



Transport
**Roads & Maritime
Services**

Master Goods and
Services Agreement

for
Supply of Traffic Logging
System and Support Services

Roads and Maritime Services
("RMS")

CEOS Industrial Pty Ltd
("Supplier")

Contract Reference Number *#insert ref no#*

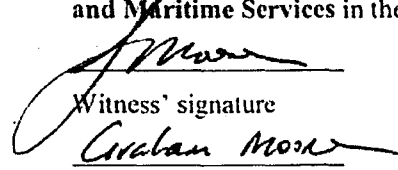
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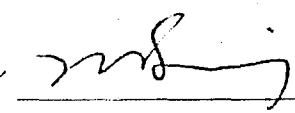
Parties		RMS and Supplier
RMS	Name	Roads and Maritime Services
	ABN	76 236 371 088
	Address	20 Ennis Rd Milsons Point, New South Wales, 2061
Supplier	Name	CEOS Industrial Pty Ltd
	ABN	64 095 186 468
	ACN	095 186 468
	Address	Unit 3, 17 Burgundy Street, Heidelberg VIC - 3084

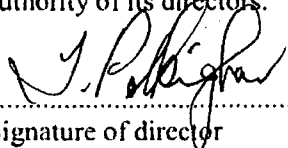
Date of agreement

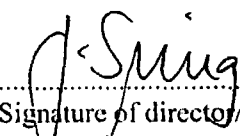
EXECUTED as an agreement.

Signed by the authorised Delegate of Roads and Maritime Services in the presence of


 Witness' signature
Coralan Moran
 Name


 Delegate's Signature
Melinda Bailey
 Name
Executive Director
 Position
2/7/2019
 Date of Signing

EXECUTED by CEOS Industrial Pty Ltd in accordance with section 127(1) of the Corporations Act 2001 by authority of its directors:

 Signature of director
 Terence Polkinghorn
 Name of director (block letters)


 Signature of director/company secretary*
 *delete whichever is not applicable
 Jonathan Spring
 Name of director/company secretary* (block letters)
 *delete whichever is not applicable
29 JULY 2019
 Date

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Contract Details

Commencement Date (Clause 2) The date that the last party signs this agreement

Initial Term (Clause 2) 36 months from the Commencement Date

Further Term (Clause 2) One year plus one year

Other Services Rates (Clause 3.3)

Service/Personnel	Rates (Includes GST)	Materials (Includes GST)
ITS systems and software	[REDACTED]	Cost + 10%

Repair Location (Clause 4.9) Sydney

IP Ownership (clause 14)	Option A - RMS Owns New IP	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	Option B - Supplier Owns New IP but RMS has Exclusive Use Licence	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	Option C - Supplier Owns New IP but RMS has Non-Exclusive Use Licence	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

RMS Representative (Clause 16) and notices (Clause 25)

Name: Guido Zatschler
Position: Senior Project Engineer
Address: 110 George Street Parramatta NSW 2150
Facsimile:
Email: [REDACTED]

Supplier Representative (Clause 16) notices (Clause 25)	Name:	Jonathan Spring
	Position:	Managing Director
	Address:	Unit 3, 17 Burgundy Street, Heidelberg VIC 3084
	Facsimile:	03 9458 4966
	Email:	[REDACTED]

**Reports
(Clause 16.3)** N/A

**Review meetings
(Clause 16.4)** As required

**Supplier Liability
Cap (Clause 18.2)** \$20 million

**Insurance Policies
(Clause 19.1)**

TYPES OF INSURANCES	MINIMUM SUM INSURED	TICK IF REQUIRED
Broadform Public and Products Liability	\$20 million for any single occurrence and unlimited in the aggregate as to the number of occurrences The total aggregate liability during any one period of insurance for all claims arising out of the Supplier's Products shall not exceed [\$20 million*]	<input checked="" type="checkbox"/>
Motor Vehicle Comprehensive or Third Party Property Damage	\$20 million for any single occurrence and unlimited in the aggregate as to the number of occurrences	<input checked="" type="checkbox"/>
Workers Compensation	As required by the laws of each relevant State and Territory	<input checked="" type="checkbox"/>
Personal Accident & Illness	Minimum of 104 weeks but only required if the Supplier is a sole trader	
Professional Indemnity	\$10 million per occurrence	<input checked="" type="checkbox"/>
Fire and Extraneous Perils including Accidental Damage, Burglary, Theft and Transit Insurance (or similar Industrial Special Risks Insurance) whilst in the care, custody and control of the Supplier		N/A

For details of requirements for each policy see Attachment D.

**Important
contractual notices
(Clause 25.2)**

**Important contractual notices under clause 25.2 must be
copied to:**

1 If to RMS:

Copy to: The General Counsel

(for notices under
clause 25.2 only) 20 Ennis Rd
Milsons Point
New South Wales

2 If to the Supplier:

Copy to: Jonathan Spring

(for notices under
clause 25.2 only) CEOS Industrial Pty Ltd
Unit 3, 17 Burgundy Street
Heidelberg, VIC 3084

**Note: Under clause 25.2 important contractual notices are
not permitted to be sent by facsimile or email.**

General Terms

1 Contract structure

1.1 Overview

This agreement consists of the following parts:

- (a) these General Terms - the clauses of these General Terms set out the contractual framework under which the Supplier will supply Goods and perform Services;
- (b) the Contract Details - the details set out the key commercial variables applicable to this agreement;
- (c) the Schedules - set out the detailed provisions relating to the Goods, Services and Service Levels;
- (d) the Scope of Works – sets out the requirements for the supply and operational support of the Goods and Services;
- (e) Orders - sets out the provisions relating to each supply of Goods and/or performance of Services; and
- (f) the other Attachments - sets out forms and other material relevant to this agreement.

1.2 Master Agreement

This agreement sets out the terms on which the Supplier will provide Goods and Services to RMS from time to time. The Supplier will provide individual supplies to RMS pursuant to this agreement and as set out in Orders.

1.3 No exclusivity or minimum Orders

The Supplier acknowledges that:

- (a) it is not the exclusive supplier of the Goods or Services, or goods or services similar to the Goods or Services and RMS may at any time during the Term acquire such Goods or Services or any part of them from a third party; and
- (b) RMS is under no obligation to place any Orders or acquire any minimum quantity of Goods or Services under this Agreement.

1.4 Priority

If there is any inconsistency between any of the parts of this agreement, then the part listed higher in clause 1.1 (Overview) takes priority and applies over any part listed lower in that clause, but only to the extent of the inconsistency.

1.5 Definitions and interpretation

The definitions used in this agreement and the rules of interpretation are set out in the Dictionary in Schedule 1.

2 Term

2.1 Term of Agreement

This agreement commences on the Commencement Date and continues until expiry of the Initial Term unless extended under clause 2.2 (Extension) or 2.3 (Holding Over) or terminated in accordance with this agreement.

2.2 Extension

RMS may extend this agreement on the same terms and conditions for the Further Term by notifying the Supplier in writing.

2.3 Holding over

Following expiry of the Initial Term (including any extension of it under clause 2.2 (Extension)) this agreement will continue on a periodic basis on the same terms (including Charges) until the earlier of:

- (a) termination by either party giving the other at least 3 month's notice;
- (b) expiration of 12 months; or
- (c) termination in accordance with this agreement.

3 Ordering

3.1 Standard Orders

RMS may at any time during the Term issue an order to the Supplier for Standard Goods or Standard Services (or both) in accordance with the Ordering Process.

3.2 Invalid orders

An order will not be considered valid if it does not contain all information required under the Ordering Process, or if it otherwise fails to comply with the Ordering Process. The Supplier must immediately notify RMS if it receives an invalid order.

3.3 Other Goods and Other Services

The parties may agree that the Supplier will provide Other Goods or Other Services (or both) by entering into an Other Goods and Services Order. Except where expressly agreed otherwise, the Supplier warrants that the Charges for Other Goods or Other Services under each Other Goods and Services Order are calculated using rates which are equal to or lower than the Rates.

3.4 Withdrawal of Orders

RMS may cancel an Order for no charge before the later of:

- (a) expiry of 2 Business Days from the date that the Order was placed; and
- (b) the time at which the Supplier has committed substantive resources to fulfil the Order or has acquired or irrevocably committed to acquire substantive inputs from a third party in order to fulfil the Order.

4 Goods

4.1 General

The Supplier must supply the Goods to RMS in accordance with:

- (a) each Order; and
- (b) the terms and conditions of this agreement.

