amount to be reviewed for each engagement.]

Item 22 - Additional Contractor Insurance
(Annexure C)
The Contractor must effect the following additional insurances:
[Insert detail of any other insurance the Contractor is required to obtain. Include type, minimum sum insured, period of insurance and insurance cover. If no other insurances, insert ‘Nil’.

Item 23 - Aboriginal Participation in Construction
(clause 5.20 Conditions of Contract)
The Contractor must comply with the NSW Government Policy on Aboriginal Participation in Construction:
Yes / No. [Select one]

The Aboriginal Participation Project Category is:
Category [Insert number] / Not applicable.
[Delete whichever is inapplicable]

The Contractor is required to submit an Aboriginal Participation Plan and Aboriginal Participation Reports:
Yes, at times specified in the Agreement / No.
[Delete whichever is inapplicable]

The Targeted Project Spend (TPS) at the Date of Contract is:
$[Insert amount] (excl GST) / Not applicable.
[Delete whichever is inapplicable]
Professional Services Contract  
(Construction Industry)  
SCHEDULE 2 – FEES 

(clause 7 Conditions of Contract)  

1 FEES  

[The following Fees apply to the Services provided. Except as otherwise expressly provided in the Conditions of Contract, the Fees will only be varied as specified in this Schedule 2 (Fees).]  

[Specify how Fees to be calculated:  
  • lump sum;  
  • schedule of rates; and/or  
  • other  
Specify amounts exclusive of GST.  

If lump sum, specify whether amount may simply be a pro-rata or proportional payment of the lump sum price and need not be aligned directly with the value of the Services completed in the period covered by the claim. The GST applicable to the lump sum should be noted as a separate line item.  

If there are any stages for the Services, specify the stages and fees for each Service stage.  

If there are any Provisional Sums, specify the Provisional Sums.]  

2 COST ADJUSTMENTS  

The Fees set out in paragraph 1 above will be varied as follows:  

[Insert details of any permitted adjustments to the Fees payable where the Agreement will exceed 52 weeks duration.]  

3 VARIATION RATES  

[Insert details of Variation Rates]  

[For example, if relevant:]  

| Role/task | Name/description | Rate (excl GST) |
Professional Services Contract
(Construction Industry)

SCHEDULE 3 – (CONDITIONS OF CONTRACT)

The Conditions of Contract is a Legal Branch precedent document which must only be modified with the approval of the Legal Branch
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1 INTRODUCTION

1.1 Definitions

In this Agreement:

**Agreement** means this agreement between RMS and the Contractor comprising the documents specified in the Agreement Form.

**Agreement Form** means the document of that name to which these Conditions of Contract are Schedule 3.

**Approvals** includes approvals, authorities, licences, consents and permits issued by an Authority or under any Law.

**Audit** means an audit under clause 24.2(a).

**Auditor** means an independent auditor or RMS' internal auditor appointed by RMS for the purposes of clause 24.2(a).

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

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

**Call Back** means work or services requested by RMS during the Call Back Period in relation to Services provided under this Agreement including:

(a) work or services required to rectify to RMS' satisfaction any defect or omission in the Services; or

(b) work or services required to assist RMS in rectifying, understanding, implementing, verifying or otherwise dealing with the Services.

**Call Back Period** means the period specified in Item 15 of the Reference Schedule.

**Call Back Request** means a document in the form set out in Annexure A (Call Back Request) to these Conditions of Contract.

**Commencement Date** means the date specified in Item 2 of the Reference Schedule.

**Commonwealth** means the Commonwealth of Australia.

**Completion** means that stage when the Services (other than Call Back works or services) are completed in accordance with the requirements set out in Schedule 4 (Description of Services) to the Agreement Form and as otherwise required under this Agreement.

**Conditions of Contract** means Schedule 3 (Conditions of Contract) to the Agreement Form and its Annexures.
Confidential Information of a party (Discloser) means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, provided to the other party (Recipient) before, on or after the Date of Contract relating to the business, technology or other affairs of the Discloser, but excludes:

(a) information which is in or becomes part of the public domain otherwise than through breach of this Agreement;
(b) information known to the Recipient on a non-confidential basis at the time of disclosure under this Agreement; and
(c) information developed by the Recipient independently of the Confidential Information.

Construction Work means those Services (if any) which form part of a construction project as defined in the Work Health & Safety Regulations 2017 (NSW).

Contractor means the person named in Item 1 of the Reference Schedule.

Contractor Arranged Insurances means the ‘Contractor Arranged Insurances’ listed in Annexure C (Insurances).

Contractor’s Representative means the person named in Item 7 of the Reference Schedule, and any replacement person that RMS approves in writing.

Contractor Statement means a statement in the form set out in and including the details required by Part I of Annexure B (Contractor Statement and Supporting Statement) to these Conditions of Contract or such other form and details as are required by the relevant legislation from time to time.

Date for Completion means the date for Completion specified in Item 3 of the Reference Schedule, as may be varied or extended in accordance with clause 11.3 or 12 or otherwise by written agreement of the parties.

Date of Contract means the date this Agreement is formed under clause 1.3.

Deliverable means any Document or other item provided or required to be provided to RMS or produced by or on behalf of the Contractor in connection with the Services or this Agreement.

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

Expenses mean the expenses which the Contractor incurs at the express direction of RMS in respect of the items shown in Item 9 of the Reference Schedule.

Expiry Date means the first to occur of:

(a) the expiration of the Call Back Period; or
(b) the date this Agreement is terminated in accordance with clause 22.

Fee means the fee calculated at the rates or in the amounts set out in Schedule 2 (Fees) to the Agreement Form, as increased or decreased in accordance with this Agreement.

GST has the same meaning as in the GST Law.

GST Law has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Good Industry Practice means the care, skill, diligence, prudence and foresight reasonably expected of a competent, qualified, skilled and experienced professional working in a
consultancy firm providing similar services to an organisation like RMS, seeking to comply with its contractual and legal obligations and having regard to the requirements of the Project and any other circumstances affecting the carrying out of the Services.

**Insolvent** means:

(a) where the Contractor is an individual or partnership including an individual person, being bankrupt; and

(b) where the Contractor is a company:

(i) a liquidator has been appointed;

(ii) an administrator has been appointed (voluntarily or otherwise);

(iii) the Contractor enters into a scheme or other arrangement with its creditors;

(iv) a winding-up order is made in respect of the Contractor;

(v) a mortgagee of any property of the Contractor takes possession of that property; or

(vi) the Contractor enters into any other form of insolvency administration.

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

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

**Letter of Acceptance** means a letter from RMS to the Contractor accepting the Contractor’s tender or offer for the Services.

**Liability** means any claim, suit, demand, damage, loss, expense, cost (including legal costs) or other liability.

**Milestone** means an event specified in Item 10 of the Reference Schedule.

**Nominated Personnel** means the persons named in Item 6 of the Reference Schedule and any other person that RMS consents to in writing.


**Payment Claim** means a claim for payment submitted in accordance with clause 10.1.

**Payment Claim Date** means the date specified in Item 10 of the Reference Schedule.

**Payment Schedule** means a payment schedule under clause 10.2.

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

**Personnel** means the Subcontractors and officers, employees and agents of the Contractor and the Subcontractors (and, if the Contractor is a partnership, includes partners).
Principal Contractor means a principal contractor under the Work Health and Safety Regulations 2017 (NSW).

Privacy Laws means the Privacy and Personal Information Protection Act 1998 (NSW), the Privacy Act 1988 (Cth), any applicable principles, codes of conduct or directions issued under those Acts and all other applicable Law relating to privacy or personal information.

Program means, if required under Item 13 of the Reference Schedule, the program for the provision of the Services, and any updates to it, approved by RMS in accordance with clause 11.2.

Project means the project described in Item 5 of the Reference Schedule.

Provisional Sum means a provisional sum specified in Schedule 2 (Fees) to the Agreement Form.

Records mean the records and other documents contemplated in clause 24.1(a).

Reference Schedule means Schedule 1 (Reference Schedule) to the Agreement Form.

Relevant Offence means any offence which:

(a) involves an element of dishonesty or violence;
(b) involves behaviour which RMS Representative would reasonably regard as inconsistent with the inherent requirements of the roles which the relevant person is or would be required to undertake in the performance of the Services; or
(c) resulted in the person having served a custodial sentence at any time in the preceding 10 years.

RMS means Roads and Maritime Services (ABN 76 236 371 088) of 20-44 Ennis Road, Milsons Point, New South Wales 2061.

RMS Arranged Insurances means the ‘RMS Arranged Insurances’ listed in Annexure C (Insurances).


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

RMS Representative means the person named in Item 16 of the Reference Schedule and any replacement person that RMS may nominate in writing.

RMS’ Insurer means the party identified as ‘RMS’ Insurer’ in Annexure C (Insurances) to these Conditions of Contract or such other insurance provider/advisor as is nominated by RMS in writing from time to time.


RTA or Roads and Traffic Authority means RMS or Roads and Maritime Services, 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 RMS (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 RMS is progressively updating its documents from “RTA” to “RMS” and that this is likely to be ongoing during the currency of this Agreement).


**Service Stage** means a stage of the Services specified in Schedule 2 (Fees) to the Agreement Form.

**Services** means the services set out in Schedule 4 (Description of Services) to the Agreement Form and includes any:

(a) services incidental to, or reasonably inferred from, the services set out in Schedule 4 (Description of Services) to the Agreement Form;
(b) Variations to the Services directed in accordance with this Agreement; and
(c) Call Backs.

**Subcontractor** means a person who supplies work, services, materials, plant, equipment or advice to the Contractor in connection with the Services under this Agreement (regardless of tier).

**Supporting Statement** means a statement in the form set out in and including the details required by Part II of Annexure B (Contractor Statement and Supporting Statement) to these Conditions of Contract or such other form and details as are required by the relevant legislation from time to time.

**Targeted Project Spend** means the amount identified in Item 23 of the Reference Schedule. It represents 1.5% of the Fee at the Date of Contract (excl GST) less allowable exclusions, in line with the NSW Government *Policy on Aboriginal Participation in Construction* (dated 1 May 2015, as updated from time to time) goals.

Allowable exclusions are costs incurred by the Contractor over which it has little or no control, e.g. expenditure in this Agreement unrelated to design, etc., as agreed between RMS and the Contractor.

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

**Variation** means a change to the Services by notice given under clause 12.1.

**Variation Proposal** means a notice from the Contractor referred to in clause 12.2 addressing:

(a) the price or saving it will give to RMS for the Variation or proposed Variation;
(b) the particulars of the plant, labour, materials and goods to be used or not used as a result of the Variation or proposed Variation; and
(c) the effect on the timing for the provision of the Services, including on the Program and when Completion is likely to be achieved, as a result of the Variation or proposed Variation.

