### REVISION REGISTER

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<tr>
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<td></td>
<td>Initial issue</td>
<td>Manager Contracts Strategy</td>
<td>11-09-09</td>
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<tr>
<td>Ed 2/Rev 1</td>
<td></td>
<td>Clause 14.3(b) deleted and 14.3 has been amended. Annexure C Insurances additional notes included.</td>
<td>Manager Contracts Strategy</td>
<td>25-11-09</td>
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<tr>
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<td>1.1</td>
<td>The following Definitions have been amended: Confidential Information, Deliverable, Intellectual Property Rights, Subcontractor Clause deleted. All references to Contract Documents have also been deleted.</td>
<td>Manager Contracts Strategy</td>
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<td>Manager Contracts Strategy</td>
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<td>Ed 2/Rev 9</td>
<td>6.3 &amp; Ref schedule Item 15 Annexure C</td>
<td>Additional sentence added Amendments to limitation of liability provisions Amended Insurance Schedule</td>
<td>Manager, Contracts Strategy</td>
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<td>Ed 2/Rev 10</td>
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<td>Reference WHS instead of OHS Link to PAI policy Terms in cl 14.1</td>
<td>Manager, Contracts Strategy</td>
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<td>Ed 2/Rev 11</td>
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<td>Old clause deleted and replaced with new Government Information Disclosure clause</td>
<td>Manager, Contracts Strategy</td>
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<tr>
<td>Ed 2/Rev 13</td>
<td>Cl 1.1 Cl 16.7</td>
<td>the definitions of &quot;RMS IP&quot; and &quot;Third Party IP&quot; added Fair Work Building Inspectorate replaces ABCC</td>
<td>Manager, Contracts Strategy</td>
<td>14-08-13</td>
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<tr>
<td>Ed 2/Rev 14</td>
<td>Cl 5.17</td>
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<td>Manager, Contracts Strategy</td>
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<td>Ed 2/Rev 16</td>
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<td>Inserted requirements re mandatory implementation of the NSW Government Policy on Aboriginal Participation in Construction</td>
<td>GM Commercial</td>
<td>20-06-16</td>
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<tr>
<td>Ed 2/Rev 17</td>
<td>Throughout Cl 1.1 Cl 1.1 Cl 2</td>
<td>Updated details for Services specified in an Order. Revised to reflect the introduction of the Work Health and Safety Regulation 2017, replacing the 2011 Regulation Deleted definition for RMS Insurance Broker and added definition for RMS Insurer Added clauses for formation of Deed, Term and unperformed obligations at end of Term</td>
<td>Director, Commercial Services</td>
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<tr>
<td>Ed 2/Rev 17</td>
<td>Cl 3</td>
<td>Added clauses for Operation of Panels, including duration and extension of appointments, changes to panels, Services proposals and Giving Orders</td>
<td></td>
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<td></td>
<td>Cl 4.3</td>
<td>Inserted provisions allowing the Services to be staged</td>
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<td></td>
<td>Cl 4.6</td>
<td>Amended so Deed applies retrospectively to Services performed before the date of the applicable Order</td>
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<tr>
<td></td>
<td>Cl 5</td>
<td>Removed reference to Insurance Broker</td>
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<td></td>
<td>Cl 7.1</td>
<td>Inserted subclauses for the Contractor to ensure that Services are carried out in accordance with relevant standards, codes, good industry practice</td>
<td></td>
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<td></td>
<td>Cl 7.2</td>
<td>Inserted clause introducing standards for documents created by the Contractor provided as part of the Services</td>
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<td></td>
<td>Cl 7.4</td>
<td>Inserted regime giving RMS the right (but not obligation) to comment on documents submitted by the Contractor</td>
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<td></td>
<td>Cl 7.5</td>
<td>Inserted subclauses clarifying reliance of documents by RMS and others produced by the Contractor as part of the Services</td>
<td></td>
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<td></td>
<td>Cl 7.13</td>
<td>Inserted a new clause requiring RMS to comply with reasonable Contractor confidentiality, security and access requirements at Contractor’s premises</td>
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<td></td>
<td>Cl 7.14</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></td>
<td>Cl 7.20</td>
<td>Updated to include full name of policy</td>
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<td></td>
<td>Cl 7.21</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 12.4</td>
<td>Included provisions allowing provisional sum work.</td>
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<td></td>
<td>Cl 13.3</td>
<td>Amended to require the Contractor to take reasonable measures to mitigate delay.</td>
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<td></td>
<td>Cl 13.4</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 13.6</td>
<td>Updated liquidated damages regime.</td>
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<td></td>
<td>Cl 13.7</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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<tr>
<td>Ed/Rev Number</td>
<td>Clause Number</td>
<td>Description of Revision</td>
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<tr>
<td>Ed 2/Rev 17 (cont.)</td>
<td>Cl 14.6</td>
<td>Included a right for RMS to omit Services through the Variation mechanism.</td>
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<td></td>
<td></td>
<td>Revised to reflect change from insurance broker (AON) to insurer (iCare)</td>
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<td></td>
<td>Cls 15.1(e), 15.3 &amp; Annexure C</td>
<td>Amended to expressly require the Contractor to obtain and effect it’s own professional indemnity insurance</td>
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<tr>
<td></td>
<td>Cl 15.2 &amp; Annexure C</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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<tr>
<td></td>
<td>Cl 16.2</td>
<td>Updated carve outs to exclusion of consequential type loss.</td>
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<td></td>
<td>Deleted cl 20.2</td>
<td>Removed change of control restriction.</td>
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<td></td>
<td>Cl 24.4</td>
<td>Included ability to terminate any current Orders by a minimum of 30 days notice at the expiry of the Term</td>
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<td></td>
<td>Cl 24.5</td>
<td>Set out RMS’ rights where it takes work out of the Contractor’s hands.</td>
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<tr>
<td></td>
<td>Cl 26.2</td>
<td>Added subclause requiring the RMS Auditor to comply with the Contractor’s reasonable access requirements when at the Contractor’s premises</td>
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<tr>
<td></td>
<td>Cl 27.3</td>
<td>Added additional requirement that Dispute Notices be given with 40 Business Days after the nominated representatives have met</td>
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<td></td>
<td>Cl 27. 4 and 27.6</td>
<td>Amended to make either arbitration or litigation available if a dispute cannot be resolved by earlier negotiations or by expert determination</td>
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<td></td>
<td>Cl 28.5</td>
<td>Amended to clarify receipt of notices by email and requirement for concurrent hard copies in certain cases</td>
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<td></td>
<td>Annexure C Note 1(d)</td>
<td>Inclusion of Self Insurance Corporation as an approved insurer</td>
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PANEL DEED FOR PROFESSIONAL SERVICES (CONSTRUCTION INDUSTRY)
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Panel Deed for Professional Services (Construction Industry)

DEED 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)

Recitals:

This Deed sets out the terms on which the Contractor will from time to time provide Services to RMS in relation to specific projects, the details of which will be set out in Orders given and accepted under this Deed.