4.2 Specifications

The Supplier must ensure that the Goods:

- (a) comply with the Specifications; and
- (b) are identical to any Tested Goods.

4.3 Packaging

The Supplier must ensure that all Goods:

- (a) are properly and securely packaged so as to reach the Delivery Address in a new and undamaged condition;
- (b) have documentation sent with the package or container (including delivery advice notes and packing lists) containing the Delivery Address, contact name and contact number of the relevant RMS contact; and
- (c) comply with any specific packaging and identification requirements that RMS may reasonably require from time to time.

4.4 Delivery

- (a) The Supplier must deliver the Goods and Documentation to the Delivery Address in accordance with the Delivery Timeframe and the Service Levels.
- (b) Before handing over the Goods and Documentation to RMS, the Supplier must:
 - (i) sight RMS staff identification tag;

- (ii) obtain the signature; and
- (iii) record the full name and staff number,

of the RMS Representative that takes receipt of the Goods and Documentation and keep such record for the Term (“**Proof of Delivery**”). If requested by RMS, the Supplier must provide to RMS the relevant Proof of Delivery. A Proof of Delivery will (in the absence of other contrary evidence) be deemed to be sufficient evidence that the Goods and Documentation have been delivered to RMS.

4.5 Assistance

- (a) The Supplier must provide RMS with all reasonable assistance (including installation and testing) to ensure the Goods are fully operational and comply with the Specifications.
- (b) RMS may inspect and test the Goods upon delivery for compliance with the Specifications.

4.6 Errors and Defects

If Goods delivered to RMS under an Order:

- (a) do not conform with this clause 4 (Goods); or
- (b) fail to comply with a representation or warranty specified in clause 17.2 (Representations and warranties in respect of Goods and Services),

then RMS, irrespective of whether it has paid for the Goods, may reject the Goods by giving written notice to the Supplier (“**Rejection Notice**”).

4.7 Rejection Notice

If a Rejection Notice is issued by RMS in respect of any Goods, in addition to any other rights RMS may have under this agreement or by law, the Supplier must, at RMS’s sole option:

- (a) immediately refund any moneys paid in advance for the Goods (if applicable); or
- (b) immediately replace the Goods at its cost.

4.8 Warranty repairs

If the Goods are or become defective in any way during the Warranty Period, then, at RMS’s absolute discretion:

- (a) the Supplier must immediately replace or repair the Goods at the Supplier’s cost; or
- (b) RMS may return the Goods to the Supplier and may cancel any Orders in respect of identical Goods which have not yet been

delivered. The Supplier must fully refund any amounts paid for the Goods that RMS does not retain.

4.9 Facilities to repair

The Supplier agrees to ensure that facilities for the repair of the Goods are available at the Repair Location for the Warranty Period.

4.10 Stock Levels

The Supplier must ensure that throughout the Term it maintains sufficient stock levels of Goods to meet obligations under this agreement, including being able to fill any Order issued for Goods up to the quantity specified in the Order without delay.

4.11 Title and risk

The parties acknowledge and agree that:

- (a) Goods becomes the property of RMS on delivery of the Goods to the Delivery Address;
- (b) the risk of loss or damage to the Goods passes to RMS on delivery of the Goods to the Delivery Address in accordance with this clause 4 (Goods); and
- (c) if any Goods are re-taken by the Supplier, the risk of loss or damage to the Goods passes back to the Supplier upon removal from RMS's premises.

5 Services

5.1 General

The Supplier must provide the Services to RMS to a standard that meets or exceeds any applicable Services Levels in accordance with:

- (a) each Order; and
- (b) the terms and conditions of this agreement.

5.2 Incidental Services

The Supplier must provide (without additional charge) any incidental or related services not specifically described in Schedule 3 (Services), an Order or this agreement which are required for the proper performance or use of the Services described in the relevant Order.

5.3 Capability Levels

The Supplier must ensure that throughout the Term it maintains sufficient capability and resources in relation to Services to meet its obligations under this agreement, including being able to fill an Order issued in respect of Services without delay.

5.4 Warranty rectification

If the result achieved by the Services is or becomes defective in any way during the Warranty Period then the Supplier must immediately re-perform the Service or remedy the defect at the Supplier's cost.

6 Service Levels and Service Credits

Where the Supplier fails to meet any Service Level, without limiting other rights and remedies available to RMS, the Supplier must at no additional cost to RMS promptly:

- (a) at RMS's option, pay to or credit RMS, the Service Credits;
- (b) if requested by RMS, in the case of Services re-perform those Services which gave rise to the failure to meet the Service Level;
- (c) use all reasonable endeavours to correct the issue which caused the failure to meet the Service Level;
- (d) arrange all additional resources reasonably necessary to deliver the Goods or perform the Services in accordance with the Service Level as soon as practicable; and
- (e) if requested by RMS, provide at no charge to RMS a detailed report on the steps taken by the Supplier to prevent similar future non-compliance with the Service Levels.

7 Other Supplier Obligations

7.1 Standard of performance

Without limiting the Supplier's obligations under this agreement, the Supplier must perform its obligations under this agreement:

- (a) in accordance with best industry practice;
- (b) with all due care, skill and diligence expected of a professional service supplier and in a proper and workmanlike manner; and
- (c) in a cost effective manner consistent with the required level of quality and performance.

7.2 Comply with requirements

Without limiting the Supplier's obligations under this agreement, the Supplier must comply, and must ensure that the Supplier Personnel comply, with:

- (a) all RMS standards, policies and procedures notified from time to time (other than any which are expressly inconsistent with this agreement);
- (b) all other reasonable requirements and directions of RMS in relation to the Goods and Services, including that the Supplier must reasonably co-operate with other RMS suppliers; and

- (c) the Supplier's own internal standards and policies (other than any which are inconsistent with this agreement).

Where there is any inconsistency between any of the requirements set out above, the requirement listed earlier prevails to the extent of the inconsistency.

7.3 SME Participation Plan and reporting

- (a) This clause only applies where the Supplier has submitted a SMEPP to RMS.
- (b) The Supplier acknowledges that RMS has relied on the SMEPP in awarding this agreement to the Supplier.
- (c) The Supplier must comply with the requirements and commitments provided for in the SMEPP and take all steps reasonably required to enable RMS to monitor compliance by the Supplier with the SMEPP.
- (d) The parties acknowledge and agree that:
 - (i) RMS may establish mechanisms to monitor compliance by the Supplier with its commitments under the SMEPP; and
 - (ii) non-compliance by the Supplier of the SMEPP commitments will entitle RMS to terminate in accordance with clause 23.1 (Termination by RMS for cause).
- (e) The Supplier acknowledges that RMS may take into consideration non-compliance by the Supplier with the SMEPP when evaluating tenders submitted by the Supplier to RMS in the future for other agreements.
- (f) In this clause "SMEPP" refers to a Small & Medium Enterprise Participation Plan under the NSW Government's Small and Medium Enterprises Policy.

8 Charges, invoices and payments

8.1 RMS will pay Charges

Subject to this clause 8 (Charges, invoices and payments), in consideration of the Supplier supplying the Goods and performing the Services, RMS will pay to the Supplier the Charges. The Supplier is not entitled to recover any charge or expenses additional to the Charges for the supply of Goods, the performance of the Services, the provision of any benefit or the performance of any acts, even if required to do so under this agreement, unless the agreement provides otherwise.

8.2 Invoice Timing

The Supplier will issue and invoice for the Charges in accordance with the Invoice Timing or if there is no Invoice Timing established for the relevant Goods or Services, then:

- (a) in respect of Goods, on delivery of all Goods under that Order; and
 - (b) in respect of Services, on completion of all Services under that Order,
- unless otherwise agreed in writing by RMS.

8.3 Payment of amounts due to or in respect of employees

RMS may but is not obliged to (unless otherwise required by law) pay any amounts owing by the Supplier to or in respect of an employee of the Supplier who has carried out work in connection with this agreement provided that:

- (a) the time for payment has passed;
- (b) the Supplier has not given RMS a completed Contractor Statement in the form set out in Attachment C in respect of the period for which the amounts are owed; and
- (c) RMS first gives the Supplier not less than 5 Business Days' notice that it intends to make the payment.

Without limiting any rights RMS may have under section 127 of the *Industrial Relations Act 1996* (NSW), the Supplier must credit or pay the amount to RMS as required by clause 8.7 (Amounts due to) at RMS's option.