**Variation Rates** means the rates or other amounts described as the "Variation Rates" in Schedule 2 (Fees) to the Agreement Form.
**WHS Scheme** means the Australian Government Building and Construction WHS Accreditation Scheme established by the BCIIP Act.

1.2 **Interpretation**

In this Agreement:

(a) headings are for convenience only and do not affect the interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa;

(c) where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning;

(d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency;

(e) a reference to any statute, regulation or law includes a variation, consolidation or replacement and a reference to any statute or law includes all regulations, ordinances, proclamations and by-laws issued under that statute or law;

(f) a reference to a party includes their successors and permitted assigns;

(g) where the day on which something is to be done is not a Business Day, that thing must be done on the preceding Business Day;

(h) if a party comprises more than one person, the obligations of that party are joint and several and the rights of that party are joint;

(i) “includes” means includes but without limitation;

(j) the defined terms in clause 1.1 will have the same meaning in all schedules and annexures to this Agreement;

(k) a reference to any document or agreement is a reference to that document or agreement as amended or varied; and

(l) unless this Agreement expressly states otherwise, each party may give or withhold any consent or approval, or exercise any other right, power, authority, discretion or remedy, under this Agreement in its absolute discretion.

1.3 **Formation of Agreement**

(a) This Agreement is formed by RMS sending a Letter of Acceptance to the Contractor, unless RMS requires in writing that this Agreement be formed by the execution of a formal agreement or deed by the Contractor.

(b) Within 10 Business Days after a written request by RMS, the Contractor must execute and return to RMS two copies of a formal agreement or deed documenting this Agreement for RMS’ execution. RMS will return an executed copy to the Contractor. Even where a Letter of Acceptance has been sent, RMS may require the Contractor to execute a formal agreement or deed.
1.4 Precedence

Where there is any inconsistency between the terms of this Agreement, the following order of precedence will apply:

(a) the Letter of Acceptance;
(b) the Agreement Form (excluding the schedules to it);
(c) Schedule 1 (Reference Schedule) to the Agreement Form;
(d) Schedule 3 (Conditions of Contract) to the Agreement Form;
(e) Schedule 2 (Fees) to the Agreement Form;
(f) Schedule 4 (Description of Services) to the Agreement Form; and
(g) any documents incorporated in this Agreement by reference.

1.5 Other terms excluded

This Agreement represents the entire agreement between the parties and it supersedes the provisions of any previous agreements, proposals, correspondence or discussions in relation to the subject matter of this Agreement. To the extent permitted by law, all implied terms are excluded.

2 SCOPE OF SERVICES

2.1 Performance

RMS engages the Contractor to provide the Services, and the Contractor must provide the Services, in accordance with this Agreement.

2.2 Commencement

Subject to clause 3, the Contractor must commence providing the Services on the Commencement Date.

2.3 Service Stages

Where Service Stages are specified in Schedule 2 (Fees) to the Agreement Form, the Contractor must not commence a Service Stage (other than the first Service Stage), and RMS has no obligation to pay the Contractor for a Service Stage (other than the first Service Stage), unless RMS has directed the Contractor to commence the Service Stage in writing.

2.4 Expiry of Agreement

This Agreement will end on the Expiry Date.

2.5 Approvals

(a) Subject to clause 2.5(b), the Contractor must obtain and maintain all Approvals required for the performance of the Services.

(b) RMS is responsible for obtaining and maintaining the RMS Approvals specified in Item 4 of the Reference Schedule.
2.6 Co-operation with others

RMS may, for its sole convenience and at its absolute discretion, also engage other contractors. The Contractor must:

(a) cooperate with those other contractors;
(b) coordinate the provision of the Services with the services provided by those other contractors;
(c) to the extent RMS reasonably requires, attend meetings involving those other contractors;
(d) align its programs with the programs of those other contractors; and
(e) ensure that the performance of the Services does not delay, disrupt or interfere with the activities of the other contractors.

2.7 Prior Services

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

3 CONDITIONS TO BE SATISFIED BEFORE SERVICES START

The Contractor must not start providing the Services until the Contractor has:

(a) obtained the Contractor's insurances in accordance with clause 13.2; and
(b) provided RMS with:
   (i) satisfactory proof that the Contractor's insurances have been obtained in accordance with clause 13.3; and
   (ii) the information to be provided in accordance with clause 13.1(e).

4 THE RELATIONSHIP

4.1 Independent contractor

In providing the Services, the Contractor acts as RMS' independent contractor and does not have any authority to act as RMS' agent or on RMS' behalf, unless RMS expressly authorises the Contractor to do so in writing. In particular, the Contractor has no authority to enter into contracts, make representations or incur liabilities on behalf of RMS.

4.2 No other relationship

This Agreement does not create any relationship of employment, partnership or joint venture between RMS and the Contractor.

4.3 No employee entitlements

The Contractor acknowledges that its engagement to carry out the Services does not entitle it to any employee benefits or entitlement.
5 REQUIREMENTS FOR SERVICES

5.1 Standard of Services

(a) The Contractor must satisfy itself as to RMS’ requirements for the Services and must comply with the policies, practices and procedures of RMS relating to the Services and the performance of the Services.

(b) The Contractor must ensure that the Services are carried out in accordance with all relevant standards (including Australian Standards, where applicable), codes (including the Australian National Construction Code, where applicable), Good Industry Practice and the other requirements of this Agreement.

(c) The Contractor must ensure that it has the skill, experience and resources to perform the Services in accordance with this Agreement. The Contractor acknowledges that RMS is relying on the Contractor’s skill, expertise and judgement in the Contractor’s performance of the Services.

5.2 Standard of Documents

The Contractor must ensure that the Documents provided as part of the Services:

(a) are complete, clear, accurate, coordinated, and free from errors, inconsistencies and ambiguity which would have a material impact on RMS or any other stakeholder in the Project;

(b) comply with all relevant standards (including Australian Standards, where applicable), codes (including the Australian National Construction Code, where applicable) and manufacturer’s recommendations;

(c) comply with RMS’ reasonable requirements regarding form and format; and

(d) comply with the other requirements of this Agreement.

5.3 Fitness for purpose

The Contractor must ensure that the Services, any Documents provided as part of the Services and any design contained in those Documents are fit for the purposes specified in or reasonably ascertainable from this Agreement.
5.4 Review by RMS

(a) The Contractor must prepare and submit the Documents as required by Schedule 4 (Description of Services) to the Agreement Form or, if no requirements are specified, as reasonably directed by RMS taking into account its requirements for the Project. The Contractor must carefully check Documents for compliance with this Agreement before submission to RMS.

(b) RMS may (but is not obliged to) give the Contractor written comments on the Documents. If RMS does comment on an aspect of a Document that does not comply with this Agreement:

(i) the Contractor must, at its own cost, promptly make any changes to the Document required by RMS to ensure the Document complies with this Agreement; and

(ii) if required by RMS, resubmit the revised Document to RMS, in which case this clause 5.4(b) and clause 5.4(c) will reapply.

(c) Where a Document is materially non-compliant with this Agreement, RMS may, without providing detailed comments, require the Contractor to revise and resubmit the Document to RMS at the Contractor’s cost, in which case clause 5.4(b) and this clause 5.4(c) will reapply.

(d) The Contractor’s obligations and liabilities under this Agreement are not reduced or affected by any receipt, acknowledgment, review, comment, approval or silence by or on behalf of RMS in relation to any Documents.

5.5 Reliance by others

The Contractor acknowledges that RMS and others engaged by RMS may rely on the Services carried out by the Contractor in carrying out further work or services relating to the Project. Any such reliance:

(a) must be consistent with the intended purpose of the Services, as ascertained from this Agreement or reasonably advised to the Contractor by RMS (unless inconsistent with the express provisions of this Agreement); and

(b) will be subject to any reasonable disclaimer by the Contractor, provided that the Contractor has obtained RMS’ prior written approval to the disclaimer.

5.6 Resources and Personnel

(a) Subject to clause 2.5(b), the Contractor must provide all things and Personnel necessary to perform the Services and comply with its obligations under this Agreement at its own expense.

(b) The Contractor must use the Nominated Personnel (or other personnel approved in writing by RMS) to provide the Services, and ensure that those persons are honest and have the skills, experience, reliability and ability necessary to perform the Services.

5.7 Removal of Personnel

(a) RMS may direct the Contractor to cease using any Personnel in respect of any activity relating to the Services on the basis that it considers that person’s performance to be unsatisfactory. The Contractor must remove that person within the time directed by RMS.
(b) The Contractor must:

(i) immediately notify RMS if the Contractor becomes aware that a person involved in the provision of the Services on behalf of the Contractor has been charged with or has been convicted of a Relevant Offence; and

(ii) promptly take such action as RMS requests in relation to that person's involvement in the provision of the Services, including ensuring that, if requested, that person ceases to be involved in the provision of the Services.

5.8 Licensing

The Contractor must be, and must ensure that its Personnel are, registered or licensed to perform the Services in accordance with the requirements of any Authority.

5.9 Legal compliance

(a) The Contractor must comply with, and ensure the Services comply with, all applicable Laws and Approvals.

(b) The Contractor must ensure that any plant, equipment and motor vehicles used in the performance of the Services are registered at all times where required by Law.

(c) The Contractor must at all times comply with the NSW Government Code of Practice for Procurement in connection with this Agreement and the provision of the Services.

5.10 Contractual compliance

The Contractor must comply with, and ensure the Services comply with, any agreements binding on RMS to the extent that:

(a) RMS discloses any such agreements to the Contractor; and

(b) the terms of such agreements are not directly inconsistent with the terms of this Agreement.

5.11 Responsibility preserved

The Contractor remains fully responsible for the Services despite RMS', RMS Representative's, or any of RMS' other contractor's comments on, review of, approval of, acceptance of, or certification issued in connection with the Services (or any failure to do so).

5.12 Contractor's Representative

(a) The Contractor appoints the Contractor's Representative to act on behalf of the Contractor. The Contractor's Representative has full authority to act on behalf of the Contractor.

(b) The Contractor may appoint a replacement Contractor's Representative where that replacement is notified to RMS and acceptable to RMS acting reasonably.