Agreement:

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

This Deed comprises this document, the following schedules and annexures (and all schedules and annexures to them) and each Order given by RMS and accepted by the Contractor under this Deed:

Schedule 1 – Reference Schedule
Schedule 2 – Conditions of Contract
Annexure A – Call Back Request
Annexure B – Contractor Statement And Supporting Statement
Annexure C – Insurances
Annexure D – Order Template
Annexure E – Aboriginal Participation in Construction - Quarterly Report
Annexure F – Panel Appointments

EXECUTED by the parties as a deed.

SIGNED, SEALED and DELIVERED by
ROADS AND MARITIME SERVICES
on ....../....../.....
by its authorised delegate

in the presence of:

Witness  
Name printed 
Delegate  
Name printed

SIGNED, SEALED and DELIVERED by the CONTRACTOR
on ....../....../.....
in accordance with section 127 of the Corporations Act

Secretary (or additional Director)  
Name printed 
Director  
Name printed
Panel Deed for Professional Services  
(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 engagement. Where suggested wording has 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 Services, Technical and Project Services.

Item 1 – Contractor  
(clause 1.1 Conditions of Contract)
The Contractor is:  

<table>
<thead>
<tr>
<th>Name: [Insert Contractor's full legal title]</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABN / ACN: [Insert ABN or ACN]</td>
</tr>
<tr>
<td>Address: [Insert address]</td>
</tr>
</tbody>
</table>

Item 2 – Term  
(clause 2.2 Conditions of Contract)
The Term is:  

| The period commencing on the Date of Contract and expiring [Insert number] [months/years] from the earliest Panel Appointment Date. |

Item 3 – RMS options to extend  
(clause 2.3 Conditions of Contract)
Options for RMS to extend the Term are:  

| A first option to extend the Term by [Insert number] [months/years]. |
| A second option to extend the Term by [Insert number] [months/years]. |
| [Add / delete and complete details as required.] |

Item 4 – Not used  

| Not used |

Item 5 – Contractor’s Representative for Deed  
(clause 7.12 Conditions of Contract)
The Contractor's Representative for this Deed is: [Insert name, title, email address and phone number].

Item 6 – Not used

Item 7 – Payment Claim Date
(clause 12.1 and 12.3 Conditions of Contract)
The Payment Claim Dates for lodgement of Payment Claims are: The first Business Day of every month.

Item 8 – Margin for Provisional Sum work
(clause 12.4 Conditions of Contract)
The margin for Provisional Sum work is: [Insert]% or as otherwise specified in an Order.

Item 9 – Grounds for extension of Date for Completion
(clause 13.3 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 10 – Call Back Period
(clause 13.7(a) Conditions of Contract)
The Call Back Period is [Insert number of weeks/months] from the date of Completion of the relevant Order.

Item 11 – RMS Representative for Deed
(clause 22 Conditions of Contract)
RMS Representative for this Deed is: [Insert name, title, email address and phone number].
<table>
<thead>
<tr>
<th>Item 12 – Not used</th>
<th>Not used</th>
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</table>

**Item 13 – Contractor Professional Indemnity Insurance Amount**  
*(Annexure C)*  
The amount of insurance for the purposes of item 5 in Annexure C is:  

| [As specified in an Order - refer to guidance in ECM 6 Appendix 6-Y]. |
| [Insurance amount to be reviewed for each deed.] |

**Item 14 – 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 deed.] |

**Item 15 – Additional Contractor Insurance**  
*(Annexure C)*  
The Contractor must effect the following additional insurances for the purposes of item 6 in Annexure C:  

| [As specified in an Order – In each Order (refer to guidance in ECM 6 Section 6.15.6), 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’.] |
Panel Deed for Professional Services
(Construction Industry)

SCHEDULE 2 – 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 through Commercial Services, Technical and Project Services.
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Panel Deed for Professional Services  
(Construction Industry)  
CONDITIONS OF CONTRACT

1 INTERPRETATION

1.1 Definitions

In this Deed:

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

Audit means an audit under clause 26.2(a).

Auditor means an independent auditor or RMS' internal auditor appointed by RMS for the purposes of clause 26.2(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 for an Order including:

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

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

Call Back Period means the call back period for an Order, as specified in Item 10 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 an Order for the commencement of the Services under the Order, or such other date as RMS directs the Contractor in writing to commence the Services under the Order.

Commonwealth means the Commonwealth of Australia.

Completion means that stage when the Services under an Order (other than Call Back work or services) are completed in accordance with the requirements set out in this Deed.

Conditions of Contract means Schedule 2 (Conditions of Contract) to the Deed 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 this Deed 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 Deed;

(b) information known to the Recipient on a non-confidential basis at the time of disclosure under this Deed; 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:

(a) in respect of this Deed, the person named in Item 5 of the Reference Schedule, or any replacement person approved by RMS in writing; and

(b) in respect of an Order, the person named as the Contractor's Representative in the Order, or any replacement person approved by RMS 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 of the Services under an Order, as may be varied or extended in accordance with clause 13.3 or 14 or otherwise by written agreement of the parties.

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

Date of Order means the date an Order becomes binding under clause 3.6(c).

Deed means this deed between RMS and the Contractor comprising the documents specified in the Deed Form.

Deed Form means the document of that name to which these Conditions of Contract are Schedule 2.

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 Deed.

Documents means all documents, reports, plans, drawings, computer disks, specifications and all other materials in both hard and electronic formats.
Expenses means the expenses which the Contractor incurs at the express direction of RMS in respect of the items nominated in the relevant Order.

Fee means the fee calculated at the rates or in the amounts set out in the applicable Order, as increased or decreased by this Deed.

GST has the same meaning as in the GST Law.

GST Law has the meaning given in the \textit{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.


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

Milestone means an event (if any) specified as a milestone in an Order.
**Nominated Personnel** means, in relation to an Order, the persons named in the Order and any other person that RMS consents to in writing.


**Order** means written instructions given by RMS under clause 3.6(a) requiring the Contractor to provide Services in accordance with this Deed, which must be in the form of the Order Template.

**Order Template** means the template in Annexure D (Order Template) to these Conditions of Contract.

**Panel** means each panel of contractors specified in the Panel Appointments established by RMS for the provision of services covered by that Panel.

**Panel Appointment Date** means the ‘Panel Appointment Date’ for a Panel specified in the Panel Appointments.

**Panel Appointments** means Annexure F (Panel Appointments) to these Conditions of Contract, incorporating any extensions under clause 3.3 and changes under clause 3.4.

**Panel End Date** means, for a Panel, the first to occur of:

(a) the ‘Panel End Date’ specified for the Panel in the Panel Appointments;

(b) expiration of the Term; or

(c) the date when this Deed is terminated in accordance with clause 24.

**Payment Claim** means a claim for payment submitted in accordance with clause 12.1.

**Payment Claim Date** means the date specified in Item 7 of the Reference Schedule.

**Payment Schedule** means a payment schedule under clause 12.2.

**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 an Order, the program for the provision of the Services, and any updates to it, approved by RMS in accordance with clause 13.2.

Project means the project described in an Order.

Provisional Sum means a provisional sum specified in an Order.

Records mean the records and other documents contemplated in clause 26.1(a).

Reference Schedule means Schedule 1 (Reference Schedule) to the Deed 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) to these Conditions of Contract.


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 Deed which are vested in, or otherwise owned by, RMS.