8.4 Payment of invoices

RMS is not required to pay any amount to the Supplier unless it has received a correctly rendered invoice for that amount. Unless the Order specifies otherwise, RMS must pay each correctly rendered invoice within 30 days after receipt of that invoice.

8.5 Correctly rendered invoice

For the purposes of this agreement, an invoice is not correctly rendered unless:

- (a) the invoice is a Tax Invoice;
- (b) the amount claimed in the invoice is due for payment in accordance with clause 8.2 (Invoice Timing);
- (c) the amount claimed in the invoice is correctly calculated under this agreement;
- (d) the invoice includes the relevant RMS purchase order number, cost centre number and general ledger code and is set out in a manner that identifies the Order, the Goods and/or Services which the invoice covers and itemises each amount claimed, to a level of detail satisfactory to RMS acting reasonably;
- (e) the invoice is accompanied by documents that adequately demonstrate to RMS the Goods supplied, the Services that were performed and the basis on which the amounts are claimed;

- (f) the invoice is addressed to "Roads and Maritime Services" with attention to the RMS Representative and identifies this agreement and the relevant Order; and
- (g) the invoice is accompanied by a completed Contractor Statement in the form set out in Attachment C in respect of the period to which the invoice relates.

8.6 Disputed invoices

Where RMS considers that an invoice is not correctly rendered RMS will issue to the Supplier within 10 Business Days after receipt of the invoice a notice setting out the reasons and identifying any amounts which are in dispute.

8.7 Amounts due to RMS

Each amount payable by the Supplier to RMS under an indemnity, warranty, reimbursement, rebate or refund obligation, or default event under this agreement is a debt due and payable to RMS on demand. Any demand must be accompanied by any relevant verifying documentation and, if the amount payable is a taxable supply must be a Tax Invoice. At RMS's option the Supplier must pay or credit the amount to RMS, within 30 days after issue of the demand or in accordance with the time otherwise set out in this agreement.

8.8 Set off rights

Without prejudicing any other rights available to RMS, RMS is entitled to set off against any amount due for payment by it to the Supplier any amount payable by the Supplier to RMS (including Service Credits).

8.9 Payment does not affect other rights or obligations

Payment of money under clause 8.1 (RMS will pay Charges) is not evidence:

- (a) that RMS accepts any Goods or Services under this agreement;
- (b) of any waiver by or estoppel against RMS in relation to any right or action which RMS may have at any time against the Supplier;
- (c) that the Supplier has carried out its obligations under this agreement; or
- (d) of the value of any of the Goods or Services.

9 Taxes and GST

9.1 Taxes

The Supplier is responsible for all Taxes arising from or relating to this agreement and must pay Taxes which are imposed on the Supplier arising from or relating to this agreement, directly to the relevant Government Agency, except for any income tax or capital gains tax payable by RMS.

9.2 Evidence of payment

Where the Supplier pays Taxes imposed on RMS under clause 9.1 (Taxes), the Supplier must provide to RMS within 3 Business Days of payment a written notification evidencing, to the satisfaction of RMS, the full and timely payment of the relevant Taxes.

9.3 Indemnity

The Supplier indemnifies RMS against any costs or expenses that RMS suffers or incurs as a result of the Supplier failing to meet its obligations under clause 9.1 (Taxes).

9.4 GST

The parties agree that:

- (a) unless expressly stated otherwise, all amounts payable by RMS to the Supplier under this agreement are inclusive of GST;
- (b) if a supply under this agreement is subject to GST, and the consideration payable or to be provided for the supply is not inclusive of GST, then the party receiving the supply must pay to the party making the supply an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate;
- (c) the additional amount is payable at the same time as the consideration for the supply is payable;
- (d) if the additional amount differs from the amount of GST payable by the party making the supply, the parties must adjust the additional amount; and
- (e) if a party is entitled to be reimbursed or indemnified under this agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

9.5 Withholding tax

If a law requires RMS to deduct an amount in respect of Taxes from a payment under this agreement, then:

- (a) RMS agrees to deduct the amount for the Taxes; and
- (b) RMS agrees to pay an amount equal to the amount deducted to the relevant Government Agency as required by applicable law and give the original receipts to the Supplier.

10 Supplier Personnel

10.1 Supplier Personnel

The Supplier must ensure that the Supplier Personnel are suitably qualified, experienced and competent for their role in providing the Goods and Services.

10.2 Removal of Supplier Personnel

Where required by RMS, the Supplier must remove and replace any particular Supplier Personnel as reasonably request by RMS.

10.3 Information about Supplier Personnel

If requested to do so by RMS, the Supplier must provide to RMS:

- (a) a list of any of the Supplier Personnel; and
- (b) accurate information about the identity, qualifications, job history and character of each of the Supplier Personnel.

10.4 Security

If specified in Schedule 2 (Goods) or Schedule 3 (Services) or the applicable Other Goods and Services Order, the Supplier must, and must ensure that the relevant Supplier Personnel:

- (a) submit to security checks; and
- (b) execute a deed of confidentiality in the form reasonably required by RMS.

10.5 Criminal record search and investigation

If required by clause 10.4 (Security), in relation to all relevant Supplier Personnel (as specified in Schedule 2 (Goods) or Schedule 3 (Services)) or the applicable Other Goods and Services Order:

- (a) prior to, but no earlier than 3 weeks before the Supplier engages that person to work on an Order, the Supplier must:
 - (i) for Supplier Personnel who are resident in Australia, perform or procure a national criminal record search of that person from the Criminal Records Section of the NSW Police Force (or such other branch or office of the NSW Police Force or law enforcement agency performing the functions of the Criminal Records Section from time to time) and must provide the results to RMS;
 - (ii) for Supplier Personnel who are resident outside Australia, use reasonable endeavours to perform or procure a criminal record search of that person from the relevant police force of the jurisdiction where the Supplier Personnel resides and must provide the results to RMS;

- (b) RMS may, but is not required to, carry out the search referred to in clause 10.5(a) itself;
- (c) the Supplier must conduct such other investigations at the Supplier's expense as RMS may reasonably request and must provide the results of those investigations to RMS; and
- (d) RMS may conduct such other investigations at RMS's expense as RMS considers appropriate and the Supplier must provide all such assistance as RMS may reasonably request.

The Supplier acknowledges that any search or investigation by RMS in accordance with this clause 10.5 (Criminal record search and investigation) will not affect the Supplier's obligations under this agreement.

10.6 Consent from Supplier Personnel

The Supplier must obtain all necessary consent from the relevant Supplier Personnel to enable:

- (a) the Supplier and RMS to conduct the searches or investigations under and within the timeframes specified in clause 10.5 (Criminal record search and investigation); and
- (b) the Supplier to provide the results of its searches or investigations to RMS in accordance with clause 10.5 (Criminal record search and investigation).

10.7 Inability to obtain consent

If the Supplier is unable to obtain a consent required under clause 10.6 (Consent from Supplier Personnel) from a person, then, unless RMS agrees otherwise in writing, the Supplier must not allow that person to perform work in connection with this agreement and the Supplier must provide a replacement for that person who is acceptable to RMS within a reasonable time of RMS's request to do so and without inconvenience or cost to RMS.

10.8 No access where there has been a Relevant Offence

The Supplier must not allow a member of the Supplier Personnel to perform work in connection with this agreement without the written consent of RMS if:

- (a) a search conducted under clause 10.5 (Criminal record search and investigation) shows that the person has been convicted of an offence which is or could be a Relevant Offence;
- (b) the Supplier has reliable evidence that the person has a criminal conviction or has served a custodial sentence and that conviction occurred, or any part of that sentence was served, in the previous 10 years anywhere in the world; or
- (c) the Supplier has reliable information indicating that a trial is currently underway against the person which could result in a conviction of that person for an offence which is or could be a Relevant Offence.

10.9 Supplier becomes aware of information

If, after the Supplier has allowed a person to perform work in connection with the agreement, the Supplier becomes aware of information of the type referred to in clause 10.8 (No access where there has been a Relevant Offence), then the Supplier must immediately notify RMS and the Supplier must take such reasonable action as RMS requests in relation to the person including, without limitation, replacing that person with a person who is acceptable to RMS within a reasonable time of RMS's request to do so and without inconvenience or cost to RMS.