(c) An instruction or direction given to the Contractor's Representative will be deemed to be an instruction or direction given to the Contractor.
5.13 Access

(a) The Contractor's access to any premises owned or occupied by RMS for the purposes of carrying out the Services is subject to the following conditions:

(i) the Contractor must ensure that its Personnel complies with RMS' access, security and health and safety requirements when performing the Services;

(ii) if required by RMS, the Contractor must give RMS accurate information about the identity and job history of its Personnel; and

(iii) RMS may for its sole convenience and at its absolute discretion deny or restrict access to the premises to any person who RMS considers does not comply with RMS' access, security and health and safety requirements.

(b) The Contractor must:

(i) within a reasonable time of any request by RMS, give access to, and at RMS' request and cost, verified copies of, any Document or equipment created or used in connection with the Services; and

(ii) upon reasonable notice, permit RMS access to the Contractor's premises in order for RMS to inspect, discuss and assess any Document created or used in connection with the Services.

(c) RMS must comply with the Contractor's reasonable confidentiality, security and access requirements when accessing the Contractor's premises under clause 5.13(b).

5.14 Principal Contractor

(a) Where Item 8 of the Reference Schedule states the Contractor will be the Principal Contractor:

(i) RMS engages the Contractor as the Principal Contractor for the Construction Work (if any) until the Construction Work is complete or RMS ends the Contractor’s engagement by written notice (including so that RMS can engage another person as Principal Contractor);

(ii) RMS authorises the Contractor to have management or control of the workplace on which the Construction Work (if any) is performed and to discharge the duties of a Principal Contractor under the Work Health and Safety Regulations 2017 (NSW); and

(iii) the Contractor accepts its engagement as the Principal Contractor and must perform the duties and functions of the Principal Contractor, regardless of whether its engagement is effective.

(b) Where Item 8 of the Reference Schedule states the Contractor will not be the Principal Contractor, or RMS ends the Contractor's engagement under clause 5.14(a) for the purpose of engaging a different Principal Contractor, the Contractor:

(i) acknowledges that the Principal Contractor for the Construction Work (if any) will be selected by RMS; and

(ii) must comply with any direction given by the Principal Contractor for the Construction Work in its capacity as the Principal Contractor.

(c) This clause 5.14 does not apply where Item 8 of the Reference Schedule states no Principal Contractor is required.
5.15 Deliver Documentation

The Contractor must deliver to RMS upon request (including after termination of this Agreement for any reason) all Documents:

(a) provided by or on behalf of RMS in connection with the Services; or
(b) prepared by the Contractor or others as part of the Documents to be provided to RMS in connection with, or as part of, the Services,

but the Contractor may retain one copy of its own working notes created in the course of providing the Services to the extent necessary to comply with any Law or to maintain compliance with the Contractor's quality assurance system, provided that the Contractor securely and safely stores such working notes, marks them as confidential and complies with clause 15.

5.16 Reporting

The Contractor must:

(a) consult with RMS in the manner and at the times set out in Schedule 4 (Description of Services) to the Agreement Form, and at such other times as RMS reasonably requests, in relation to the provision of the Services. Without limiting any requirements set out in Schedule 4 (Description of Services) to the Agreement Form, matters for consultation may include:

(i) the progress of the performance of the Services;
(ii) the standard of performance of the Services; and
(iii) such other matters as RMS identifies; and

(b) keep RMS fully informed as to any matters affecting the cost, timing or quality of the Services (including as to any matters on which RMS may specifically request that the Contractor report) promptly upon the Contractor becoming aware of such matters.

5.17 Identification of the Services

The Contractor must co-operate with RMS in connection with RMS’ use of the Contractor’s name in any marketing or promotion associated with the Project to the extent RMS may reasonably require.

5.18 RMS policies

The Contractor must comply with the ethical and other policy requirements of RMS relating to the provision of the Services or the Project including:

(a) RMS Statement of Business Ethics;
(b) RMS Customer Charter; and
(c) the policies specified in Item 18 of the Reference Schedule.

RMS reserves the right to notify the Contractor at any time of additional policies with which the Contractor must comply.
5.19 Alterations to approved documents

The Contractor must not make any alteration to, addition to or omission from the plans, drawings, layouts, designs, specifications or other material supplied or approved by RMS, without the written approval of RMS.

5.20 NSW Government Policy on Aboriginal Participation in Construction

Where required in Item 23 of the Reference Schedule:

(a) The Contractor must comply with the NSW Government Policy on Aboriginal Participation in Construction (dated 1 May 2015, as updated from time to time) and the Targeted Project Spend (TPS) on Aboriginal participation as stated in Item 23 of the Reference Schedule.

(b) The Contractor must prepare and submit the following:

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

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

(B) an Aboriginal Participation Report at 90% completion of the Services, which explains how the Aboriginal Participation Plan has been implemented and what outcomes have been achieved; and

(ii) to the RMS Representative only:

(A) if requested, a draft of the Aboriginal Participation Plan referred to in clause 5.21(b)(i)(A), within 20 days after the Date of Contract;

(B) quarterly, its Aboriginal Participation Report in the form set out in Annexure D (Aboriginal Participation in Construction – Quarterly Report), providing details of the implementation of the Policy and achievement of targets; and

(C) a final Aboriginal Participation Report, at the end of the Call Back Period. 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.

(c) The Aboriginal Participation Plans and the Aboriginal Participation Reports (except the reports referred to in clause 5.21(b)(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:


5.21 Non-compliances

(a) RMS may, before Completion is achieved, direct the Contractor to rectify any aspect of the Services or any Document provided as part of the Services which do not comply with this Agreement within a reasonable time specified by RMS.

(b) All costs and expenses incurred in performing rectification work under clause 5.22(a) are the responsibility of the Contractor and cannot be recovered from RMS.
If the Contractor does not comply with RMS’ direction under clause 5.22(a), including within the time specified, RMS may, after giving the Contractor 5 Business Days’ notice, have the non-compliance rectified by itself or others.

The costs and expenses incurred by RMS in carrying out or having carried out rectification work under clause 5.22(c) will be a debt due and payable from the Contractor to RMS, and may be deducted by RMS from amounts payable to the Contractor.

6 INFORMATION PROVIDED BY RMS

6.1 Provision of information

RMS (or others acting for RMS) may provide the Contractor with information relevant to the provision of the Services. The Contractor must:

(a) act with reasonable care in relying upon or using that information in connection with the provision of the Services; and

(b) not rely on or use any part of that information for any purpose to the extent that RMS informs the Contractor that it is not to be so relied upon or used.

6.2 Inadequacy of information

The Contractor must promptly notify RMS if it considers that any information which RMS has provided is inaccurate or inadequate for the Contractor to provide the Services.

6.3 No claim

RMS has no Liability in respect of any information:

(a) which RMS informs the Contractor is not to be relied upon or used; or

(b) to the extent that the Contractor fails to exercise reasonable care in relying upon or using that information.

7 FEES PAYABLE FOR SERVICES

7.1 Lump sum

Where Schedule 2 (Fees) to the Agreement Form specifies that the Contractor is to be paid for Services provided at a lump sum price, RMS will pay the Contractor the amount specified in Schedule 2 (Fees) to the Agreement Form in accordance with clause 10. Where provided for in Schedule 2 (Fees) to the Agreement Form, this amount may be a pro-rata or proportional payment of the lump sum fee and need not be aligned directly with the value of the Services completed in the period covered by the payment claim.

7.2 Rates

Where Schedule 2 (Fees) to the Agreement Form specifies that the Contractor is to be paid for Services covered by a schedule of rates (including rates per hour), RMS will pay the Contractor the amount calculated by multiplying the measured quantity of each section, item or hour of work actually undertaken in accordance with the Agreement by the applicable rate set out in the schedule of rates specified in Schedule 2 (Fees) to the Agreement Form for that section, item or hour, in accordance with clause 10.
7.3 Variations

RMS will pay the Contractor for the Services the subject of any Variation based on the valuation for that Variation agreed or determined under clause 12 in accordance with clause 10.

8 EXPENSES

8.1 Outlays

RMS will reimburse the Contractor for Expenses incurred by the Contractor in providing the Services only if RMS has agreed in writing to:

(a) the specific items to which those Expenses relate; and

(b) the amount which it will reimburse the Contractor,

before the Expenses are incurred.

8.2 Cost Reimbursement

Unless otherwise agreed in writing, Expenses will be reimbursed on the basis of cost to the Contractor without allowance for any profit or overhead.

8.3 Allowance for Credits

RMS will not reimburse the Contractor to the extent that it is entitled to any discount, refund, credit (including goods and services tax credit), reimbursement or other allowance in relation to the cost or expense.

9 TAXES AND CHARGES

9.1 Interpretation

(a) Unless otherwise stated in this Agreement, amounts payable, and consideration to be provided, in connection with this Agreement include GST.

(b) Terms used in this clause 9 which are not defined in this Agreement, but which are defined in the GST Law, have the meanings given in the GST Law.

9.2 Payment of GST

If GST is payable on a supply made under this Agreement, the recipient must pay the supplier an amount equal to the GST payable on that supply at the time the recipient pays or provides consideration for the supply.

9.3 Other taxes

Other than as provided by clause 9.2, the Contractor is responsible for and must pay all taxes and charges payable in connection with the provision of the Services.

9.4 Recipient created tax invoices

Unless RMS notifies the Contractor otherwise in relation to a particular supply:

(a) RMS will issue to the Contractor a recipient created tax invoice for each taxable supply made by the Contractor to RMS under this Agreement; and
(b) the Contractor must not issue a tax invoice in respect of any supply it makes to RMS under this Agreement.

9.5 Registration for GST

(a) The Contractor must be registered for GST purposes unless, before entering this Agreement, the Contractor has notified RMS that the Contractor is not required to be registered for GST.

(b) Each party must notify the other party if it ceases to be registered for GST purposes or if it ceases to comply with any of the requirements of the GST Law in relation to issuing recipient created tax invoices (including any taxation ruling issued by a taxation authority relating to tax invoices).

9.6 Tax withholding

Despite any other provision of this Agreement, if RMS is obliged to make any deduction or withholding on account of any tax, charge, rate, duty or impost however described in connection with this Agreement as a result of not being provided with the Contractor's ABN or for any other reason, RMS may withhold the relevant amount from the payment due to the Contractor and promptly pay that amount to the relevant authority. RMS has no obligation to pay any additional amount to the Contractor in connection with any withheld amount.

10 PAYMENTS

10.1 Payment Claims

(a) On each Payment Claim Date the Contractor may provide to RMS a Payment Claim in respect of the Services the subject of the Payment Claim setting out:

(i) details of the Services provided; and

(ii) the amount claimed in respect of those Services calculated in accordance with clause 7 or as otherwise specified in this Agreement; and

(iii) any Expenses incurred during the relevant period,

in each case as supported by:

(iv) such information as RMS requires to substantiate the claim; and

(v) a properly executed Contractor Statement and Supporting Statement in relation to the Payment Claim.