RMS Representative means:

(a) in respect of this Deed, the person named in Item 11 of the Reference Schedule, or any replacement person nominated by RMS in writing; and

(b) in respect of an Order, the person named as RMS Representative in the Order, or any replacement person nominated by RMS in writing.


RMS Insurer means RMS’s external insurer from time to time, whose contact details at the date of this deed are set out in Annexure C (Insurances) to these Conditions of Contract or such other insurer 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 Deed).


**Service Stage** means a stage specified in an Order for the Services under the Order.

**Services** means:

(a) services and activities of the type generally covered by a Panel; and

(b) any other services or activities which the parties agree in writing may be the subject of an Order,

required by an Order given by RMS, and accepted by the Contractor, under clause 3.6, and includes any:

(c) services incidental to or reasonably inferred from the Services required by that Order;

(d) Variations to the Services required by that Order which are directed in accordance with this Deed; and

(e) 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 Deed (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 an Order. It represents 1.5% of the Fee for the Services under the Order at the Date of Order (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 the Order unrelated to design, etc., as agreed between RMS and the Contractor.

**Term** means the period specified in Item 2 of the Reference Schedule, as extended by RMS under clause 2.4.

**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 Deed 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 Deed.

Variation means a change to the Services by notice given under clause 14.1.

Variation Proposal means a notice from the Contractor referred to in clause 14.2 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 for the relevant Order and when Completion of the relevant Order 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 an Order.

1.2 Interpretation

In this Deed:

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

(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) a reference to a document or agreement is a reference to that document or agreement as amended or varied

(k) the defined terms in clause 1.1 will have the same meaning in all schedules and annexures to this Deed and in any Orders issued under this Deed; and
unless this Deed 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 Deed in its absolute discretion.

1.3 Precedence

Where there is any inconsistency between the terms of this Deed (including an Order), 
the following order of precedence will apply:

(a) the Deed Form (excluding the schedules to it);
(b) the Order;
(c) Schedule 1 (Reference Schedule) to the Deed Form;
(d) Schedule 2 (Conditions of Contract) to the Deed Form;
(e) the Annexures A to F to these Conditions of Contract; and
(f) any documents incorporated in this Deed by reference.

1.4 Other terms excluded

This Deed (including all Orders) comprise the entire agreement between the parties and 
supersedes the provisions of any previous agreements, proposals, correspondence or 
discussions in relation to the subject matter of this Deed. To the extent permitted by law, 
all implied terms are excluded.

2 COMMENCEMENT AND TERM

2.1 Formation of Deed

This Deed is formed on the Date of Contract, however only clauses [HSF to insert when 
deed close to final] come into effect on that date. The remaining provisions of this Deed 
come into effect on the earliest Panel Appointment Date.

2.2 Term

Subject to clauses 2.3 and 2.4, this Deed will expire at the end of the Term, unless 
terminated earlier.

2.3 Option to extend term

RMS may, for its sole convenience and at its absolute discretion and by notice to the 
Contractor given not later than 1 month before the expiration of the Term, exercise an 
option to extend the Term specified in Item 3 of the Reference Schedule. Each option 
may be exercised only once. RMS’ notice must specify which Panels are extended under 
clause 3.3.
2.4 Terms of extended Term

Where RMS extends the Term under clause 2.3, the terms of this Deed continue to apply for the duration of the extended Term and each reference to Term will be read as a reference to the Term as extended.

2.5 Unperformed obligations at end of Term

After the expiry of the Term, this Deed will continue in relation to any unperformed obligations of a party in relation to an Order, including any Services under the Order which have not been performed and Call Backs in relation to the Order during the Call Back Period for the Order, unless the Order is terminated earlier.

3 OPERATION OF PANELS

3.1 Appointment by RMS

RMS appoints the Contractor to each Panel to provide such Services covered by the Panel as may be required under individual Orders given by RMS in accordance with this Deed.

3.2 Duration of appointments

The Contractor’s appointment to each Panel is effective on and from the Panel Appointment Date for the Panel and expires on the Panel End Date for the Panel.

3.3 Extension to appointments

Any notice given by RMS under clause 2.3 exercising an option to extend the Term must specify the Panels which are extended. Upon the exercise of the option, the Panel End Date for each specified Panel will be extend by the same period as the Term.

3.4 Changes to Panels

The parties may, from time to time, agree changes to the Panel Appointments. Changes may include the addition of a new Panel, omission of an existing Panel or changes to the details for a Panel.

3.5 Services proposals

(a) RMS may, from time to time during the Contractor’s appointment to a Panel, request a proposal from the Contractor for Services covered by the Panel.

(b) The Contractor must provide a proposal promptly after RMS’ request and must act reasonably when considering any changes to a proposal requested by RMS.

3.6 Giving Orders

(a) RMS may, from time to time during the Contractor’s appointment to a Panel, give the Contractor an Order for Services covered by the Panel. The Contractor must promptly give RMS any information requested by RMS for the purposes of preparing an Order.
(b) The Contractor must, promptly after receipt of an Order under clause 3.6(a), either sign and return the Order to RMS or notify RMS in writing that the Contractor does not accept the Order.

(c) An Order will become binding, and the Contractor is taken to have accepted an Order, when the Order has been signed on behalf of RMS and either signed on behalf of the Contractor or acted on by the Contractor.

3.7 Contractor's Acknowledgments

The Contractor acknowledges:

(a) each Panel will have a number of members, of which it will be only one;

(b) it is only entitled to charge for the Services requested in an Order given by RMS and accepted by the Contractor in accordance with clause 3.6;

(c) that by entering into this Deed, RMS does not guarantee that it will issue any Orders or Orders for any minimum quantity of work to the Contractor; and

(d) that nothing in this Deed prevents RMS from obtaining services from other contractors which are identical or similar to the type of services contemplated under this Deed.

3.8 RMS' Acknowledgments

RMS agrees that it will use its reasonable endeavours to ensure that:

(a) each Panel is operated in a consistent manner; and

(b) work is allocated between Panel members with regard to:

(i) the criteria set out in the invitation to tender;

(ii) the absence of any actual or potential conflict of interest relating to any proposed Order; and

(iii) the Contractor's advice as to whether it is available to provide the Services, and has the resources necessary to complete a proposed Order, within the time required by RMS.

Nothing in this clause 3.8 limits RMS' discretion to give an Order or obliges it to select any Panel member, including a Panel member whose performance of any part of the Services has, in RMS’ view and at RMS’ sole discretion, been unsatisfactory, or who has on more than one occasion accepted an Order which it is unable to complete in accordance with this Deed.

4 SCOPE OF SERVICES

4.1 Performance

The Contractor will provide the Services in accordance with this Deed, including the Orders.
4.2 **Commencement**

Subject to clause 5, the Contractor must commence providing the Services under an Order on the Commencement Date for the Order.

4.3 **Service Stages**

Where Service Stages are specified in an Order, the Contractor must not commence a Service Stage (other than the first Service Stage under the Order), and RMS has no obligation to pay the Contractor for a Service Stage (other than the first Service Stage under the Order), unless RMS has directed the Contractor to commence the Service Stage in writing.

4.4 **Approvals**

(a) Subject to clause 4.4(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 an Order.

4.5 **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 program 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.