10.10 Removal of unsuitable Supplier Personnel

If, as a result of any investigation under clause 10.5 (Criminal record search and investigation) or any breach of the security or privacy obligations contained in this agreement, RMS is of the reasonable opinion that any of the Supplier Personnel is unsuitable to undertake work in respect of this agreement, then RMS may request the Supplier to remove that person from the performance of this agreement. If RMS makes such a request, then the Supplier will provide replacement personnel reasonably acceptable to RMS within a reasonable time of RMS's request and without inconvenience or cost to RMS.

10.11 Certification

Within 5 Business Days of each anniversary of the Commencement Date or otherwise on request by RMS, the Supplier must certify that, as at the relevant date, the Supplier has and is complying with clauses 10.5 (Criminal record search and investigation) to 10.10 (Removal of unsuitable Supplier Personnel).

10.12 Obligations subject to law

Neither party is required to comply with clauses 10.5 (Criminal record search and investigation) to 10.10 (Removal of unsuitable Supplier Personnel) to the extent that compliance would result in a contravention of any legal requirement with which the party is required to comply.

10.13 No poaching

From the Commencement Date until 12 months after expiry of the Term, neither party may solicit for employment, or independent contract for the provision of services, any employee of the other party who is involved in the performance of that party's obligations under this agreement. Nothing in this clause prevents RMS from employing or contracting any person through a publicly advertised recruitment or procurement process.

11 Business continuity and disaster recovery

11.1 Develop plan

Within 2 months from the Commencement Date, the Supplier must develop a draft Business Continuity Plan and provide it to RMS for review. The draft Business Continuity Plan must detail how the Supplier would continue to

supply the Goods and Services to RMS if a Disaster Recovery Event occurs. The Supplier must ensure that the draft Business Continuity Plan:

- (a) enables the Goods and Services to be provided in accordance with this agreement except as specifically agreed by RMS;
- (b) reflects best industry practice in relation to the planned continued provision of the Goods and Services to RMS where there is a Disaster Recovery Event; and
- (c) defines relevant Disaster Recovery Events.

The Supplier must make all changes reasonably required by RMS to the draft Business Continuity Plan to create the Business Continuity Plan.

11.2 Update plan

The Supplier must ensure at all times that the Business Continuity Plan is up-to-date and reflects the current Goods and Services.

11.3 Test plan

The Supplier must test the Business Continuity Plan at least annually from the Commencement Date, and must liaise and co-operate with RMS over the extent and timing of those tests.

11.4 Disaster Recovery Event

On the occurrence of a Disaster Recovery Event, the Supplier must immediately implement the Business Continuity Plan. The Supplier must continue to provide the Goods and Services to the relevant Service Levels unless otherwise specified or allowed for in the Business Continuity Plan.

12 Sub-contracting

12.1 Subcontracting

The Supplier must not sub-contract any of its obligations under this agreement without the prior written approval of RMS. RMS may give or withhold its approval in its absolute discretion and may impose conditions on its approval.

12.2 Responsibility for Subcontractors

The Supplier is responsible for all acts and omissions of Subcontractors as if they were those of the Supplier and the Supplier indemnifies RMS against all costs, expenses liabilities incurred by RMS in connection with the acts or omissions of any Subcontractors.

13 Change control

13.1 Change request

Either party may request a change to:

- (a) the scope or description of any Goods or Services; or
- (b) the requirements of Schedule 2 (Goods), Schedule 3 (Services) or an Other Goods and Services Order;

(each a "Change") by issuing a notice in writing to the other party.

13.2 Change request by RMS

If a Change is requested by RMS, the Supplier must provide to RMS within 10 Business Days of receiving the notice of request, or such other period as the parties may agree, a Change Proposal which complies with clause 13.5 (Requirements for Change Proposal).

13.3 Change request by Supplier

If the Change is requested by the Supplier, the Supplier must include a Change Proposal with the request for Change or provide the Change Proposal at such later date as the parties may otherwise agree.

13.4 Assistance from RMS

Where the Supplier requires information from RMS in order to properly prepare a Change Proposal, RMS will provide all such information reasonably requested within a reasonable period from the date of the request.

13.5 Requirements for Change Proposal

Each Change Proposal must:

- (a) set out a full description of the Change; and
- (b) specify all changes to the relevant Charges, the relevant timeframes and any other conditions which the Supplier reasonably requires in order to perform the Change and must detail reasons for those changes.

Any adjustment to the Charges must be based on the Supplier's actual direct costs as a result of the Change, including a reasonable profit allowance.

13.6 Acceptance or rejection of a Change Proposal

RMS may accept or reject a Change Proposal at any time within 20 Business Days of receiving the Change Proposal. Where RMS accepts a Change Proposal, the parties will execute a Change Notice on those terms and this agreement will be varied accordingly, with effect from the date of execution of the Change Notice.

14 Intellectual Property Rights

14.1 Existing Intellectual Property Rights

All Intellectual Property Rights of the parties existing before the date of this agreement will be retained by the relevant party.

14.2 Licence for RMS to Use Existing Supplier IP

The Supplier grants to RMS a royalty-free, non-exclusive, irrevocable licence:

- (a) to Use the Supplier IP to the extent necessary to receive the full use and benefit of the Goods and Services; and
- (b) sub-licence any of the rights granted under (a) to any person, but only in relation to the use or benefits of the Goods or Services.

14.3 Licence for Supplier to Use Existing RMS IP

RMS grants to the Supplier, and to the extent necessary any relevant Subcontractor, for the Term, a royalty-free, non-exclusive, non-transferable licence to Use RMS IP only to the extent necessary to provide the Goods and Services.

14.4 New Intellectual Property Rights

The Contract Details determine whether Option 1, 2 or 3 applies.

(a) Option 1 – RMS Owns New IP

The Supplier assigns or will procure the assignment to RMS, on creation:

- (i) Intellectual Property Rights in all modifications made to RMS IP by the Supplier or its Subcontractors; and
- (ii) all other Intellectual Property Rights created by the Supplier or its Subcontractors in the supply of the Goods or performance of the Services.

(b) Option 2 – Exclusive Licence to RMS to Use New IP

In respect of:

- (i) Intellectual Property Rights in all modifications made to RMS IP by the Supplier or its Subcontractors; and
- (ii) all other Intellectual Property Rights created by the Supplier or its Subcontractors in the supply of the Goods or performance of the Services

the Supplier grants RMS an exclusive perpetual irrevocable and royalty-free licence to:

- (iii) use, reproduce, modify and communicate to the public anywhere in the world and for any purpose connected with the business of RMS;
- (iv) permit any person to assist the RMS to do any of the things referred to in paragraph (iii) above; and

- (v) sublicense any of the rights described in paragraph (iii) or (iv) to any person.

(c) Option 2 – Non-exclusive Licence to RMS to Use New IP

In respect of:

- (i) Intellectual Property Rights in all modifications made to RMS IP by the Supplier or its Subcontractors; and
- (ii) all other Intellectual Property Rights created by the Supplier or its Subcontractors in the supply of the Goods or performance of the Services

the Supplier grants RMS a non-exclusive perpetual irrevocable and royalty-free licence to:

- (iii) use, reproduce, modify and communicate to the public anywhere in the world and for any purpose connected with the business of RMS;
- (iv) permit any person to assist the RMS to do any of the things referred to in paragraph (iii) above; and
- (v) sublicense any of the rights described in paragraph (iii) or (iv) above to any person.

14.5 Supplier Licence

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

- (a) to Use the Supplier IP to the extent necessary to receive the full use and benefit of the Goods and Services; and
- (b) sub-licence any of the rights granted under clause 14.5(a) to any person, but only in relation to the use or benefits of the Goods or Services.

14.6 RMS Licence

RMS grants to the Supplier, and to the extent necessary any relevant Subcontractor, for the Term, a royalty-free, non-exclusive, non-transferable licence to Use RMS IP only to the extent necessary to provide the Goods and Services.

14.7 Confidentiality

Nothing in clause 14.2 (Licence for RMS to Use Existing Supplier IP) and clause 14.3 (Licence for Supplier to Use Existing RMS IP) removes or limits the obligations of confidentiality under clause 15 (Confidentiality Privacy).

14.8 Know-how use

Subject to clause 15 (Confidentiality Privacy) and clause 14.1 (Existing Intellectual Property Rights), each of RMS, the Supplier and any Subcontractor will be free to use its general knowledge, skills and experience and any ideas, concepts, know-how, methodologies and techniques related to the scope of the Goods, Services or this agreement.