(b) A Payment Claim does not create a tax liability under GST Law.

10.2 Payment Schedule

(a) Within 10 Business Days after receiving a Payment Claim, RMS Representative will issue to the Contractor a Payment Schedule evidencing RMS Representative's valuation of the money due from RMS to the Contractor in relation to that Payment Claim and the reasons for any difference. In preparing the Payment Schedule, RMS Representative may deduct:

(i) any amount claimed by RMS from the Contractor under this Agreement; and
(ii) the value of any of the Services for which payment is claimed that RMS considers have not been performed in accordance with this Agreement.

(b) If an adjudication determination under the Security of Payment Act is made in connection with this Agreement or the Services, RMS Representative may account to the parties for any money then due and payable in any subsequent Payment Schedule, including by setting off any amounts payable or paid pursuant to that determination.

(c) RMS may correct any error in, or otherwise modify, any previous Payment Schedule.

10.3 Milestones

Where Item 10 of the Reference Schedule specifies Milestones that are to be achieved, the Contractor may only make a claim for payment in respect of that Milestone:

(a) where RMS has confirmed in writing that the Milestone has been achieved; and

(b) in a Payment Claim submitted on a Payment Claim Date after the achievement of the Milestone.

10.4 Provisional Sums

(a) This clause 10.4 will only apply where Provisional Sums are specified in Schedule 2 (Fees) to the Agreement Form.

(b) RMS may direct the Contractor in writing to proceed or not proceed with Provisional Sum work. The Contractor must not carry out Provisional Sum work, and RMS has no obligation to pay for Provisional Sum work, unless RMS has directed the Contractor in writing to proceed with the Provisional Sum work.

(c) Where RMS directs the Contractor in writing to proceed with Provisional Sum work, the Contractor must perform the Provisional Sum work as part of the Services and the Fees will be adjusted by RMS (acting reasonably) as follows:

(i) deduct from the Fees the Provisional Sum for that work;

(ii) add to the Fees the additional, actual and direct costs incurred by the Contractor in performing the Provisional Sum work, excluding the cost of any supervisor or administrative personnel and overheads; and

(iii) add to the Fees the margin specified in Item 11 of the Reference Schedule applied to the costs assessed by RMS under clause 10.4(c)(ii).

(d) The Contractor must:

(i) use its reasonable endeavours to minimise the costs it incurs in performing Provisional Sum work; and

(ii) provide reasonable evidence of costs under clause 10.4(c)(ii) with any claim for those costs and before the Contractor is entitled to payment of those costs.

(e) Where RMS directs the Contractor in writing to not proceed with Provisional Sum work:

(i) the Contractor is not required to perform the Provisional Sum work, and the Provisional Sum work will not form part of the Services; and

(ii) the Provisional Sum for that work will be deducted from the Fees.
10.5 No other claims

To the extent permitted by law, the Contractor agrees that:

(a) all claims for payment for any Services must be made in accordance with this Agreement; and

(b) if this Agreement is terminated, the Contractor will not be entitled to any payment other than as expressly provided for under this Agreement.

10.6 Payment times

Subject to clauses 10.1(a) and 10.7, RMS must pay the Contractor the amount set out in a Payment Schedule as payable by RMS within 15 Business Days of being served with the Payment Claim.

10.7 Set off

RMS may deduct from any payment otherwise due to the Contractor any amount the subject of a claim by RMS against the Contractor.

10.8 Effect of payment

(a) Any payment by RMS for the Services is not an approval by RMS of the Contractor's compliance with this Agreement, nor evidence of the value of the Services.

(b) Any failure by RMS Representative to set out in a Payment Schedule an amount which RMS is entitled to retain, deduct, withhold or set-off (whether under this Agreement or otherwise) will not prejudice RMS' right to subsequently exercise that right to retain, deduct, withhold or set-off any amount.

11 TIME FOR PROVISION OF SERVICES

11.1 Time requirements

The Contractor must:

(a) subject to clause 3, commence and perform the Services from the Commencement Date, without delay, diligently and with due expedition; and

(b) provide the Services in accordance with:

(i) the Milestones and the Date for Completion;

(ii) the Program; and

(iii) to the extent there is no Program, the reasonable requirements notified by RMS to the Contractor from time to time.

11.2 Program

(a) Where required under Item 13 of the Reference Schedule, the Contractor must provide RMS for its approval a draft Program for the provision of the Services to be developed in accordance with this clause 11.2.
(b) The draft Program will be developed by the Contractor in consultation with RMS. The draft Program must be in a form acceptable to RMS and must:

(i) include the major activities to be undertaken by the Contractor in providing the Services including any Milestones;

(ii) specify the date for delivery for any Documents or other items required by the Services to be delivered to RMS;

(iii) specify the resources the Contractor will commit to the provision of the Services to achieve Completion by the Date for Completion; and

(iv) include any other matter reasonably required by RMS.

(c) The Contractor must promptly make any changes to the draft Program reasonably required by RMS.

(d) Once the draft Program has been approved by RMS, it will be the agreed "Program."

(e) Where RMS has approved a Program under clause 11.2(d), the Contractor must promptly:

(i) prepare an updated draft Program to reflect any change to the Program; and

(ii) provide RMS with the updated draft Program for RMS’ further approval under this clause 11.2.

11.3 Extension of time

(a) The Contractor must promptly notify RMS of any matter that delays or is likely to delay the provision of the Services and include in the notice details of the circumstances and extent or likely extent of the delay.

(b) If the Contractor is or will be delayed in achieving Completion by the Date for Completion by:

(i) an act, default or omission of RMS, its employees, agents, or contractors not required, permitted or contemplated by this Agreement;

(ii) a Variation directed by RMS under clause 12.1; or

(iii) any cause specified in Item 14 of the Reference Schedule,

and the Contractor, within 10 Business Days after the cause of the delay occurs, gives RMS a written request for an extension of the Date for Completion identifying:

(iv) the event or circumstance giving rise to the delay;

(v) the nature and extent of the delay;

(vi) the effect on the Program;

(vii) the period, if any, by which, in the opinion of the Contractor, the Date for Completion should be extended; and

(viii) the action which the Contractor has taken or will take to avoid or mitigate the delay, or the reasons why the Contractor cannot avoid or mitigate the delay,
the Contractor will be entitled to such an extension of the Date for Completion as is reasonably determined by RMS and notified to the Contractor.

(c) The Contractor will not be entitled to an extension of the Date for Completion unless it gives RMS a notice in the form, and within the time, required by clause 11.3.

(d) The Contractor must take reasonable steps, including managing its resources, to avoid or mitigate any delay to Completion.

(e) The Contractor will not be entitled to an extension of the Date for Completion to the extent:

(i) the Contractor or its Personnel caused or contributed to the delay; or

(ii) the delay would have been avoided or mitigated if the Contractor complied with this clause 11.3(d).

(f) Notwithstanding that the Contractor may not be entitled to an extension of the Date for Completion, RMS may by notice extend the Date for Completion for any reason to the benefit of RMS.

11.4 Additional resources

(a) RMS may, from time to time, require the Contractor to provide a resource schedule or updated resource schedule for the Services.

(b) The Contractor must, if requested by RMS, demonstrate that the Contractor’s resources will be adequate to ensure the Services are performed in compliance with this Agreement and Completion is achieved by the Date for Completion.

(c) If the Contractor fails to demonstrate its resources are adequate under clause 11.4(b) to RMS’ reasonable satisfaction, RMS may direct the Contractor to increase its resources so they are adequate. The Contractor must promptly comply with any such direction at its own cost.

(d) RMS’ rights under this clause 11.4 are additional to, and do not exclude or limit, its other rights under this Agreement and otherwise, including under clause 11.6.

11.5 Completion

(a) The Contractor must promptly notify RMS of the date on which it considers that Completion was achieved.

(b) If, after receipt of a notice under clause 11.5(a), RMS considers Completion has not been achieved, RMS may notify the Contractor that RMS does not agree with the Contractor’s assessment and set out the Services to be completed before Completion is achieved.

(c) If RMS does not issue a notice under clause 11.5(b) within 10 Business Days of receipt of the Contractor’s notice under clause 11.5(a), then Completion is deemed to have been achieved by the date notified by the Contractor.

(d) The issue by the Contractor of a notice specifying Completion has been achieved (whether under this clause or otherwise) is not evidence or an admission by RMS that the Services or any of them have been performed satisfactorily or in accordance with this Agreement.
11.6 Liquidated damages

(a) Where item 12 of the Reference Schedule states that liquidated damages are required, if Completion does not occur by the Date for Completion, the Contractor must pay to RMS liquidated damages for each day of delay in achieving Completion.

(b) The liquidated damages will be calculated in the manner set out in Item 12 of the Reference Schedule and will apply from and excluding the Date for Completion to and including the actual date of Completion.

(c) The parties agree that the liquidated damages (if any) specified in Item 12 of the Reference Schedule are a genuine pre-estimate of damages likely to be suffered by RMS if Completion does not occur by the Date for Completion.

(d) If:

(i) no amount or rate is set out in Item 12 of the Reference Schedule (or if "nil" or "not applicable" or some other form of words to similar effect is included, or if Item 12 of the Reference Schedule is blank); or

(ii) the Contractor's obligation to pay liquidated damages is held to be unenforceable for any reason whatsoever,

then the Contractor remains liable to RMS for general damages if Completion does not occur by the Date for Completion.

11.7 Call Back

(a) During the Call Back Period, the Contractor must be available to, and must if required by RMS, provide Call Back work or services.

(b) The Contractor must carry out and complete a Call Back within the time frame and on the other conditions set out in a Call Back Request. Except to the extent expressly specified by the Call Back Request (or otherwise required by the context), all applicable terms of this Agreement apply to the performance of Call Backs.

(c) If, in the reasonable opinion of RMS, the need for a Call Back arose from or in connection with a default (including a defect or omission) in the performance of the Services, the Call Back must be provided by the Contractor at no cost to RMS. In any other circumstances, the Contractor may claim payment for the Call Back in accordance with clause 10 at the Variation Rates.

(d) If the Contractor fails to provide Call Back work or services within the timeframe set out in the Call Back Request, RMS may, after giving the Contractor prior notice of its intention to do so, have the Call Back work or services carried out by itself or others.