4.6 **Prior Services**

This Deed retrospectively applies to any Services under an Order performed by the Contractor before the Date of Order. If the Contractor commences Services under an Order before the Commencement Date for the Order, this Deed (including the Order) continues to apply to those Services.

5 **CONDITIONS TO BE SATISFIED BEFORE SERVICES START**

The Contractor must not start providing the Services under any Order until the Contractor has:

(a) obtained the Contractor's insurances in accordance with clause 15.2; and
(b) provided RMS with:

(i) satisfactory proof that the Contractor’s insurances have been obtained in accordance with clause 15.3; and

(ii) the information to be provided in accordance with clause 15.1(e).

6 THE RELATIONSHIP

6.1 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.

6.2 No other relationship

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

6.3 No employee entitlements

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

7 REQUIREMENTS FOR SERVICES

7.1 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 Deed (including the applicable Order).

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

7.2 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 relevant 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 Deed (including the applicable Order).

7.3 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 Deed (including the applicable Order).

7.4 Review by RMS

(a) The Contractor must prepare and submit the Documents for an Order as required by the Order or, if no requirements are specified in the Order, as reasonably directed by RMS taking into account its requirements for the relevant Project. The Contractor must carefully check Documents for compliance with this Deed 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 Deed or the applicable Order:

(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 Deed (including the applicable Order); and

(ii) the Contractor must, if required by RMS, resubmit the revised Document to RMS, in which case this clause 7.4(b) and clause 7.4(c) will reapply.

(c) Where a Document is materially non-compliant with this Deed (including the applicable Order), 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 7.4(b) and this clause 7.4(c) will reapply.

(d) The Contractor’s obligations and liabilities under this Deed 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.

7.5 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 relevant Project. Any such reliance:

(a) must be consistent with the intended purpose of the Services, as ascertained from this Deed (including the applicable Order), or as reasonably advised to the Contractor by RMS (unless inconsistent with the express provisions of this Deed); and
(b) will be subject to any reasonable disclaimer by the Contractor, provided that the Contractor has obtained RMS’ prior written approval of the disclaimer.

7.6 Resources and Personnel

(a) Subject to clause 4.4(b), the Contractor must provide all things and Personnel necessary to perform the Services and comply with its obligations under this Deed at its own expense.

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

7.7 Removal of Personnel

(a) RMS may, if it considers it reasonable to do so, direct the Contractor to cease using any Personnel in respect of any activity relating to the Services. 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.

7.8 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.

7.9 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 Deed and the provision of the Services.

7.10 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 Deed.

7.11 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).

7.12 Contractor's Representative

(a) The Contractor appoints and gives full authority to:

(i) the Contractor’s Representative for this Deed to act on behalf of the Contractor in relation to this Deed; and

(ii) the Contractor’s Representative for an Order to act on behalf of the Contractor in relation to the Order.

(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 will be deemed to be an instruction or direction given to the Contractor where:

(i) the instruction or direction relates to a particular Order and has been given to the Contractor's Representative for the Order; or

(ii) the instruction or direction has been given to the Contractor’s Representative for this Deed.

7.13 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 7.13(b).

7.14 Principal Contractor

(a) Where an Order states the Contractor will be the Principal Contractor:

(i) RMS engages the Contractor as the Principal Contractor for the Construction Work under the Order (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 under the Order (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 an Order states the Contractor will not be the Principal Contractor, or RMS ends the Contractor’s engagement under clause 7.14(a)(i) for the purpose of engaging a different Principal Contractor, the Contractor:

(i) acknowledges that the Principal Contractor for the Construction Work under the Order (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 7.14 does not apply where an Order states no Principal Contractor is required.

7.15 Deliver Documentation

The Contractor must deliver to RMS upon request (including after termination of this Deed 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 any recognised quality assurance system, provided that the Contractor securely and safely stores such working notes, marks them as confidential and complies with clause 17.

7.16 Reporting

The Contractor must:

(a) consult with RMS in the manner and at the times set out in each Order, and at such other times as RMS reasonably requests, in relation to the provision of the Services under the applicable Order. Without limiting any requirements set out in an Order, matters for consultation may include:

(i) the progress of the performance of the Services under the Order;

(ii) the standard of performance of the Services under the Order; 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.

7.17 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 a Project to the extent RMS may reasonably require.

7.18 RMS policies

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

(a) RMS Statement of Business Ethics;

(b) RMS Customer Charter; and

(c) in relation to an Order, the policies specified in the Order.

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

7.19 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.
7.20 NSW Government Policy on Aboriginal Participation in Construction

Where an Order specifies that the Contractor is to comply with the NSW Government Policy on Aboriginal Participation in Construction (dated 1 May 2015, as updated from time to time) (Policy):

(a) The Contractor must comply with the Policy and the Targeted Project Spend (TPS) on Aboriginal participation as stated in the Order.

(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 Order, 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 under the Order, 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 7.19(b)(i)(A), within 20 days after the Date of Order;

   (B) quarterly, its Aboriginal Participation Report in the form set out in Annexure E (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 for the Order. 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 7.19(b)(ii)(B)) must be prepared in accordance with the Policy and in the format prescribed by the NSW Procurement Board. Templates are available at:


7.21 Non-compliances

(a) RMS may, before Completion of an Order is achieved, direct the Contractor to rectify any aspect of the Services, or any Document provided as part of the Services, under the Order which do not comply with this Deed within a reasonable time specified by RMS.
(b) All costs and expenses incurred in performing rectification work under clause 7.20(a) are the responsibility of the Contractor and cannot be recovered from RMS.

(c) If the Contractor does not comply with RMS' direction under clause 7.20(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.

(d) The costs and expenses incurred by RMS in carrying out or having carried out rectification work under clause 7.20(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.

8 INFORMATION PROVIDED BY RMS

8.1 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.

8.2 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.

8.3 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.

9 FEES PAYABLE FOR SERVICES

9.1 Lump sum

Where an Order specifies that the Contractor is to be paid for Services under the Order at a lump sum price, RMS will pay the Contractor the amount specified in the Order in accordance with clause 12. Where provided for in the Order, 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.
9.2 Rates

Where an Order specifies that the Contractor is to be paid for Services under the Order 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 this Deed by the applicable rate set out in the Order for that section, item or hour, in accordance with clause 12.

9.3 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 14 in accordance with clause 12.

10 EXPENSES

10.1 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.

10.2 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.

10.3 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.

11 TAXES AND CHARGES

11.1 Interpretation

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

(b) Terms used in this clause 11 which are not defined in this Deed, but which are defined in the GST Law, have the meanings given in the GST Law.
11.2 Payment of GST

If GST is payable on a supply made under this Deed, 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.

11.3 Other taxes

Other than as provided by clause 11.2, the Contractor is responsible for and must pay all taxes and charges payable in connection with the provision of the Services.

11.4 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 Deed; and

(b) the Contractor must not issue a tax invoice in respect of any supply it makes to RMS under this Deed.

11.5 Registration for GST

(a) The Contractor must be registered for GST purposes unless, before entering this Deed, RMS has notified the Contractor that RMS does not require the Contractor 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).

11.6 Tax withholding

Despite any other provision of this Deed, 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 Deed 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.