14.9 Indemnity

The Supplier must (either directly itself or by procuring sub-contractors to do so):

- (a) at RMS's request and sole option:
 - (i) defend at no cost to RMS, all Infringement Claims; or
 - (ii) provide, at no cost to RMS, all reasonable assistance required by RMS to defend any Infringement Claim;
- (b) indemnify RMS against all costs (including legal costs on a solicitor and own client basis), losses, damages and expenses that RMS may sustain or incur as a result of an Infringement Claim; and
- (c) satisfy any settlement of or judgement given in an Infringement Claim.

14.10 Other remedies

Without limiting any other rights RMS may have, if, as a result of any Infringement Claim, RMS is prevented from using the Goods or the results of the Services, the Supplier must, at RMS's option and at the Supplier's cost:

- (a) promptly procure for RMS the right to use the Goods or the results of the Services (as applicable) on reasonable commercial terms as contemplated under this agreement free of any claim or liability for infringement;
- (b) promptly procure for RMS replacement goods or materials which comply with the relevant Specifications; or
- (c) promptly modify the Goods or materials so that they cease to infringe those rights (while still complying with the applicable Specifications).

15 Confidentiality Privacy and Data Management

15.1 Disclosure of Confidential Information

A party who receives Confidential Information ("Recipient") must not disclose the Confidential Information supplied by the other party ("Discloser") to any person except:

- (a) its Representatives who require the Confidential Information for the purposes of this agreement; or

- (b) to enable the Recipient to obtain professional advice in relation to this agreement; or
- (c) with the consent of the Discloser; or
- (d) if the Recipient is required to do so by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the Recipient or by a stock exchange; or
- (e) if the Recipient is required to do so in connection with legal proceedings relating to this agreement or other agreement between the parties.

15.2 Permitted disclosures

If the Recipient discloses the Discloser's Confidential Information under clause 15.1(a) or 15.1(c) then:

- (a) it must use its best endeavours to ensure that persons receiving the Confidential Information from it do not disclose the information except in the circumstances permitted in clause 15.1 (Disclosure of Confidential Information);
- (b) the Discloser may at any time require the persons receiving the Confidential Information to give written undertakings relating to the non-disclosure of the Confidential Information and the Recipient must arrange for all such undertakings to be given promptly; and
- (c) the Recipient must reserve the right to demand immediate delivery of all documents or other materials in its possession, power or control or in the possession, power or control of the third party who has received Confidential Information from it containing or referring to that Confidential Information.

15.3 Use of Confidential Information

The Recipient must not use the Discloser's Confidential Information except for the purpose of exercising the Recipient's rights or performing its obligations under this agreement or any other agreement between the parties.

15.4 Return of Confidential Information

On the Discloser's request, the Recipient must immediately deliver to the Discloser or destroy all documents or other materials containing or referring to the Confidential Information which are in its possession, power or control, or in the possession, power or control of persons who have received Confidential Information from the Recipient, except to the extent that:

- (a) the Recipient requires the Confidential Information for the purpose of performing its obligations or exercising its rights under this agreement or other agreement between the parties; or
- (b) the Recipient is otherwise entitled to retain the Confidential Information.

15.5 No disclosure of the terms of this agreement

Except as otherwise agreed or required by law, any regulatory authority or stock exchange, neither party may disclose the terms of this agreement to any person other than its Representatives on a confidential basis.

15.6 Access to information

- (a) This 15.6 only applies to the extent that the Supplier is required to provide goods or services to the public on behalf of RMS.
- (b) Within 3 days of receiving a written request by RMS the Supplier must provide RMS with immediate access to information referred to in section 121(1) of the *Government Information (Public Access) Act 2009* (NSW) (but excluding information referred to in section 121(2) of the *Government Information (Public Access) Act 2009* (NSW)) contained in records held by the Supplier at the Supplier's expense and in such medium as RMS may reasonably require. This is an essential term of this Agreement.
- (c) RMS will consult with the Supplier before releasing any information obtained from the Supplier where required under section 54 of the *Government Information (Public Access) Act 2009* (NSW).

15.7 Disclosure of details of RMS contracts with the private sector

- (a) The Supplier acknowledges and agrees that RMS is required by section 15A of the Freedom of Information Act 1989 (NSW) to publish certain information concerning this agreement, and that clause 15.1(d) applies to such publications by RMS.
- (b) The Supplier acknowledges that RMS may be required to publish certain information concerning this agreement in accordance with ss 27 – 35 of the *Government Information (Public Access) Act 2009* (NSW). If the Supplier reasonably believes that any part of this agreement contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, then the Supplier should immediately advise RMS in writing, identifying the provisions and providing reasons so that RMS may consider seeking to exempt those provisions from publication.

15.8 Publicity

The Supplier may only make press or other announcements or releases about this agreement and the transactions related to it:

- (a) with the express, written approval of RMS; or
- (b) as required to be made by law or the rules of a stock exchange provided that the Supplier gives RMS as much prior notice as is reasonably practicable and the opportunity to review and comment on the form and text of the disclosure before the disclosure is made.

15.9 Compliance with privacy requirements

The Supplier must:

- (a) comply with RMS's privacy policy (and each specific privacy policy of RMS in relation to the collection and/or handling of personal or private information relating to third parties including the obtaining of any necessary consents to its use by RMS or by third parties) as notified in writing to the Supplier from time to time as if it were bound by that policy;
- (b) comply with the *Privacy Act 1988* (Cwlth) and all other applicable privacy laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information, as if it were regulated by those laws;
- (c) comply with all directions by RMS:
 - (i) relating to the means by which RMS complies with the *Privacy and Personal Information Protection Act 1998* (NSW), RMS's privacy policy, and all other applicable laws, codes and privacy policies; and
 - (ii) co-operate with RMS in the resolution of any complaint alleging a breach of such laws, codes or privacy policy.

15.10 Provide information

At RMS's request, the Supplier will promptly provide all reasonable assistance to enable RMS to comply with its obligations under this agreement and at law, including providing details of any person (for example, a Related Body Corporate or any other private sector entity in which the Supplier has an interest) that:

- (a) will be involved in performing any of the Supplier's obligations under this agreement; or
- (b) will receive a benefit under this agreement.

This clause survives the termination of this agreement for any reason whatsoever.

15.11 RMS Data

The Supplier must comply with the obligations set out in **Schedule 6** in relation to RMS Data.

16 Representatives, reporting and audits

16.1 Responsibilities

The RMS Representative and the Supplier Representative will be responsible for the co-ordination and management between the parties of this agreement,

including ensuring the performance by the parties of their respective roles and responsibilities.

16.2 Delegation by Representatives

The RMS Representative and the Supplier Representative may delegate part of their operational responsibilities to other Representatives in order to operate more efficiently and effectively.

16.3 Reports

The Supplier must provide to RMS the reports with the content and in the frequency and form (electronic or physical) set out in the Contract Details.

16.4 Review meetings

The Supplier Representative must attend meetings with the RMS Representative at a place and time to be notified to the Supplier by RMS on the frequency set out in the Contract Details to:

- (a) review the performance of the Supplier in relation to this agreement and the Charges incurred by RMS up to that date, including any faults in the provision of any of the Services over the previous review period and any actions undertaken by the Supplier to resolve the relevant faults;
- (b) discuss any other issues in relation to the Goods, the Services or this agreement.

16.5 Records and inspection

The Supplier must, and must ensure all Subcontractors:

- (a) keep and maintain all necessary Records during the Term and 7 years thereafter;
- (b) make those Records available for inspection and/or audit as reasonably required by RMS, a regulator, any external auditor or advisor or any of their authorised representatives, during normal business hours. Copies and extracts of any Records may be taken for these purposes;
- (c) permit RMS to inspect or appoint a third party to inspect the Supplier's premises to confirm compliance with this agreement; and
- (d) provide all appropriate resources and all reasonable assistance required by any person conducting any inspection and/or audit, and fully co-operate with that person in good faith and at the Supplier's sole cost.

16.6 Annual audit

Each year, on dates nominated by RMS, RMS may conduct itself, or appoint a third party to conduct, an audit of the Supplier's performance and compliance with this agreement.

16.7 Costs of audit

The auditors' costs incurred by RMS in the audit under clause 16.6 (Annual audit) will be paid by RMS. However, where the auditor objectively determines that the performance by the Supplier of any Order falls below the Service Levels or identifies breaches of this agreement by the Supplier, all the costs of RMS (including third party auditor fees) in respect of that audit will be paid by the Supplier.