(e) Where clause 11.7(c) requires the Call Back to be provided at no cost to RMS, the costs and expenses incurred by RMS in carrying out or having carried out the Call Back work or services under clause 11.7(d) will be a debt due and payable from the Contractor to RMS, and may be deducted by RMS from amounts payable to the Contractor.

11.8 Suspension of Services

(a) RMS may, for its sole convenience and at its absolute discretion, immediately by notice suspend the provision of the Services and payments relating to those suspended Services regardless of whether there has been any default on the Contractor's part at any time. RMS may only suspend payment in relation to those Services which are yet to
be performed. Clause 10 will continue to apply in respect of previously performed Services.

(b) If RMS suspends the provision of the Services, the Contractor may claim payment from RMS for the direct costs incurred by the Contractor as a result of the suspension of the provision of the Services, provided that the Contractor must minimise and mitigate any such direct costs. The Contractor may only claim payment for such direct costs under a Payment Claim issued under clause 10.1. This clause 11.8(b) does not apply where the suspension was a result of or made necessary by an act or omission of the Contractor or its Personnel, including a breach of this Agreement.

12 VARIATIONS

12.1 Variations

RMS may direct the Contractor in writing to add to, omit from or vary the scope of or requirements for the Services. The Contractor must comply with any such direction and the Fees payable for the Services will be adjusted in accordance with clause 12.3.

12.2 Consequences of Variation or proposed Variation

(a) Before directing a Variation under clause 12.1, RMS may request the Contractor to provide a Variation Proposal. The Variation Proposal must be provided by the Contractor to RMS within a reasonable time nominated by RMS.

(b) If:

(i) RMS directs a Variation under clause 12.1 and no request for a Variation Proposal in relation to that Variation has been made by RMS under clause 12.2(a); or

(ii) the Contractor considers that the direction will affect:

   (A) the price (including a saving in price) for providing the Services;
   
   (B) the plant, labour, materials and goods to be used or not used as a result of the direction; or
   
   (C) the timing of the provision of the Services, including on the Program and Date for Completion,

the Contractor must, as soon as practicable, and in any event no later than 10 Business Days after the direction is given, provide RMS with a Variation Proposal in relation to the additional or varied Services the subject of the direction.

(c) A Variation Proposal must constitute an offer by the Contractor to comply with the Variation (or proposed Variation). RMS is not obliged to accept any Variation Proposal.

12.3 Valuation of Variations

Any Variation will be priced as follows:

(a) where RMS accepts the price or saving set out in the Variation Proposal, as set out in the accepted Variation Proposal. If RMS accepts the Variation Proposal, RMS will issue a notice for the Variation incorporating the terms of the Variation Proposal; and
(b) if the Contractor does not provide a Variation Proposal or RMS does not accept the price or saving set out in the Variation Proposal, RMS may determine the value of the Variation by:

(i) applying the Variation Rates; or

(ii) if the Variation Rates are not applicable to the Variation, RMS will reasonably determine the value of the Variation,

and RMS will notify the Contractor of its determination.

### 12.4 Notification of changes in scope

As soon as practicable after becoming aware of any matter which is likely to change or which has changed the scope of the Services, the Contractor must give written notice to RMS detailing the circumstances and extent (or likely extent) of the change.

### 12.5 Entitlement to payment

The Contractor will have no entitlement to claim, or to be paid for, a Variation unless RMS directs the Variation in writing.

### 12.6 Omissions

RMS may direct a Variation which omits any part of the Services. RMS must give the Contractor 21 days’ prior written notice of its intention to omit a substantial portion of the Services.

### 13 INSURANCE

#### 13.1 RMS Arranged Insurances

(a) RMS will effect the RMS Arranged Insurances required to cover the Contractor as an insured in accordance with the requirements specified in Annexure C (Insurances) to these Conditions of Contract in relation to the provision of the Services.

(b) RMS may (but is not obliged to) effect the other RMS Arranged Insurances specified in Annexure C (Insurances) to these Conditions of Contract in relation to the provision of the Services.

(c) RMS may for its sole convenience and at its absolute discretion list other insureds on RMS Arranged Insurances, including any other government entity with an interest in the Services.

(d) RMS must maintain the RMS Arranged Insurances required to cover the Contractor as an insured in relation to the Services until the Expiry Date.

(e) Before the earlier of:

(i) 10 Business Days after the Date of Contract; or

(ii) the Contractor starting to provide the Services,

the Contractor must provide RMS’ Insurer with all details reasonably requested by RMS’ Insurer for the purpose of RMS effecting RMS Arranged Insurances.
(f) The Contractor acknowledges and agrees that any settlement paid pursuant to a claim under RMS Arranged Insurances in relation to the Services may be paid directly to RMS.

(g) The Contractor must:

(i) ensure that it complies with the conditions of insurance under RMS Arranged Insurances;

(ii) not do or omit to do anything which might vitiate, impair or derogate from the cover under RMS Arranged Insurances or which might prejudice any claim under RMS Arranged Insurances;

(iii) immediately notify RMS, upon becoming so aware, of any event which may result in RMS Arranged Insurances being varied, cancelled or avoided;

(iv) immediately notify RMS in writing, upon becoming so aware, of any occurrence, claim, demand or circumstance that may give rise to a claim under RMS Arranged Insurances;

(v) if a notification is made pursuant to clause 13.1(g)(iv), provide all information reasonably requested by RMS, and comply with all reasonable requests made by RMS, in relation to the occurrence, claim, demand or circumstance the subject of the notice;

(vi) keep RMS fully informed of developments concerning any subsequent claim or claims upon RMS Arranged Insurances; and

(vii) ensure that its Personnel keep the Contractor informed of any occurrence, claim, demand or circumstance that may give rise to a claim under RMS Arranged Insurances so that the Contractor is able to comply with clause 13.1(g)(iv).

(h) The existence of RMS Arranged Insurances will not reduce, vary, or otherwise affect the Contractor's liabilities and obligations under this Agreement.

(i) The Contractor must pay or discharge the relevant deductible or excess set out in Annexure C (Insurances) to these Conditions of Contract under the heading "RMS Arranged Insurances" payable or retained by itself or RMS in connection with any claim made in respect of any loss or liability to the extent it is caused by, or contributed to by, the Contractor and its Personnel covered by RMS Arranged Insurances.

(j) The Contractor can access the public and products RMS Arranged Insurance terms at:


13.2 Contractor's insurances

The Contractor must obtain and maintain the Contractor Arranged Insurances on the terms, for the risks identified, for the period of time and for the amounts specified in Annexure C (Insurances) to these Conditions of Contract.

13.3 Evidence of insurances

The Contractor must provide evidence of the insurances obtained and maintained under clause 13.2, in the form of a certificate of currency, to RMS on request.
13.4 Failure to provide evidences of insurances

If the Contractor breaches clause 13.2 or 13.3, RMS may, in its absolute discretion, obtain the relevant Contractor Arranged Insurances and may:

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

13.5 Notification of claims

The Contractor must:

(a) provide full particulars to RMS in writing of:

(i) any occurrence of an event that may give rise to a claim against any of the insurance policies obtained and maintained under, or as required by, this Agreement; and

(ii) any claim or subsequent proceeding or action and developments concerning the claim, related to this Agreement against any of the insurance policies obtained and maintained under, or as required by, this Agreement promptly upon becoming aware of such matters;

(b) give RMS any further information regarding the claim as RMS may require; and

(c) take such steps as are necessary or appropriate to ensure that any Subcontractor engaged to provide the Services in accordance with this Agreement will, in relation to RMS and in respect of an event or claim of a like nature arising out of or relating to the operations or responsibilities of the Subcontractor, take similar action to that which the Contractor is required to take under clauses 13.5(a) and 13.5(b).

13.6 Insurance claims procedure

(a) In relation to RMS Arranged Insurances, the Contractor must:

(i) not, without the consent of the insurer, make any admission, offer, promise or payment in connection with any occurrence or claim; and

(ii) promptly give all information and reasonable assistance to RMS and the insurer as RMS or the insurer, or its nominee, may require in the prosecution, defence or settlement of any occurrence or claim.

(b) Nothing in this clause 13.6 prevents a party from taking immediate action to avoid loss of life or damage to property where that is reasonably necessary in the circumstances, and any such action will not prejudice the position of either party under the policies of insurance effected in respect of any loss or damage.
14 LIABILITY

14.1 Indemnity

The Contractor indemnifies RMS from and against all actions, claims, costs, losses, expenses and damages (including the costs of defending or settling any action or claim) in respect of:

(a) loss of, loss of use of, or damage to property of RMS; and

(b) personal injury (including death) or illness to any person or loss of, loss of use of or damage to any property; and

(c) claim for breach of confidence or privacy or misuse of Personal Information,

arising out of or in connection with a negligent act or omission of the Contractor, its employee or agent in the carrying out of the Services.

The Contractor’s liability to indemnify RMS is reduced proportionally to the extent that a malicious or negligent act or omission of RMS, or employees or agents (other than the Contractor) of RMS, or a breach of this Agreement by RMS has contributed to the injury, damage or loss.

Part 4 of the Civil Liability Act 2002 (NSW) does not apply to this Agreement or any of the Services.

14.2 Limitation of liability

(a) Subject to clauses 14.2(b) and 14.3, the Contractor’s total liability to RMS arising out of or in connection with this Agreement (however arising) is limited to the amount set out in Item 19 of the Reference Schedule.

(b) Subject to clause 14.3, clause 14.2(a) does not limit the Contractor’s liability:

(i) in respect of liability which:

(A) cannot be limited at law;

(B) arises under clause 14.1 or 16 or a breach of clause 17;

(C) is due to the Contractor’s or the Personnel’s wilful or reckless misconduct, fraud or criminal conduct; or

(D) arises in connection with the Contractor’s abandonment of its obligations under this Agreement;

(ii) to the extent that any insurer under a policy referred to in clause 13.2 seeks to exercise a right of subrogation against the Contractor;

(iii) to the extent that (ignoring the application of clause 14.2(a)), the Contractor is entitled to recover that liability from any other third party (including any Personnel but excluding any insurer), or would have been entitled to recover that liability but for any act or omission of the Contractor;

(iv) to the extent insurance proceeds are recovered by the Contractor in respect of that liability under any insurance that it is required to effect and maintain under this Agreement, or would have been recovered if the Contractor had effected
and maintained insurance as required by this Agreement, complied with the
insurance policies and taken all reasonable steps to recover the proceeds;

(v) to pay interest or other amounts which this Agreement expressly treats as
recoverable debts;

(vi) for liquidated damages under clause 11.6 or general damages referred to in
clause 11.6(d); or

(vii) for personal injury (including death) or illness to any person in any
circumstances,

and those liabilities will not be included in any calculation of the Contractor’s total liability
under clause 14.2(a).