12 PAYMENTS

12.1 Payment Claims

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

(i) details of the Order;

(ii) details of the Services provided under the Order; and
(iii) the amount claimed in respect of those Services calculated in accordance with clause 9 or as otherwise specified in this Deed; and

(iv) any Expenses incurred in relation to the Order during the relevant period, in each case as supported by:

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

(vi) 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.

12.2 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 Deed; 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 Deed.

(b) If an adjudication determination under the Security of Payment Act is made in connection with this Deed 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.

12.3 Milestones

Where an Order specifies Milestones that are to be achieved, the Contractor may only make a claim for payment in respect of a 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.

12.4 Provisional Sums

(a) This clause 12.4 will only apply where Provisional Sums are specified in an Order.

(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 Order and the Fees for the Order will be adjusted by RMS (acting reasonably) as follows:

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

(ii) add to the Fees for the Order 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 for the Order the margin specified in Item 8 of the Reference Schedule applied to the costs assessed by RMS under clause 12.4(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 12.4(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 Order; and

(ii) the Provisional Sum for that work will be deducted from the Fees for the Order.

12.5 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 Deed; and

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

12.6 Payment times

Subject to clauses 12.1(a) and 12.7, 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.

12.7 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.
12.8 Effect of payment

(a) Any payment by RMS for the Services is not an approval by RMS of the Contractor's compliance with this Deed, 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 Deed or otherwise) will not prejudice RMS' right to subsequently exercise that right to retain, deduct, withhold or set-off any amount.

13 TIME FOR PROVISION OF SERVICES

13.1 Time requirements

The Contractor must:

(a) subject to clause 5, commence and perform the Services under an Order from the Commencement Date for the Order, without delay, diligently and with due expedition; and

(b) provide the Services under an Order, in accordance with:

(i) the Milestones (if any) and the Date for Completion for the Order;

(ii) the Program (if any) for the Order; and

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

13.2 Program

(a) Where required by an Order, the Contractor must provide RMS for its approval a draft Program for the provision of the Services under the Order to be developed in accordance with this clause 13.2.

(b) The draft Program for the Order will be developed by the Contractor in consultation with RMS. The draft Program for the Order 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 under the Order including any Milestones;

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

(iii) specify the resources the Contractor will commit to the provision of the Services under the Order to achieve Completion of the Order by the applicable 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 for the Order reasonably required by RMS.
(d) Once the draft Program for the Order has been approved by RMS, it will be the agreed "Program" for the Order.

(e) Where RMS has approved a Program for an Order under clause 13.2(d), the Contractor must promptly:

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

(ii) provide RMS with the updated draft Program for the Order for RMS’ further approval under this clause 13.2.

13.3 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 under an Order 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 of an Order by the relevant Date for Completion by:

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

(ii) a Variation directed by RMS under clause 14.1; or

(iii) any cause specified in Item 9 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 time 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; and

(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 a Date for Completion unless it gives RMS a notice in the form, and within the time, required by this clause 13.3.

(d) The Contractor must take reasonable steps, including managing its resources, to avoid or mitigate any delay to Completion of an Order.
(e) The Contractor will not be entitled to an extension of the Date for Completion for an Order 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 clause 13.3(d).

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

13.4 Additional resources

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

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

(c) If the Contractor fails to demonstrate its resources are adequate under clause 13.4(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 13.4 are additional to, and do not exclude or limit, its other rights under this Deed and otherwise, including under clause 13.6.

13.5 Completion

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

(b) If, after receipt of a notice under clause 13.5(a), RMS considers Completion of the Order has not been achieved, RMS may notify the Contractor that RMS does not agree with the Contractor’s assessment and set out the Services under the Order to be completed before Completion is achieved.

(c) If RMS does not issue a notice under clause 13.5(b) within 10 Business Days of receipt of the Contractor’s notice under clause 13.5(a), then Completion of the Order is deemed to have been achieved by the date notified by the Contractor.

(d) The issue by the Contractor of a notice specifying Completion of an Order has been achieved (whether under this clause 13.5 or otherwise) is not evidence or an admission by RMS that the Services under the Order or any of them have been performed satisfactorily or in accordance with this Deed.

13.6 Liquidated damages

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

(b) The liquidated damages (if any) will be calculated in the manner set out in the applicable Order and will apply from and excluding the Date for Completion for the Order to and including the actual date of Completion of the Order.

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

(d) If:

   (i) no amount of, or rate for, liquidated damages is set out in an Order (or if "nil" or "not applicable" or some other form of words to similar effect is included, or if the liquidated damages in the Order is left blank); or

   (ii) the Contractor’s obligation to pay liquidated damages in relation to an Order is held to be unenforceable for any reason whatsoever,

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

13.7 Call Back

(a) During the Call Back Period for an Order, the Contractor must be available to, and must if required by RMS, provide Call Back works or services relating to the Order.

(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 Deed 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 12 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 13.7(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 13.7(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.
13.8 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 12 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 12.1. This clause 13.8(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 Deed.

14 VARIATIONS

14.1 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 the Services will be adjusted in accordance with clause 14.3.

14.2 Consequences of Variation or proposed Variation

(a) Before directing a Variation under clause 14.1, 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 14.1 and no request for a Variation Proposal in relation to that Variation has been made by RMS under clause 14.2(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 for the applicable Order,

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.
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.

14.3 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.

14.4 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.

14.5 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.

14.6 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.

15 INSURANCE

15.1 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 for the period in which the Services are carried out including the Call Back Periods.

(e) Before the earlier of:

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

(ii) the Contractor starting to provide the Services requested in any Order,

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 15.1(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 15.1(g)(iv).

(h) The existence of RMS Arranged Insurances will not reduce, vary, or otherwise affect the Contractor's liabilities and obligations under this Deed.
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 caused by, or contributed to by, the Contractor and its Personnel covered by RMS Arranged Insurances.

The Contractor can access the public and product RMS Arranged Insurance terms at:


15.2 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.

15.3 Evidence of insurances

The Contractor must provide evidence of the insurances obtained and maintained under clause 15.2, in the form of a certificate of currency, to RMS' Insurer on request.

15.4 Failure to provide evidences of insurances

If the Contractor breaches clause 15.2 or 15.3, 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.

15.5 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 Deed; and

(ii) any claim or subsequent proceeding or action and developments concerning the claim, related to this Deed against any of the insurance policies obtained and maintained under, or as required by, this Deed 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 Services in accordance with this Deed 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 15.5(a) and 15.5(b).

15.6 Insurance claims procedure

(a) In relation to the 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 15.6 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.

16 LIABILITY

16.1 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;

(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 Deed by RMS has contributed to the injury, damage or loss.

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

16.2 Limitation of liability

(a) Subject to clauses 16.2(b) and 16.3, the Contractor’s total liability to RMS arising out of or in connection with the Services under any single Order (however arising) is limited to the amount set out in the relevant Order.

(b) Subject to clause 16.3, clause 16.2(a) does not limit the Contractor’s liability:
(i) in respect of liability which:

(A) cannot be limited at law;

(B) arises under clause 16.1 or 18 or a breach of clause 19;

(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 Deed;

(ii) to the extent that any insurer under a policy referred to in clause 15.2 seeks to exercise a right of subrogation against the Contractor;

(iii) to the extent that (ignoring the application of clause 16.2(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 for 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 Deed or any Order, or would have been recovered if the Contractor had effected and maintained insurance as required by this Deed, complied with the insurance policies and taken all reasonable steps to recover the proceeds;

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

(vi) for liquidated damages under clause 13.6 or general damages referred to in clause 13.6(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 16.2(a).