16.8 Costs

Unless expressly provided otherwise in this clause 16 (Representatives, reporting and audits), RMS and the Supplier will each pay their own costs and expenses in connection with this clause 16 (Representatives, reporting and audits).

17 Warranties and representations

17.1 Supplier's general representations and warranties

The Supplier represents and warrants on the date of this agreement and at all time during the Term, that:

- (a) it has full capacity and authority to enter into and to perform this agreement;
- (b) this agreement is duly authorised representative of that party;
- (c) there are no actions, suits or proceedings pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitral tribunal that might affect the ability of that party to meet and carry out its obligation under this agreement; and
- (d) once duly signed this agreement will constitute a legal, valid and binding obligation on that party.

17.2 Representations and warranties in respect of Goods and Services

The Supplier represents and warrants that:

- (a) the Goods:
 - (i) will meet the Specifications and all other applicable requirements under this agreement;
 - (ii) be of good quality, fit for purpose and free from defects and omissions in material, design or workmanship;
 - (iii) upon title passing to RMS, will be unused and free from any charge or encumbrance; and
 - (iv) will comply with all laws that are related in any way to the Goods;

- (b) the Services:
 - (i) will be performed with due care and skill and in accordance with industry best practice;
 - (ii) will meet or exceed the Service Levels;
 - (iii) will be used with materials that are:
 - (A) fit for the purpose for which they are supplied and used; and
 - (B) will comply with any applicable specifications or requirements;
- (c) the Supplier and the Supplier Personnel will not infringe the Intellectual Property rights or Moral Rights of any person in providing the Services or otherwise performing this agreement;
- (d) the Goods or Services and their use will not:
 - (i) result in a breach of any law or mandatory code of conduct;
 - (ii) infringe any person's rights (including Intellectual Property Rights and Moral Rights);
 - (iii) constitute a misuse of any person's confidential information; or
 - (iv) result in the Supplier or any Related Bodies Corporate of the Supplier breaching any obligation that it owes to any person.

17.3 Notification of non-compliance

As soon as practicable after becoming aware of any matter which is likely to impact upon its ability to comply with a warranty or representation in this clause 17 (Warranties and representations), the Supplier must give written notice to RMS detailing that matter and its likely impact on the Supplier's ability to comply with this clause 17 (Warranties and representations).

18 Liability

18.1 RMS's liability

Subject to clause 18.3 (No limitation):

- (a) the aggregate liability of RMS to the Supplier under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action, is limited to an amount equal to the aggregate of the Charges paid or payable for all Orders entered into under this agreement; and
- (b) RMS will not be liable to the Supplier under or in respect of this agreement or any Order whether in contract, tort (including

negligence), statute or any other cause of action for Consequential Loss.

18.2 Supplier's liability

Subject to clause 18.3 (No limitation):

- (a) the aggregate liability of the Supplier to RMS under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action is limited to an amount equal to the aggregate of the Supplier Liability Cap; and
- (b) the Supplier will not be liable to RMS under or in respect of this agreement or any Order whether in contract, tort (including negligence), statute or any other cause of action for Consequential Loss.

18.3 No limitation

Nothing in this agreement operates to limit or exclude:

- (a) liability that cannot by law be limited or excluded;
- (b) the liability of either party in respect of personal injury (including sickness and death) or real or tangible property loss or damage;
- (c) liability of a party in respect of a breach of clause 15 (Confidentiality Privacy);
- (d) the Supplier's liability under clause 14 (Intellectual Property Rights);
- (e) liability of either party for unlawful or illegal acts or conduct; or
- (f) RMS's liability to pay such of the Charges as are due and payable.

18.4 Consequential Loss Definition

(a) Subject to clause 18.4(b) Consequential Loss:

- (i) means any loss, not arising naturally, that is according to the usual course of things, from the relevant breach act or omission, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties, at the time they entered the agreement, as the probable result of the relevant breach; and
 - (ii) includes loss of profit or loss of anticipated savings.
- (b) Consequential Loss does not include:
- (i) additional internal administrative and management costs and expenses;
 - (ii) expenditure or fees rendered unnecessary;
 - (iii) costs of procuring replacement Goods or Services;

- (iv) cost of repairing Goods;
- (v) legal fees on a full indemnity basis.

18.5 Civil Liability Act

The parties agree that:

- (a) all rights, obligations and liabilities under or in connection with this agreement are to apply unlimited and otherwise unaffected by anything that, but for this clause, may by virtue of the provisions of the *Civil Liability Act 2002* (NSW) have limited or otherwise affected those rights, obligations and liabilities; and
- (b) this clause applies even where the relevant circumstances involve a failure to take reasonable care and the existence of concurrent wrongdoers (as that term is defined in section 34(2) of the *Civil Liability Act 2002* (NSW)).

18.6 Indemnity

- (a) The Supplier is liable for, and indemnifies RMS against, all liability or loss arising out of or in connection with the breach of this agreement or an Order by the Supplier or its personnel or the negligence or default of the Supplier or its personnel except to the extent the liability or loss is contributed to by RMS's negligence or breach.

19 Insurance

19.1 Insurance

Before the Commencement Date, the Supplier must obtain on terms reasonably approved by RMS and thereafter maintain the policies of insurance listed in the Contract Details on the terms, for the risks identified, and for the periods of time set out in Attachment D.

19.2 Evidence of insurance

On request by RMS, the Supplier must provide certificates of currency proving that the policies of insurance required under this agreement have been effected and are current. A certificate of currency provided under this section must be issued by the insurance company providing insurance and must contain all details reasonably requested by RMS, including a summary of all risks covered and any exclusions.

19.3 Supplier notification

The Supplier must notify RMS within two Business Days of any event which affects or may affect the Supplier's compliance with this clause 19 (Insurance), including any cancellation of a policy or reduction of limit of coverage below that required by this agreement.

19.4 Notification of relevant insurance claims

Within 5 Business Days of the Supplier becoming aware of any claims against any of its insurances in connection with the Goods or Services or which may impact upon the provision of the Goods or Services, it must:

- (a) notify RMS in writing of the claim; and
- (b) give RMS any further information regarding the claim as RMS may require.

20 Disputes

20.1 Reasonable endeavours to settle

If a Dispute arises the parties undertake in good faith to use all reasonable endeavours to settle the Dispute expeditiously.

20.2 Dispute notice

Any party claiming that a Dispute has arisen may give a written notice to the other party.

20.3 Negotiation

If a Dispute is notified under clause 20.2 (Dispute notice) each party must nominate a senior representative with appropriate authority to negotiate on behalf of the party to settle the Dispute. The representatives must endeavour to resolve the Dispute within 10 Business Days of the notice under clause 20.2 (Dispute notice).

20.4 Alternative dispute resolution

If the Dispute is not resolved within the period referred to in clause 20.3 (Negotiation), the parties' representatives will within a further 5 Business Days seek to agree on:

- (a) a process to resolve the Dispute, for example through mediation, conciliation or other such similar forms of alternative dispute resolution;
- (b) the procedure and timetable for any exchange of documents and other information in relation to the Dispute;
- (c) procedural rules and timetable for the conduct of the selected mode of proceedings;
- (d) a procedure for selection and compensation of any neutral person (who may or may not be employed by a party); and
- (e) whether the parties should seek the assistance of a dispute resolution organisation such as the Australian Commercial Dispute Centre.

20.5 Further resolution process

If the representatives are unable to agree on a process for resolving the Dispute in the period referred to in clause 20.4 (Alternative dispute resolution) or the Dispute has not been resolved within 10 Business Days (or such other period as the parties may agree) of the parties agreeing on a particular process, then:

- (a) if the amount of the Dispute is less than \$100,000, either party may refer the Dispute to expert determination in accordance with clause 20.6 (Expert determination) unless RMS has notified the Supplier that in its reasonable opinion, the Dispute is not appropriate for resolution by expert determination; or
- (b) if the amount of the Dispute is \$100,000 or more or RMS has notified the Supplier that in its reasonable opinion, the Dispute is not suitable for expert determination, then either party will be free to commence court proceedings relating to the Dispute.