14.3 Exclusion of certain kinds of loss

(a) Subject to clause 14.3(b), each party will not be liable to the other party for:

(i) loss of business opportunity;

(ii) loss of goodwill;

(iii) loss of contracts (other than this Agreement);

(iv) loss arising from business interruption;

(v) loss of or corruption of data;

(vi) loss of anticipated savings; or

(vii) the cost of capital or other financing costs,

arising out of or in connection with this Agreement (however arising).

(b) Clause 14.3(a) does not exclude a party’s liability:

(i) which cannot be excluded at law;

(ii) in the case of the Contractor, which arises under clause 14.1 or 16 or a breach
of clause 17;

(iii) arising out of or in connection with that party’s wilful or reckless misconduct,
fraud, criminal conduct or gross negligence;

(iv) to pay interest or other amounts which this Agreement expressly treats as
recoverable debts;

(v) in the case of the Contractor, for liquidated damages under clause 11.6 or
general damages referred to in clause 11.6(d); or

(vi) arising out of or in connection with a substantial breach by that party of this
Agreement.
15 CONFIDENTIALITY

15.1 Treatment of Confidential Information

Each party acknowledges that the Confidential Information of the other party is valuable to the other party. Each party undertakes to keep the Confidential Information of the other party secret and to protect and preserve the confidential nature and secrecy of that Confidential Information.

15.2 Use of Confidential Information

A Recipient may only use the Confidential Information of the Discloser for the purposes of performing the Recipient’s obligations, exercising the Recipient’s rights under this Agreement or, where the Recipient is RMS, enjoying the benefit of the Services and Deliverables.

15.3 Disclosure of Confidential Information

A Recipient may not disclose Confidential Information of the Discloser to any person except:

(a) representatives, legal advisers, auditors and other consultants of the Recipient who require it in connection with this Agreement;

(b) with the prior written consent of the Discloser;

(c) in the case of RMS, to any government agency or relevant Minister provided that the government agency or Minister is made aware of the confidential nature of the information;

(d) if the Recipient is required to do so by law, requirements of any government agency or a stock exchange; or

(e) if the Recipient is required to do so in connection with legal proceedings relating to this Agreement.

15.4 Disclosure by Recipient

A Recipient disclosing information under clause 15.3(a) or 15.3(b) must ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted by clause 15.3.

15.5 Return of Confidential Information

On the earlier of the Discloser’s request and termination or expiry of this Agreement, the Recipient must immediately deliver to the Discloser or destroy all Documents in the Recipient’s power or control containing or referring to the Discloser’s Confidential Information except:

(a) to the extent the Recipient requires the Confidential Information to continue to perform this Agreement;

(b) the Recipient may retain a copy of the Confidential Information to the extent required by law or by its reasonable archiving and risk management policies; and

(c) RMS will not be required to return any Contractor’s Confidential Information incorporated in any Deliverables or which it requires to enjoy the benefit of the Services or Deliverables.
16 OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

16.1 Ownership of new Intellectual Property Rights

Subject to clause 16.3, all Intellectual Property Rights which are created or developed by the Contractor in connection with the provision of the Services will vest absolutely in and are assigned by the Contractor to RMS from the later of the Date of Contract and the date they are created or developed. The Contractor agrees to do all things necessary to give effect to this clause.

16.2 Licence to Contractor

RMS grants to the Contractor and its Subcontractors who RMS has consented to in accordance with clause 18, a non-exclusive, non-transferrable, royalty free licence during the term of this Agreement to use, reproduce and modify RMS IP and Third Party IP only to the extent required to provide the Services or meet the Contractor’s other obligations under this Agreement. Except as expressly stated in this Agreement, no licence or right to Intellectual Property Rights is transferred to or created for the benefit of the Contractor or any Personnel.

16.3 Ownership of existing Intellectual Property Rights

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

(a) were created by the Contractor before the earlier of the Date of Contract and the date the Contractor commences the Services; or

(b) are developed independently of this Agreement and the Services,

remain the property of the Contractor.

16.4 Licence to RMS

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

(a) use, reproduce, add to, modify and communicate to the public all Intellectual Property Rights not assigned to RMS under clause 16.1 and which are incorporated in or necessary to use or enjoy the benefit of any Deliverable or the Services in any manner for any purpose;

(b) permit any person to assist RMS to do any of the things referred to in clause 16.4(a); and

(c) sublicense any of the rights described in clause 16.4(a) or clause 16.4(b) to any person, but only as part of the use or exploitation of the Deliverables or enjoying the benefit of the Services. RMS may for its sole convenience and at its absolute discretion assign this licence or license these rights to any entity that becomes entitled to any interest in the Services or the Deliverables to which the licence relates.

16.5 Indemnity

The Contractor indemnifies RMS against any Liability arising from others making any claims against RMS in respect of the ownership of, or rights to use, Intellectual Property Rights the Contractor uses, develops or creates in connection with the provision of the Services including Intellectual Property Rights vesting in RMS under clause 16.1 or licensed to RMS under clause 16.4 or arising out of RMS’ use of the Deliverables in accordance with this Agreement.
16.6 Ownership of Documents

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

17 MORAL RIGHTS

17.1 Warranty

The Contractor warrants to RMS that:

(a) all individuals who may have moral rights (as that expression is defined in the Copyright Act 1968 (Cth)) in any Documents provided as part of the Services or any works constructed in accordance with that material have validly provided their written consent (pursuant to section 195AWA of that Act) to RMS (or any other person); and

(b) the consent referred to in clause 17.1(a) allows RMS (and others) to deal with that material or those works (including by way of destruction or alteration) and without attribution of authorship in such manner as RMS may for its sole convenience and at its absolute discretion decide without being held to have infringed any moral right of the individual.

17.2 Existing moral rights

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

18 SUBCONTRACTING

18.1 Consent to subcontracting

The Contractor must not subcontract the provision of the Services without the written consent of RMS.

18.2 Responsibility preserved

Any subcontracting of the Services by the Contractor:

(a) will not relieve it from the full responsibility for the provision of the Services;

(b) must be on terms which are consistent with its obligations to RMS; and

(c) will result in the Contractor being liable to RMS for acts or omissions of its Subcontractors as if they were its own acts or omissions.
18.3 Co-ordination

The Contractor must ensure that:

(a) the services of its Subcontractors are co-ordinated to meet RMS' requirements for the Services; and

(b) all its Subcontractors comply with all obligations imposed on the Contractor in this Agreement.

18.4 Conditions of consent

A condition of RMS’ consent to any subcontracting of the Services by the Contractor will be that the Subcontractor must be subject to the following conditions of this Agreement:

(a) equivalent indemnity and insurances provisions as apply to the Contractor under this Agreement; and

(b) those provisions in this Agreement equally relevant to the Subcontractor.

19 ASSIGNMENT

19.1 Contractor

The Contractor must not assign, novate or encumber its rights or obligations under this Agreement without the written consent of RMS.

19.2 RMS assignment to another Government body

RMS may, for its sole convenience and at its absolute discretion, assign, novate or otherwise deal with its rights and obligations to any government department, agency, authority or state owned corporation without the Contractor's consent and the Contractor must promptly execute any document reasonably required by RMS to give effect to the assignment, novation or other dealing.

19.3 Other RMS assignment

Subject to clause 19.2, RMS must not assign or novate its rights or obligations under this Agreement without the written consent of the Contractor which must not be unreasonably withheld or delayed.

20 RMS REPRESENTATIVE

20.1 RMS Representative

The Contractor must deal with RMS Representative specified in Item 16 of the Reference Schedule, or other representative as may be notified by RMS to the Contractor from time to time.

20.2 RMS Representative's directions

RMS Representative may give written directions to the Contractor with regard to the provision of the Services. The Contractor must comply with all directions given by RMS Representative to the extent that such directions are not inconsistent with the terms of this Agreement.
20.3 RMS Representative’s authority

RMS Representative has full authority to act on behalf of RMS in respect of the subject matter of this Agreement. An instruction or written direction given by RMS Representative will be deemed to be an instruction or direction given by RMS.

21 CONFLICT OF INTEREST

21.1 Warranty

The Contractor warrants that it is not aware of any reason why the provision of the Services will, or may, place it in a position of conflict having regard to any other interest or duty of the Contractor or any of its Personnel.

21.2 Disclosure

The Contractor must fully disclose to RMS any such conflict of interest or possible conflict of interest immediately upon becoming aware of the conflict or possible conflict of interest.

22 TERMINATION

22.1 Termination for convenience

RMS may, for its sole convenience and in its absolute discretion, terminate this Agreement at any time before the Expiry Date, and regardless of whether there has been any default by the Contractor, by a minimum of 30 days’ notice to the Contractor.

22.2 Termination for breach by Contractor

RMS may terminate this Agreement, or take the whole or any part of the performance of the Services out of the Contractor’s hands, immediately by notice to the Contractor if:

(a) the Contractor breaches this Agreement and:

   (i) the Contractor fails to remedy the breach or overcome its effects on RMS within 10 Business Days, or such longer time as RMS states, of receiving a notice from RMS requiring the breach to be remedied; or

   (ii) the breach has been the subject of a notice under clause 22.2(a)(i) and the Contractor commits a similar breach;

(b) the Contractor:

   (i) breaches this Agreement on 3 separate occasions within a consecutive 3 month period;

   (ii) receives a notice from RMS stating that any further breach of this Agreement will give RMS the right under this clause 22.2(b) to terminate this Agreement; and

   (iii) commits a further breach of any provision of this Agreement;

(c) the Contractor becomes Insolvent;
(d) the Contractor has not obtained, or provided evidence of, the Contractor Arranged Insurances in accordance with clause 13 within 10 Business Days after the Date of Contract; or

(e) the Contractor breaches:

(i) the confidentiality requirements under clause 15;

(ii) the restrictions on assignment under clause 19;

(iii) the conflict of interest requirements under clause 21; or

(iv) the privacy requirements under clause 23.

22.3 Termination for breach by RMS

The Contractor may terminate this Agreement by notice to RMS if:

(a) RMS has failed to pay an amount due to the Contractor under this Agreement;

(b) the amount referred to in clause 22.3(a) is not the subject of a dispute;

(c) the Contractor serves a notice on RMS:

(i) stating that the amount referred to in clause 22.3(a) is overdue;

(ii) stating that if the amount referred to in clause 22.3(a) is not paid within 30 days of receipt of the notice, the Contractor proposes to exercise its rights under this clause 22.3; and

(iii) attaching evidence of the amount overdue, and

(d) RMS has not made payment of the amount referred to in clause 22.3(a) within 30 days of receipt of the notice referred to in clause 22.3(c).