16.3 Exclusion of certain kinds of loss

(a) Subject to clause 16.3(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 Deed);

(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 Deed (however arising).

(b) Clause 16.3(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 16.1 or 18 or a breach of clause 19;

(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 Deed expressly treats as recoverable debts;

(v) in the case of the Contractor, for liquidated damages under clause 13.6 or general damages referred to in clause 13.6(d); or

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

17 CONFIDENTIALITY

17.1 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.

17.2 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 Deed or, where the Recipient is RMS, enjoying the benefit of the Services and Deliverables.

17.3 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 Deed;

(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 Deed.

17.4 Disclosure by Recipient

A Recipient disclosing information under clause 17.3(a) or 17.3(b) must ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted by clause 17.3.

17.5 Return of Confidential Information

On the earlier of the Discloser’s request and termination or expiry of this Deed, 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 Deed;

(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.

18 OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

18.1 Ownership of new Intellectual Property Rights

Subject to clause 18.3, all Intellectual Property Rights which are created or developed by the Contractor in connection with the provision of the Services under an Order will vest absolutely in, and are assigned by the Contractor to, RMS from the later of the associated Date of Order and the date they are created or developed. The Contractor agrees to do all things necessary to give effect to this clause.

18.2 Licence to Contractor

The RMS grants to the Contractor and its Subcontractors who RMS has consented to in accordance with clause 20, a non-exclusive, non-transferrable, royalty free licence during the term of this Deed 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 Deed. Except as expressly stated in this Deed, no licence or right to Intellectual Property Rights is transferred to or created for the benefit of the Contractor or any Personnel.

18.3 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 the applicable Order and the date the Contractor commences the Services; or

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

remain the property of the Contractor.

18.4 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 18.1 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 18.4(a); and

(c) sublicense any of the rights described in clause 18.4(a) or clause 18.4(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.

18.5 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 18.1 or licensed to RMS under clause 18.4 or arising out of RMS’ use of the Deliverables in accordance with this Deed.

18.6 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.

19 MORAL RIGHTS

19.1 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 19.1(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.

19.2 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.

20 SUBCONTRACTING

20.1 Consent to subcontracting

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

20.2 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.

20.3 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 Deed.

20.4 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 Deed:

(a) equivalent indemnity and insurances provisions as apply to the Contractor under this Deed; and
(b) those provisions in this Deed equally relevant to the Subcontractor.

21 ASSIGNMENT

21.1 Contractor

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

21.2 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.

21.3 Other RMS assignment

Subject to clause 21.2, RMS must not assign or novate its rights or obligations under this Deed without the written consent of the Contractor which must not be unreasonably withheld or delayed.

22 RMS REPRESENTATIVE

22.1 RMS Representative

The Contractor must deal with:

(a) in relation to a particular Order, RMS Representative for the Order; and

(b) otherwise, RMS Representative for this Deed,

or other representative as may be notified by RMS to the Contractor from time to time.

22.2 RMS Representative's directions

(a) RMS Representative for this Deed may give written directions to the Contractor with regard to the provision of the Services, and the Contractor must comply with all directions given by RMS Representative for this Deed to the extent that such directions are not inconsistent with the terms of this Deed.

(b) RMS Representative for an Order may give written directions to the Contractor with regard to the provision of the Services under the Order, and the Contractor must comply with all directions given by RMS Representative for the Order to the extent that such directions are not inconsistent with the terms of this Deed in relation to the Order.

22.3 RMS Representative's authority

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

(b) RMS Representative for an Order has full authority to act on behalf of RMS in respect of the subject matter of the Order. An instruction or written direction given by RMS Representative for the Order in relation to the Order will be deemed to be an instruction or direction given by RMS.

23 CONFLICT OF INTEREST

23.1 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.

23.2 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.

24 TERMINATION

24.1 Termination for convenience

RMS may, for its sole convenience and in its absolute discretion, terminate this Deed or any Order, at any time and regardless of whether there has been any default by the Contractor, by a minimum of 30 days' notice to the Contractor.

24.2 Termination for breach by Contractor

RMS may terminate this Deed or any Order, 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 Deed 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 24.2(a)(i) and the Contractor commits a similar breach;

(b) the Contractor:

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

(ii) receives a notice from RMS stating that any further breach of this Deed will give RMS the right under this clause 24.2(b) to terminate this Deed; and
(iii) commits a further breach of any provision of this Deed;

c) the Contractor becomes Insolvent;

d) the Contractor has not obtained, or provided evidence of, the Contractor Arranged Insurances in accordance with clause 15 within 10 Business Days after the Date of Contract; or

e) the Contractor breaches:

(i) the confidentiality requirements under clause 17;

(ii) the restrictions on assignment under clause 21;

(iii) the conflict of interest requirements under clause 23; or

(iv) the privacy requirements under clause 25.

24.3 Termination for breach by RMS

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

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

(b) the amount referred to in clause 24.3(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 24.3(a) is overdue;

(ii) stating that if the amount referred to in clause 24.3(a) is not paid within 30 days of receipt of the notice, the Contractor proposes to exercise its rights under this clause 24.3; and

(iii) attaching evidence of the amount overdue, and

(d) RMS has not made payment of the amount referred to in clause 24.3(a) within 30 days of receipt of the notice referred to in clause 24.3(c).

24.4 Termination at end of Term

After the expiry of the Term, RMS may terminate all or any of the then current Orders by a minimum of 30 days’ notice to the Contractor.

24.5 Rights of RMS

(a) Termination of this Deed or an Order 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 under any Orders.

(b) Without limiting RMS’ other rights, where RMS takes Services out of the Contractor’s hands under clause 24.2:

(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 24.5(b)(iii) progressively as those amounts are incurred; and

(v) amounts demanded under clause 24.5(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.

24.6 Rights exhaustive

The rights of termination specified in this clause 24 are the only rights of termination available to the parties and any common law rights of termination are excluded.

24.7 Adjustment of Fee on termination

(a) Where this Deed is terminated under clause 24.1 or clause 24.3, RMS must pay the Contractor for Services provided up until the date of termination.

(b) Where an Order is terminated under clause 24.1, clause 24.3 or clause 24.4, RMS must pay the Contractor for Services under the Order provided up until the date of termination.

(c) Other than as set out in clause 24.7(a) and clause 24.7(b), the Contractor will have no claim against RMS for any expenses or losses (including loss of profit or opportunity) arising from the termination of this Deed or any Order under clause 24.1, clause 24.3 or clause 24.4.

(d) Where this Deed or an Order is terminated under clause 24.2, RMS must pay the Contractor for the Services or Services under the Order (as applicable) 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 24.5(b); and

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

24.8 Contractor’s continuing liability

Termination of this Deed or an Order by RMS does not release the Contractor from liability in respect of any breach of, or non-performance of any obligation pursuant to, this Deed or the Order (as applicable).
24.9 Return of property

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

25 PRIVACY

25.1 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.

25.2 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.

26 RECORDS

26.1 Maintaining Records

The Contractor must:

(a) maintain all necessary records and documentation relating to this Deed 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 Deed.