20.6 Expert determination

If either party refers the dispute to expert determination pursuant to clause 20.5(a), the expert determination is to be carried out as follows:

- (a) Within 5 Business Days after the date of the notice under clause 20.5(a), the parties must exchange written lists of proposed experts from whom the expert is to be chosen in order of preference.
- (b) A person that appears on both lists under clause 20.6(a) will be appointed as the expert to determine the dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 20.5(a) will be appointed.
- (c) If no person appears on both lists, the parties must request the President of the NSW Chapter of the Institute of Arbitrators and Mediators of Australia to nominate a person to act as the expert.
- (d) RMS and the Supplier must enter into an agreement with the expert on such reasonable terms as the expert may require provided that the expert must be instructed that the expert:
 - (i) is to act as an expert and not as an arbitrator;
 - (ii) is to proceed in the way, and determine the rules for the conduct of the expert determination, as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (iii) is to take into consideration those documents and that information and other material which the parties give to the expert and which in the expert's opinion are relevant to the determination of the dispute;

- (iv) need not, but may obtain or refer to any other documents, information or material;
 - (v) must determine the dispute and give written reasons for the decision within one month after being appointed; and
 - (vi) must determine what proportion of the costs of the expert determination is to be paid by each party.
- (e) The determination of the expert must be given to the parties in writing and will be final and binding upon the parties.
 - (f) The parties must bear their own costs in connection with the expert determination proceedings and must pay an equal portion of the cost of the expert unless the expert determines otherwise.

20.7 Right to terminate

This clause 20 (Disputes) does not affect either party's rights to terminate this agreement under clause 23 (Termination) or pursuant to any other rights of termination contained in this agreement.

20.8 Interlocutory relief

This clause 20 (Disputes) does not affect either party's right to commence court proceedings seeking interlocutory relief.

20.9 Parties to continue to perform

Notwithstanding the existence of a Dispute, each party must continue to perform its obligations under this agreement.

21 Conflict of Interest & Probity

21.1 Definition

"Probity Event" is an event, matter, situation or thing that in RMS's reasonable opinion:

- (a) has a material adverse effect upon the character, honesty or integrity of the Supplier, a Related Body Corporate, or any of their personnel; or
- (b) relates to the Supplier, a Related Body Corporate or their personnel and has a material adverse effect upon the public interest (having regard to the policy objectives of RMS) or the reputation of or public confidence in RMS or the New South Wales Government; or
- (c) that involves a material failure by the Supplier to achieve or maintain:
 - (i) reasonable standards of ethical behaviour; or
 - (ii) the avoidance of conflicts of interest that may have (or may give the public the appearance of having) a material adverse

effect on the ability of the Supplier to impartially perform and observe its obligations in respect of this Deed; or

- (iii) standards of behaviour expected of a person engaged on a Government project.

21.2 Probity Events

- (a) **(Probity Event Notice by Service Provider)** The Supplier must give notice to RMS as soon as it becomes aware that a Probity Event has occurred or is likely to occur (Probity Event Notice).
- (b) **(Probity Event Notice by RMS)** RMS may give notice to the Supplier if RMS becomes aware that a Probity Event has occurred or is likely to occur (Probity Event Notice).
- (c) **(Content of Notice)** The Probity Event Notice must describe the nature of the Probity Event and the circumstances giving rise to it or likely to give rise to it.
- (d) **(Probity Investigations)** Following the issue of a Probity Event Notice, the Supplier must promptly comply with any reasonable request from RMS for access to its personnel for the purpose of undertaking any investigations that RMS may wish to carry out in relation to the actual or likely occurrence of the Probity Event. The Supplier must use reasonable endeavours to ensure that its personnel (and where relevant any Related Body Corporate and its personnel) co-operate with RMS and comply with any reasonable requests for information that RMS may make in the course of its investigations.
- (e) **(Remedial Action)** Upon the issue of a Probity Event Notice the parties must meet at a time nominated or agreed by RMS to discuss the occurrence of the Probity Event. During any such meeting, the parties must use reasonable endeavours to agree on the actions to be taken by the Supplier to reverse the effect of the Probity Event.
- (f) **(RMS May Direct Remedial Action)** If the parties are unable to agree within 5 Business Days of such meeting (or any longer period RMS may agree) RMS may give notice to the Supplier setting out the action it must take to address the adverse effect of the Probity Event, and the Supplier must comply with any such notice as soon as possible and in any event within 5 Business Days of receiving the notice.

22 Force Majeure

22.1 Notice of a Force Majeure Event

A party does not breach this agreement and is not liable to the other party for a delay or failure to perform an obligation to the extent it results from a Force Majeure Event provided that the party affected by the Force Majeure Event gives the other party a written notice which:

- (a) sets out details of the Force Majeure Event;

- (b) identifies the nature and extent of the obligations affected by the Force Majeure Event;
- (c) advises the period of time during which the affected party estimates that it will not be able to perform or will be delayed in performing its obligations; and
- (d) provides details of the action that it has taken or proposes to take to remedy the situation.

22.2 Obligations of affected party

A party affected by a Force Majeure Event must:

- (a) take all reasonable steps to avoid, remove or limit the effects of the Force Majeure Event on its performance of the suspended obligations as quickly as possible; and
- (b) promptly re-commence performing the suspended obligations as soon as reasonably possible and notify the other party when this occurs.

23 Termination

23.1 Termination by RMS for cause

RMS may terminate this agreement in full or, at RMS's option, as it relates to any particular Order, Good or Service immediately by notice to the Supplier if:

- (a) **Breach of agreement** - the Supplier breaches this agreement and:
 - (i) the breach is not capable of remedy; or
 - (ii) the breach is capable of remedy and the Supplier fails to remedy the breach within 10 Business Days, or such longer time as RMS states, of receiving notice from RMS requiring the breach to be remedied;
- (b) **Recurring Breach** - the Supplier:
 - (i) breaches this agreement on three (3) separate occasions within a three (3) month period; and
 - (ii) has been issued with a notice from RMS stating that any further breach of this agreement will give RMS the right under this clause 23.1(b) to terminate this agreement; and
 - (iii) commits a further breach of any provision of this agreement.
- (c) **Insolvency** - the Supplier becomes Insolvent;
- (d) **Wrongful assignment** - the Supplier assigns or purports to assign its rights otherwise than as permitted by this agreement;

- (e) **Change of Control** - the Supplier undergoes a Change of Control;
- (f) **Probity Event** – a Probity Event has not been remedied to RMS's satisfaction.

23.2 Termination by Supplier for cause

The Supplier may only terminate this agreement if RMS has failed to pay an amount due to the Supplier under this agreement which is not the subject of a bona fide dispute within 40 Business Days of receiving a correct notice claiming that the amount is overdue and stating that the Supplier proposes to exercise its rights under this clause 23.2 (Termination by Supplier for cause) if payment is not made.

23.3 Termination by RMS for convenience

RMS may terminate this agreement or any or all Orders in full or in part by giving not less than 60 days' written notice to the Supplier provided that RMS must pay the amounts required under clause 24.3 (Early termination charges).

23.4 Force Majeure

If a delay or failure to perform a party's obligations due to a Force Majeure Event exceeds 20 Business Days, or if RMS reasonably considers the Force Majeure Event will not cease within that period, RMS may immediately terminate this agreement, Order, Good or Service on notice to the Supplier.

23.5 Continuation

Where RMS exercises its rights under this clause 23 (Termination) only in relation to one or more Orders, Good or Services, the Supplier must continue to perform this agreement in respect of any other Orders, Goods or Services which have not been terminated.

24 Events following termination or expiry

24.1 Obligations on expiry or termination

On expiry or termination of this agreement or an Order (as applicable) for any reason, without limiting any other rights RMS may have, the Supplier must pay RMS:

- (a) any fees paid by RMS to the Supplier in advance for Goods and Services not yet supplied under this agreement or an Order (as applicable); and
- (b) any Service Credits accrued up to the date of termination.

24.2 Order placed prior to expiry or termination

On termination of this Agreement the Supplier must fulfil all Orders placed prior to expiry or termination of this agreement unless the Order is cancelled by RMS at its option without liability.