22.4 Rights of RMS

(a) Termination or expiry of this Agreement will not affect any other right or remedy of RMS, including the right of RMS to engage others to carry out or complete the Services.

(b) Without limiting RMS’ other rights, where RMS takes Services out of the Contractor’s hands under clause 22.2:

(i) no further amount is payable by RMS to the Contractor for the Services;

(ii) RMS may have those Services performed by itself or others;

(iii) the Contractor must pay RMS the costs and expenses incurred by RMS in performing or having performed the Services to the extent such costs and expenses exceed the amount which would have been payable to the Contractor for the Services;

(iv) RMS may demand payment of amounts under clause 22.4(b)(iii) progressively as those amounts are incurred; and

(v) amounts demanded under clause 22.4(b)(iv) will be a debt due and payable from the Contractor to RMS 10 Business Days after RMS gives the demand and provides reasonable evidence of the costs and expenses.
22.5 Holding Over

If this Agreement ends for any reason and the Contractor continues to provide the Services with the consent of RMS after the Expiry Date, it does so under a monthly arrangement:

(a) which either party may, for its sole convenience and in its absolute discretion, terminate with 1 months’ notice to the other party; and

(b) otherwise on the same terms and conditions as this Agreement.

22.6 Rights exhaustive

The rights of termination specified in clause are the only rights of termination available to the parties and any common law rights of termination are excluded.

22.7 Adjustment of Fee on termination

(a) Where this Agreement is terminated under clause 22.1 or clause 22.3, RMS must pay the Contractor for Services provided up until the date of termination.

(b) Other than as set out in clause 22.7(a), the Contractor will have no claim against RMS for any expenses or losses (including loss of profit or opportunity) arising from the termination of the Agreement under clause 22.1 or clause 22.3.

(c) Where this Agreement is terminated under clause 22.2, RMS must pay the Contractor for the Services performed by the Contractor as at the date of termination after first deducting RMS’ reasonable assessment of:

   (i) amounts which are reasonably likely to be payable by the Contractor under clause 22.4(b); and

   (ii) any other loss or damage suffered, or reasonably likely to be suffered, by RMS as a consequence of the termination of the Agreement or breach by the Contractor.

22.8 Contractor’s continuing liability

Termination by RMS does not release the Contractor from liability in respect of any breach of, or non-performance of any obligation pursuant to, this Agreement.

22.9 Return of property

On termination or expiry of this Agreement, the Contractor must immediately return to RMS all Documents and other property provided to the Contractor by RMS under this Agreement and all Deliverables which have not been handed over to RMS or which are otherwise in the Contractor’s possession.
23 PRIVACY

23.1 Compliance

The Contractor must comply with all relevant Privacy Laws when providing the Services, including obtaining the consent of each individual where Personal Information of that individual is collected, used or disclosed.

23.2 Collection on behalf of RMS

Where the Contractor is required to collect Personal Information on behalf of RMS, the Contractor must comply with the Privacy and Personal Information Protection Act 1998 (NSW) as if it were RMS collecting the Personal Information.

24 RECORDS

24.1 Maintaining Records

The Contractor must:

(a) maintain all necessary records and documentation relating to this Agreement and the Services, including records required to be maintained:

(i) by the State Records Act 1998 as if the Contractor was bound by that Act; and

(ii) any other law; and

(b) permit RMS or its representatives to inspect the Records or other Documents at any time on reasonable notice to ensure compliance with the Contractor’s obligations under this Agreement.

24.2 Auditing Records

(a) RMS may appoint an Auditor to conduct regular or one-off Audits of the Contractor’s performance in providing the Services and complying with its other obligations under this Agreement.

(b) The Contractor must make available for inspection for an Audit all such records as the Auditor may reasonably require regardless of where they are located or the manner in which they are stored. The Auditor will be entitled to take copies of records as may reasonably be required for the purposes of the Audit.

(c) The Contractor must provide all appropriate resources and all reasonable assistance required by the Auditor and fully co-operate in good faith.

(d) Each party will bear its own costs in respect of an Audit. RMS will bear the Auditor’s costs except if the Audit reveals a material non-compliance with this Agreement in which case the Contractor must pay the Auditor’s costs.

(e) If the Audit reveals any non-compliance with this Agreement then the Contractor must remedy that non-compliance within such time as RMS reasonably requires and must advise RMS in writing what steps the Contractor has taken to ensure that the identified non-compliance will not re-occur.
(f) RMS must ensure the Auditor complies with the Contractor’s reasonable access requirements when performing any Audit under this clause 24.2 at the Contractor’s premises.

25 DISPUTES

25.1 Claim Notice

If a party claims that a dispute has arisen under this Agreement (the Claimant), that party must give a notice to the other party (the Respondent) stating the matters in dispute and designating as its representative a person (other than the party's representative under this Agreement) to negotiate the dispute (a Claim Notice).

25.2 Negotiation

(a) Within 10 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative (being a person other than the party's representative under this Agreement) to negotiate the dispute.

(b) The nominated representatives must:

(i) meet to discuss the matter in good faith within 10 Business Days after service by the Respondent of notice of its representative; and

(ii) use all reasonable endeavours to settle or resolve the dispute within 15 Business Days after they have met.

25.3 Dispute Notice

(a) If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other party a written notice calling for determination of the dispute by expert determination in accordance with this clause (Dispute Notice). Unless the parties otherwise agree, any Dispute Notice must be given within 40 Business Days after the nominated representatives have met.

(b) If a Dispute Notice is served, the parties must, within 15 Business Days after it has been served, arrange for the dispute to be determined by an expert. The expert must be:

(i) an expert agreed by the parties; or

(ii) if the parties cannot agree on an expert within 15 Business Days after the Dispute Notice has been served, appointed by the Chair of the Resolution Institute on the application of either party.

(c) The expert must determine the dispute in accordance with RMS' Rules for the Expert Determination Process and the Code of Conduct for an Expert, a copy of which RMS will make available to the Contractor on request.

(d) Each party must do all things necessary on its part for the proper conduct of the expert determination.

(e) In determining the dispute the expert will be acting as an expert and not as an arbitrator. The expert's determination will be final and binding on the parties except where the difference between the amount asserted by a party during the expert determination and the expert's decision is more than $200,000.
Where the expert’s decision is not final and binding under clause 25.3(e), RMS or the Contractor may give to the other party:

(i) provided notice has not been given under clause 25.3(f)(ii), notice requiring the dispute to be referred to arbitration under clause 25.4; or

(ii) notice of its intention to commence proceedings to resolve the dispute.

Unless the parties otherwise agree, any notice under this clause 25.3(f) must be given within 20 Business Days after the date of the expert’s determination.

25.4 Arbitration

(a) Where a party is entitled under clause 25.3 to give notice requiring the dispute to be referred to arbitration, the notice (Arbitration Notice) must:

(i) be given not later than 20 Business Days after the expert has given a decision; and

(ii) specify with detailed particulars the matter at issue, including the contractual basis of the claim.

(b) Upon the issue of an Arbitration Notice by a party, the dispute will be determined by arbitration, unless within 10 Business Days the other party gives written notice of its intention to commence proceedings to resolve the dispute.

(c) If a party does not give the Arbitration Notice to the other party as required under clause 25.4(a), the decision given by the expert is not subject to arbitration.

(d) Arbitration will be effected:

(i) by an arbitrator agreed upon in writing by the parties within 20 Business Days after the Arbitration Notice is received by the party to whom it is directed; or

(ii) in the absence of agreement, by an arbitrator appointed in accordance with the provisions of the laws relating to arbitration in force in New South Wales.

25.5 Arbitration process

(a) The parties are entitled to be represented in any arbitration by a duly qualified legal practitioner.

(b) The party who received the Arbitration Notice may raise any matter by way of claim or counter claim in any arbitration where the matter arises out of this Agreement or concerns the performance or the non-performance by the other party of its obligations under this Agreement.

(c) A reference to arbitration under this clause is a reference to arbitration within the meaning of the Commercial Arbitration Act 2010 (NSW). The arbitration proceedings must be conducted in New South Wales. The arbitrator has all the powers conferred by law. The Arbitrator may enter upon the reference without any further or more formal submission than is contained in this clause.

(d) The Arbitrator may award whatever interest the Arbitrator considers reasonable.

(e) Money that is or becomes due and payable by RMS for work carried out under the Agreement and which is not subject to a dispute or difference will not be withheld because of arbitration proceedings but RMS may, at its discretion, and pending the
award of the arbitrator, withhold payment of money in respect of any matter that is the subject of arbitration proceedings.

(f) If one party has overpaid the other, whether pursuant to a final Payment Schedule or not, and whether under a mistake of law or fact, the arbitrator may order repayment together with interest.

25.6 Litigation

Upon the issue of notice of a party’s intention to commence proceedings under clause 25.3(f)(ii) or 25.4(b), either party may commence proceedings to resolve the dispute.

25.7 Continued Performance

The Contractor must continue to provide the Services in accordance with this Agreement even if there is a dispute between the parties.

26 GENERAL

26.1 Waiver

The Contractor acknowledges that no waiver by RMS of a breach of any term of this Agreement will be a waiver of any other breach of that or any other term.

26.2 Publicity

Without limiting clause 15, the Contractor:

(a) must not disclose any information concerning RMS, the Services or this Agreement:

(i) through any communications media; or

(ii) by any press release, advertisement, information, publication, document, article or promotional material, without RMS’ written approval;

(b) must refer any media enquiries concerning RMS, the Services or the Agreement to RMS Representative; and

(c) must ensure all consultants, subcontractors and suppliers engaged by the Contractor for the performance of the Services comply with the requirements of this clause.

26.3 Applicable law

The law of New South Wales applies.

26.4 Clauses survive termination

Any clause capable of continuing to apply after the Expiry Date will do so.
26.5 Notices

(a) A notice must be:

(i) in writing;

(ii) sent to the party by certified mail to the relevant address of the party in Item 17 of the Reference Schedule, as varied by notice; or

(iii) sent by email to the party's email address in Item 17 of the Reference Schedule, as varied by notice.

(b) A notice is taken to be given:

(i) if delivered to or left at the address of the party, on that day;

(ii) if posted by certified mail, on the day which it is certified as having been delivered; and

(iii) subject to clause 26.5(c), if sent by email, on the Business Day after the day on which the email (including any attachment) was sent, provided the sender does not receive notification that the email was not successfully received in the recipient’s inbox.