26.2 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 Deed.

(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 Deed in which case the Contractor must pay the Auditor's costs.

(e) If the Audit reveals any non-compliance with this Deed 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 26.2 at the Contractor's premises.

27 DISPUTES

27.1 Claim Notice

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

27.2 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 Deed) 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.

27.3 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.

(f) Where the expert’s decision is not final and binding under clause 27.3(e), RMS or the Contractor may give to the other party:

(i) provided notice has not been given under clause 27.3(f)(ii), notice requiring the dispute to be referred to arbitration under clause 27.4; or

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

Unless the parties otherwise agree, any notice under this clause 27.3(f) must be given within 20 Business Days after the date of the expert’s determination.

27.4 Arbitration

(a) Where a party is entitled under clause 27.3 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 27.4(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.
27.5 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 Deed or concerns the performance or the non-performance by the other party of its obligations under this Deed.

(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 this Deed 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.

27.6 Litigation

Upon the issue of notice of a party’s intention to commence proceedings under clause 27.3(f)(ii) or 27.4(b), either party may commence proceedings to resolve the dispute.

27.7 Continued Performance

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

28 GENERAL

28.1 Waiver

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

28.2 Publicity

Without limiting clause 17, the Contractor:

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

   (i) through any communications media; or
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 this Deed 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.

28.3 Applicable law

The law of New South Wales applies.

28.4 Clauses survive termination

Any clause capable of continuing to apply after the Panel End Date will do so.

28.5 Notices

(a) A notice given under or in connection with this Deed which:

(i) does not relate to any particular Order must be given to RMS Representative or the Contractor’s Representative (as applicable) for this Deed; and

(ii) relates to a particular Order must be given to both RMS Representative or the Contractor’s Representative (as applicable) for the Order and RMS Representative or the Contractor’s Representative (as applicable) for this Deed.

(b) A notice must be:

(i) in writing;

(ii) sent by certified mail to the relevant address in Item 5 or Item 11 of the Reference Schedule, or in the applicable Order, as varied by notice; or

(iii) sent by email to the relevant email address in Item 5 or Item 11 of the Reference Schedule, or in the applicable Order, as varied by notice.

(c) A notice is taken to be given:

(i) if delivered to or left at the relevant address, 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 28.5(d), 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.
(d) In relation to any notice under clause 13.3, 13.8, 14.1, 15.1(g), 15.5, 23.2, 24, 26.2 or 27:

(i) the sender will only be permitted to give a notice by email under clause 28.5(b)(iii) if the notice is concurrently given in accordance with clause 28.5(b)(i) or 28.5(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 28.5(c)(i) or 28.5(c)(ii) (as applicable).

28.6 Government information disclosure

The Contractor acknowledges that RMS may be required to publish certain information concerning this Deed in accordance with sections 27 – 35 of the Government Information (Public Access) Act 2009. If the Contractor reasonably believes that any part of this Deed 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.

The Contractor acknowledges that RMS may from time to time be required to disclose certain information in accordance with the requirements of the Government Information (Public Access) Act 2009 and that the Contractor must indicate what, if any, information is characterised as being commercially sensitive information for the purposes of that Act.

28.7 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 Deed but excluding the Contractor’s Confidential Information) available to the NSW Government and its departments, agencies, authorities and state owned corporations.

28.8 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.

28.9 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 28.7 and 28.8.

28.10 Release

The Contractor releases RMS from and against any Liability arising out of its provision of information under clauses 28.6, 28.7 and 28.8 or the use of such information by the NSW Government and its relevant departments, agencies, authorities and state owned corporations.
28.11 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 Deed or that will receive a benefit under this Deed.

28.12 Severability

If any provision of this Deed 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.
ANNEXURE A - Call Back Request

(clause 13.7)

[On Roads and Maritime Services letterhead]

[Contractor name]
[Contractor address]

[Date]

Dear [contact name]

[DEED DESCRIPTION] - [PANEL DESCRIPTION] - [ORDER DESCRIPTION]

CALL BACK REQUEST NO. [*]

I refer to our recent discussion in relation to the above agreement ("Deed").

The purpose of this letter is to confirm the Call Back requested to be provided in accordance with clause 13.7 of the Conditions of Contract of the Deed.

Details of the required Call Back are as follows:

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

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 this Deed.

RMS reserves all rights it has under the Deed 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 Deed (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).

Details

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

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

Name of Signatory (print)

Date

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

(see Notes on page 2)
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 (e.g. 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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<tr>
<th>Subcontractor</th>
<th>ABN</th>
<th>Contract number/identifier</th>
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</tbody>
</table>

**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](http://www.legislation.nsw.gov.au).
ANNEXURE C - Insurances

*(clause 14)*

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>RMS, the Contractor, the Subcontractors and any other parties required by RMS.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public and Products Liability</td>
<td>$20m</td>
<td>Duration of the Services</td>
<td></td>
</tr>
<tr>
<td>Excess for Public and Products Liability</td>
<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>
</tr>
<tr>
<td>Injury to Contractors – excess is $100,000 per Event/Occurrence</td>
<td></td>
<td></td>
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</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>
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<td></td>
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</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>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>
<td></td>
</tr>
<tr>
<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 14.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual until the Contractor ceases performing the Services.</td>
<td></td>
<td></td>
<td></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 Deed – 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>TYPES OF INSURANCES</td>
<td>MINIMUM SUM INSURED</td>
<td>PERIOD OF INSURANCE</td>
<td>INSURANCE COVER IS TO INCLUDE THE FOLLOWING</td>
</tr>
<tr>
<td>---------------------</td>
<td>---------------------</td>
<td>---------------------</td>
<td>-------------------------------------------</td>
</tr>
<tr>
<td>4  Workers Compensation</td>
<td>As per the relevant definition in Definitions and Notes clause 1 below</td>
<td>Annual until the Contractor ceases performing the Services.</td>
<td>As per State Workers Compensation legislation.</td>
</tr>
</tbody>
</table>

| 5  Professional Indemnity Insurance | See Reference Schedule, Item 13. | 7 years from the date of completion. | The Contractor, its Subcontractors and anyone else who is involved in providing the Services for or on behalf of the Contractor. |

| 6  Additional Insurance | As specified in Item 15 of the Reference Schedule or the applicable Order. | |

(a) **Definitions and Notes:**

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

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

(clause 3.6)

[Note to RMS: HSF to update once we finalise which details are specified in the order and which in the Reference Schedule.]

NOTE: YOU MUST USE THIS ANNEXURE AS YOUR TEMPLATE. YOU MAY NOT USE ANOTHER FORMAT WITHOUT OBTAINING PRIOR APPROVAL FROM RMS LEGAL. READ THE DEED CAREFULLY FIRST SO THAT YOU DON’T INSERT INFORMATION IN HERE WHICH DUPLICATES OR CONFLICTS WITH THE DEED. TO USE THIS TEMPLATE PLEASE ENSURE THAT YOU MAKE A COPY. DO NOT FILL IN THIS ANNEXURE.