(c) In relation to any notice under clause 11.3, 11.8, 12.1, 13.1(g), 13.5, 21.2, 22, 24.2 or 25:

(i) the sender will only be permitted to give a notice by email under clause 26.5(b)(iii) if the notice is concurrently given in accordance with clause 26.5(b)(i) or 26.5(b)(ii); and

(ii) the notice will only be taken to be given at the same time as the concurrent notice is taken to be given under clause 26.5(b)(i) or 26.5(b)(ii) (as applicable).

26.6 Government information disclosure

The Contractor acknowledges that RMS may be required to publish certain information concerning this Agreement in accordance with sections 27 – 35 of the Government Information (Public Access) Act 2009. If the Contractor reasonably believes that any part of this Agreement contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, the Contractor should immediately advise RMS in writing, identifying the provisions and providing reasons so that RMS may consider seeking to exempt those provisions from publication.

26.7 Other Government bodies

The Contractor acknowledges that RMS may make information concerning the Contractor (including any information provided by the Contractor to RMS and any information relating to the Contractor's performance under this Agreement but excluding the Contractor's Confidential Information) available to the NSW Government and its departments, agencies, authorities and state owned corporations.

26.8 Exchange of information

The Contractor acknowledges that information about the Contractor from any source, including substantiated reports of unsatisfactory performance, may be taken into account by RMS, Austroads and other road agencies, the NSW Government and its departments, agencies, authorities and state owned corporations in considering whether to offer the Contractor future opportunities for work.
26.9 Defence to defamation

The Contractor agrees that RMS will be entitled to rely on the defence of qualified privilege for the purposes of section 30 of the *Defamation Act 2005* (NSW) in relation to the provision of information under clauses 26.7 and 26.8.

26.10 Indemnity

The Contractor releases RMS from and against any Liability arising out of its provision of information under clauses 26.6, 26.7 and 26.8 or the use of such information by the NSW Government and its relevant departments, agencies, authorities and state owned corporations.

26.11 Related body corporates

The Contractor must provide RMS in writing with details of any related body corporate, or any other private sector entity in which the Contractor has an interest, that will be involved in carrying out any of the Contractor's obligations under this Agreement or that will receive a benefit under this Agreement.

26.12 Severability

If any provision of this Agreement is illegal, void, invalid or unenforceable for any reason, all other provisions which are self-sustaining and capable of separate enforcement will, to the maximum extent permitted by law, be and continue to be valid and enforceable.
Dear [contact name]

**[AGREEMENT DESCRIPTION. AGREEMENT NO. [*].] CALL BACK REQUEST NO. [*]**

I refer to our recent discussion in relation to the above agreement (“Agreement”).

The purpose of this letter is to confirm the Call Back requested to be provided in accordance with clause 11.7 of the Conditions of Contract of the Agreement.

Details of the required Call Back are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Description of Call Back required:</th>
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<tbody>
<tr>
<td>1</td>
<td>[describe the work or service required]</td>
</tr>
<tr>
<td>2</td>
<td>Time for commencement:</td>
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<tr>
<td>3</td>
<td>Time for completion:</td>
</tr>
<tr>
<td>4</td>
<td>RMS contact person: [insert name and contact details]</td>
</tr>
<tr>
<td>5</td>
<td>Special conditions: [insert any additional information or requirements – including site constraints/access arrangements etc]</td>
</tr>
</tbody>
</table>

RMS’ current position in relation to this Call Back is as indicated below:

- ☐ this Call Back is required to be provided at the Contractor’s own cost
- ☐ this Call Back will be paid for at the [rates] provided for this purpose in the Agreement.

RMS reserves all rights it has under the Agreement and under the terms of any insurance with respect to Call Backs. The current position is identified above for administrative purposes only and does not prevent RMS from subsequently determining that this or any Call Back is to be provided at the Contractor’s cost. Payment for any Call Back does not constitute an acceptance by RMS of the Call Back and does not amount to a waiver of any right or action which RMS may have at any time against the Contractor or its insurer.

Evidence of your current insurances will be required to be provided before the commencement of this Call Back.

The Call Back is to be carried out in accordance with all applicable terms of the Agreement (as modified by this Call Back Request).
I look forward to your prompt and favourable response. Failure to comply with this request may result in an adverse performance report, in addition to any legal sanctions available to RMS.

Yours faithfully,
# ANNEXURE B – CONTRACTOR STATEMENT AND SUPPORTING STATEMENT

## Part I

### 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).

<table>
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<tr>
<th>Details</th>
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<tbody>
<tr>
<td>Contractor’s Legal Name</td>
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<tr>
<td>Contractor’s Trading / Business Name</td>
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<tr>
<td>Contractor’s ABN</td>
</tr>
<tr>
<td>Contractor’s ACN</td>
</tr>
<tr>
<td>Contractor’s Address</td>
</tr>
<tr>
<td>Name or description of Contract or Works</td>
</tr>
</tbody>
</table>

| Period of Work this Statement applies to (see Note 3) |
| 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

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<th>Signature of Authorised Person</th>
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### Name of Signatory (print)

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<th>Name of Signatory (print)</th>
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### Date

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### Position / Job Title of Signatory (print - see Note 4)

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<th>Position / Job Title of Signatory (print - see Note 4)</th>
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</table>

(see Notes on page 2)

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Notes for Contractor Statement

1. A Contractor is any person or company who carries out work under a contract of any kind for any business of 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**

This form has been specially adapted for use specifically for Contractors working for RMS. Generic versions of this Statement for non-RMS use can be obtained at:


**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**

Part II

Supporting Statement

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

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

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

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

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

---

Main Contract

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

ABN  _________________________  ACN  _________________________

Of  _________________________________________________________
(Address of Contractor)

has entered into a contract with  Roads and Maritime Services

Contract description  ____________________________________________

Contract number/identifier  _____________________________________

Subcontracts

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

Period

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

subject of the payment claim dated:  _________

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

Signature: ____________________________  Date: ______________________

Full Name: ____________________________  Position / Title: ________________________
### Attachment to the Supporting Statement

#### Schedule of subcontractors paid all amounts due and payable

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

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<th>Subcontractor</th>
<th>ABN</th>
<th>Contract number/identifier</th>
<th>Date of works (period)</th>
<th>Payment claim dated (head contractor claim)</th>
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#### Notes for Supporting Statement

**Offences for False Statement**

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

**Further Information**

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

(clause 13)

Table 1: Table of Insurances

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

<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>RMS Arranged Insurances</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The details of the policies below are provided in the certificate of currency issued by RMS’ Insurer. A copy of the Public and Products Liability policy may be inspected by appointment at the offices of RMS’ Insurer.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Public and Products Liability</td>
<td>$20m</td>
<td>Duration of the Services</td>
</tr>
<tr>
<td>Excess for Public and Products Liability</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Contractor is responsible for meeting the amount of any excess payable under the RMS Arranged Insurances in respect of any claim made by it. The excess amounts current at the Date of Contract are:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Injury to Contractors – excess is $100,000 per Event/Occurrence</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Products Liability – excess is $50,000 per Event/Occurrence</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Underground Services – excess is $50,000 per Event/Occurrence</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Any other claim – excess is $10,000 per Event/Occurrence</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>2</td>
<td>Professional Indemnity</td>
<td>RMS may effect a principal professional indemnity policy for its own benefit. The Contractor will not be covered under the professional indemnity policy effected by RMS and must effect its own professional indemnity insurance.</td>
<td></td>
</tr>
<tr>
<td>Contractor Arranged Insurances</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Motor Vehicle Comprehensive or Third Party Property Damage effected with an approved insurer as defined in Definitions and Notes clause 1 below</td>
<td>See Reference Schedule, Item 21.</td>
<td>Annual until the Contractor ceases performing the Services.</td>
</tr>
<tr>
<td>(a) Motor Vehicles owned or used by the Contractor or subcontractors directly or indirectly engaged in performance of the Services.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 2 below.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) If applicable to this Agreement – all plant and equipment owned or used by the Contractor or subcontractors directly or indirectly engaged in the performance of the Services.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Workers Compensation effected with an approved</td>
<td>As per the relevant Workers Compensation</td>
<td>Annual until the Contractor ceases performing the Services.</td>
</tr>
</tbody>
</table>
### Types of Insurances

<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>insurer as defined in Definitions and Notes clause 1 below</td>
<td>legislation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 Professional Indemnity Insurance</td>
<td>See Reference Schedule, Item 20.</td>
<td>7 years from the date of Completion.</td>
<td>The Contractor, its Subcontractors and anyone else who is involved in providing the Services for or on behalf of the Contractor.</td>
</tr>
<tr>
<td>6 Additional Insurance</td>
<td>As specified in Item 22 of the Reference Schedule.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Definitions and Notes:

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

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

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

3. RMS’ Insurer is:

   Self Insurance Corporation of NSW
   Through Insurance and Care NSW (icare)
   ABN 16 759 382 489
   Level 15, 321 Kent Street
   SYDNEY NSW 2000

   Telephone: 61 2 9216 3852 (Direct)
   Email: cpai@icare.nsw.gov.au

   Advice to RMS staff

   Contact 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)
# ANNEXURE D – 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

| Total number of people (all) employed on the project: |  |
| Total number of hours worked by all employees on this project: |  |
| Total number of sub-contractors on the project: |  |
| Total number of people employed by sub-contractors on project: |  |

## ABORIGINAL PARTICIPATION

| Total number of Aboriginal people employed on the project: |  |
| Total number of hours worked by Aboriginal people employed on this project: |  |
| Total number of Aboriginal people employed by sub-contractors on project: |  |

## 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>
</tr>
<tr>
<td>b) Other employment (contractors, group training)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c) Goods/services bought from Aboriginal businesses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d) Education expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Apprentices</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Trainees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Cadets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Other</td>
<td></td>
<td></td>
</tr>
<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>
</tr>
</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>Total Actual spend on APIC (Cumulative): $ (excl GST)</th>
</tr>
</thead>
</table>

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

*Comments:*

*Approved by (Name and Position in the Organisation):*
SCHEDULE 4 – DESCRIPTION OF SERVICES

SERVICES

[Include a description of the Services, including the Documents, to be provided. Where the Services are to be carried out by reference to any pre-existing documents (such as technical specifications or reports) they should be set out. Where appropriate, you should instruct the Contractor that some (or all) of the pre-existing documents are provided for the Contractor's information only and should not be relied upon.]

[Specify the purposes for which RMS requires the Services and any Documents required to be prepared as part of the Services (Schedule 3 - (Conditions of Contract))]