ORDER

CONTRACTOR: [insert contractor’s name and address]

DEED: [insert details of panel deed]

ORDER REFERENCE/NUMBER: [insert Work order contract number as generated in CM21 contract database]

DATE: [insert the date RMS signs the Order]

References to clauses in the headings of each paragraph of this Order refer to clauses in Schedule 2 (Conditions of Contract).

1. SERVICES (CLAUSE 4.1)

The Contractor is to provide RMS with the following Services in accordance with the Deed and this Order:

[Either insert full details of all RMS’ requirements for the Services or refer to and attach a Scope of Works or Brief which does that. Mention all relevant Australian Standards and specifications that are required to be met.

If including service levels ensure that they are capable of being measured, reported and assessed.

Make sure the terminology used matches the terminology in the Deed.]

2. SERVICE STAGES (CLAUSE 4.3)

[Insert details of any stages to the Services under this Order. If there are any, include details of the fees for each Service Stage.]
3. RMS’ APPROVALS (CLAUSE 4.4(B))

RMS is responsible for obtaining and maintaining the following Approvals:

[Insert details of Approvals.]

4. FITNESS FOR PURPOSE (CLAUSE 7.3)

The Services under this Order relate to the following Project:

[Insert short description of Project.]

Specify the purpose(s) for which the Services are required.

5. NOMINATED PERSONNEL (CLAUSE 7.6)

The following Personnel are to provide the Services under this Order:

(Insert names and/or positions of the Nominated Personnel).

6. CONTRACTOR’S REPRESENTATIVE FOR ORDER (CLAUSE 7.12)

(Insert details and position of Contractor’s Representative in respect of this Order).

7. REPORTING (CLAUSE 7.15)

The Contractor is required to consult with RMS as follows:

[Insert details.]

8. FEES (CLAUSE 9)

The Fee is to be calculated as follows:

[The fees will be specifically tailored for the Services under this Order and incorporate the Contractor’s quote or tender.

If a quote or tender is to be incorporated, it should be specifically referred to and annexed. Otherwise you should set out the fees below.

The fees should be set out exclusive of GST with a separate line item stating the GST component.]
(Choose relevant alternative or delete entirely if there is no lump sum for the Order.

Alternative 1: $#

Alternative 2: a total of $# which is apportioned as per the achievement of the Milestones.)

[Rates (CLAUSE 9.2)]

[Insert rates or delete entirely if rates do not apply to the Order.

The rates set out below:

Insert rates.]

[Cost Adjustments]

[Delete completely if cost adjustment does not apply to the Order.

Cost adjustments only apply to Orders which require services to be provided for more than 12 months.]

Variation Rates (CLAUSE 9.3)

[Insert Variation Rates.]

9. EXPENSES (CLAUSE 10.1)

The Contractor will only be entitled to reimbursement of the following Expenses:

(List expense items Contractor may claim)

10. PAYMENT CLAIM DATE (CLAUSE 12.1)

The Payment Claim Date is:

[Choose relevant alternative

Alternative 1: The first Business Day of the month (for claims in respect of the previous calendar month)

Alternative 2: At the following Milestones:

(insert details of Milestones)]

11. MILESTONES (CLAUSE 12.3)

The Milestones are:

[Choose relevant alternative

Alternative 1: (insert details of Milestones)

Alternative 2: Nil]
12. PROVISIONAL SUM WORK (CLAUSE 12.4)

The margin for Provisional Sum work is [as specified in the Deed / insert different %].

13. LIQUIDATED DAMAGES (CLAUSE 13.6)

[Choose relevant alternative]

Alternative 1 [If liquidated damages are required]: Liquidated damages will be calculated as follows: (Insert details)

Alternative 2 [If liquidated damages are not required]: Liquidated damages are not required.

14. COMMENCEMENT DATE (CLAUSE 13.1)

The Contractor is to commence providing the Services under this Order on [insert date Contractor is to commence the Services].

15. DATE FOR COMPLETION (CLAUSE 13.1)

The Contractor is to complete the Services under this Order by [insert date on which the Services are to be complete].

16. PROGRAM (CLAUSE 13.2)

[Choose relevant alternative]

Alternative 1: The Contractor must submit its program to RMS by [insert date].

Alternative 2: Nil

17. CALL BACK PERIOD (CLAUSE 13.7)

The Call Back Period for this Order is [insert time period] from the date of Completion of the Order.

18. CONTRACTOR’S INSURANCE (CLAUSE 15.2)

In addition to the insurances listed in Annexure C (Insurances) to Schedule 2 (Conditions of Contract), the Contractor must effect and maintain the following insurances:

[Insert details of required insurances]

19. RMS REPRESENTATIVE FOR ORDER (CLAUSE 22)

(Insert details and position of RMS Representative in respect of this Order).
20. **RMS POLICIES (CLAUSE 7.17)**

   The Contractor must comply with the following RMS Policies:

   [List relevant policies]

21. **LIMIT OF LIABILITY (CLAUSE 16.2)**

   The liability limit for the purposes of clause 16.2 is:

   [Choose relevant alternative]
   - Alternative 1: No limit
   - Alternative 2: $# - Can be limited - refer to guidance in ECM 6]

22. **NSW GOVERNMENT POLICY ON ABORIGINAL PARTICIPATION IN CONSTRUCTION (CLAUSE 7.19)**

   [Choose relevant alternatives in the table]

   | The Policy applies to the Services required to be provided under the Order: | Yes / No |
   | The Aboriginal Participation Project Category is: | Category [insert number] / Not applicable |
   | The Contractor is required to submit an Aboriginal Participation Plan and Aboriginal Participation Reports | Yes, at times specified in the Deed / No |
   | The Targeted Project Spend (TPS) at the date of this Order is: | $[insert amount] (excl GST) / Not applicable |

   ____________________________  ____________________________
   Signature of RMS Representative  Signature of Contractor’s Representative

   [Insert RMS officer’s name and title]  [Insert name and title]

   ____________________________  ____________________________
   Date ……/……/……  Date……/ ……/……
## ANNEXURE E – 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>
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</thead>
<tbody>
<tr>
<td>a) Direct employment (employees, apprentices)</td>
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<tr>
<td>b) Other employment (contractors, group training)</td>
<td></td>
<td></td>
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<tr>
<td>c) Goods/services bought from Aboriginal businesses</td>
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<td>d) Education expenses</td>
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<tr>
<td>• Apprentices</td>
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<tr>
<td>• Trainees</td>
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<tr>
<td>• Cadets</td>
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<td></td>
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<tr>
<td>• Other</td>
<td></td>
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<tr>
<td>e) Payments to Aboriginal business/community organisations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>f) Other type of expenditure approved by RMS</td>
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<td></td>
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</tbody>
</table>

| Total Direct Expenditure Amount ($) |  |
| Proposed expenditure in participation plan ($) |  |
ABORIGINAL PARTICIPATION – INDIRECT EXPENDITURE

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

Description of activities (include participating business/community group details) and outcomes

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ABORIGINAL PARTICIPATION – ACTUAL SPEND

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

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

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

Approved by (Name and Position in the Organisation):
## ANNEXURE F – Panel Appointments

<table>
<thead>
<tr>
<th>Panel details</th>
<th>Panel Appointment Date</th>
<th>Panel End Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Insert description of panel and services]</td>
<td>[Insert date]</td>
<td>[Insert date]</td>
</tr>
</tbody>
</table>