24.3 Early termination charges

If RMS terminates one or more Orders (or part of any Orders) for convenience pursuant to clause 23.3 (Termination by RMS for convenience), then if the Supplier is able to demonstrate to RMS's reasonable satisfaction that prior to receiving notice of termination:

- (a) the Supplier has irrevocably acquired or committed with a third party to acquire Goods for the purposes of fulfilling the terminated Order (or part of an Order), then RMS must either (at RMS's election):
 - (i) acquire those Goods from the Supplier for the applicable Charges; or
 - (ii) reimburse the Supplier for the Supplier's out of pocket costs for those Goods less the proceeds which the Supplier receives on sale of those Goods (having taken all reasonable steps to sell the goods and to maximise the price received); and
- (b) the Supplier has incurred or irrevocably committed with a third party to incur costs for the purposes of providing Services under the terminated Order (or part of the Order) and the Supplier has not at the time of termination become entitled to charge for those Services, then RMS must reimburse the Supplier for those costs which the Supplier incurs.

The Supplier must take all reasonable steps to mitigate the costs referred to in this clause 24.3 and RMS will not be required to pay costs to the extent that they could have been avoided or reduced by taking such steps. The Supplier must provide RMS with evidence reasonably satisfactory to RMS to substantiate any claim under this clause 24.3.

24.4 Survival

Clauses 8 (Charges, invoices and payments), 9 (Taxes and GST), 10.13 (No poaching), 14 (Intellectual Property Rights), 15 (Confidentiality Privacy), 18 (Liability), 19 (Insurance), 20 (Disputes), and 28 (General) survive the termination or expiry of this agreement, as do any rights and remedies accrued before termination or expiry.

25 Notices

25.1 Form

Unless stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be in writing.

25.2 Important contractual notices

A notice under clause 13 (Change control), clause 20 (Disputes), clause 23.1 (Termination by RMS for cause), clause 23.4 (Force Majeure) or clause 26.1 (Assignment or novation by) or any other notice claiming or relating to a

breach, repudiation, purported termination or variation of this agreement must be:

- (a) signed on behalf of the party giving notice; and
- (b) delivered to or sent by prepaid registered post (airmail if posted to or from a place outside Australia) to the Supplier Representative of the recipient specified in the Contract Details and the person required to be copied as specified in the Contract Details or other address requested by the recipient.

25.3 Other notices and communications

A notice, consent, request or any other communication under this agreement other than one referred to in clause 25.2 (Important contractual notices) must be:

- (a) left at the address of the addressee, or
- (b) sent by prepaid post (airmail if posted to or from a place outside Australia) to the address of the addressee; or
- (c) sent by facsimile to the facsimile number of the addressee specified in the Contract Details or notified by the receiving party; or
- (d) sent by email to the email address specified in the Contract Details or as notified by the receiving party.

25.4 Time of receipt

A notice, consent, request or any other communication is deemed to be received:

- (a) if by delivery, when it is delivered;
- (b) if posted, the earlier of the date of receipt and three Business Days after posting if within Australia or seven, if posted to or from a place outside Australia;
- (c) if a facsimile, the earlier of the time the addressee receives and the next Business Day after the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- (d) if an email, the earlier of when the email is opened by the recipient and the next Business Day after the time at which it enters the recipient's system (provided that the sender does not receive a delivery failure or out of office message).

26 Assignment, Novation & Piggybacking

26.1 Assignment or novation by RMS

RMS may assign any of its rights under this agreement, or may novate its rights and obligations under this agreement:

- (a) without the consent of the Supplier to any department, to any other body created by or under a statute or ministerial direction of the State of New South Wales for the purpose of administering the functions or discharging the role of RMS or to any public sector agency within the meaning given to that term in regulation 18 of the *Public Sector Management (Goods and Services) Regulation 2000*; or
- (b) with the consent of the Supplier, which must not be unreasonably withheld or delayed, to any other person.

The Supplier must execute all documents necessary to give effect to any novation or assignment permitted under this clause 26.1 (Assignment or novation by).

26.2 Assignment or novation by the Supplier

The Supplier must not assign its rights under this agreement or purport to novate its rights and obligations under this agreement without the prior written consent of RMS.

26.3 Piggybacking by other NSW Agencies

If a public sector service agency (as defined in the *Public Works and Procurement Act 1912*) requests the Supplier to provide services to it similar to the Services then the Supplier agrees that it will enter into a separate agreement with that other agency on terms no less favourable than the terms of this agreement having regard to any necessary changes.

27 Transition Out & Unwind Services

27.1 Transition Plan

- (a) In the event of termination for any reason (including expiration by time) the parties acknowledge that it is critical that there is an orderly and well managed transition out of the arrangements established under this Agreement. To facilitate a successful transition out the parties agree that it is important that the Provider prepare and regularly review and update a Transition Plan. As a minimum the Transition Plan must deal with the relationships, responsibilities and obligations of the parties to facilitate a smooth and orderly transition of the supply of the Goods and Services to a new provider and set out the systems, procedures and processes to allow for the orderly hand-over and transition.
- (b) The Supplier must:

- (i) provide a draft initial Transition Plan to RMS on or before the Transition Plan Submission Date referred to in the Contract Details;
 - (ii) regularly review the Transition Plan and propose a new Transition Plan to RMS whenever any change in circumstances make it reasonable or advisable to do so; and
 - (iii) review and prepare a new Transition Plan whenever RMS requests (provided RMS shall not make such request more than once in any 12 month period).
- (c) The Supplier must consult RMS in the preparation of the Transition Plan and must submit the Transition Plan in draft to RMS for RMS's approval and make such amendments as RMS may reasonably require.
 - (d) If RMS and the Supplier cannot agree on a Transition Plan at any time, RMS may prepare a Transition Plan which includes the obligations set out in this clause and details of any other assistance that it may require on termination or expiry of this Agreement.

27.2 Transition Out Services - Compliance with Transition Plan

The Supplier will provide the assistance as out services as set out in the Transition Plan and any other assistance as is necessary for an effective transition.

27.3 Transition Out Services – No Charges

The Supplier will provide the transition out services at no charge to RMS.

27.4 Unwind Services

- (a) At any time RMS may issue a Change request under clause 13 requesting the Supplier to provide Unwind Services for a period expiring no later than 6 months after the later of the end of the Term (including any extension of holding-over) or the completion by the Supplier of the last Order("the Unwind Period").
- (b) Unwind Services are such services as RMS requests to achieve an orderly and staged transition of Services without interruption, from the Supplier to RMS or one or more parties nominated by RMS and include:
 - (i) the provision of all information and assistance as is reasonably necessary to assist RMS or another party to provide the Services or services like the Services to RMS or at RMS's direction;
 - (ii) the provision of access to the Resources and personnel necessary for an effective transition, including resources required by RMS to perform the Services or services like the Services under this Agreement; and

- (iii) such other assistance as may reasonably be requested by RMS.
- (c) If required by RMS the Supplier must, by the end of the Unwind Period or such earlier date as RMS may specify, cause a novation to RMS or one or more parties nominated by RMS, of the Supplier's rights and obligations under any or all of its Third Party Agreements, as are necessary for the provision of the Services, on the terms specified by RMS.

27.5 Identification of Resources

If RMS so requests at any time, the Supplier must provide RMS with a list of Resources and Third Party Agreements necessary for the provision of the Services after the Term and such other information concerning such Resources and Third Party Agreements as RMS reasonably requires.

27.6 Non-derogation

- (a) The Supplier must carry on its business, and manage its Resources and Third Party Agreements consistently with and in the expectation that RMS will exercise its rights under this clause.
- (b) The Supplier must ensure that all Third Party Agreements are capable of being transferred, assigned or novated to RMS without payment of any transfer or termination fees, and that the relevant Third Party will consent to such transfer, assignment or novation.
- (c) The Supplier must not enter into any agreements, arrangements or understandings which contain obligations the purpose, or one of the purposes, of which is to avoid the Supplier's obligations under this clause.

27.7 Definitions

- Resources** includes facilities, infrastructure, systems, equipment, software, procedures, processes and other resources, but excludes personnel;
- Third Party Agreements** means all agreements that the Supplier enters into with a third party relating to the provision of services or Resources which are used by the Supplier solely to provide the Services under this Agreement.

28 General

28.1 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this agreement expressly states otherwise.

28.2 Partial exercising of rights

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

28.3 No liability for loss

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this agreement.

28.4 Remedies cumulative

The rights and remedies provided in this agreement are in addition to other rights and remedies given by law independently of this agreement.

28.5 Variation and waiver

A provision of this agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

28.6 Indemnities

The indemnities in this agreement are continuing obligations, independent from the other obligations of the parties under this agreement and continue after this agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.

28.7 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.

28.8 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this agreement and other related documentation except for stamp duty.

28.9 Counterparts

This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

28.10 Governing law and jurisdiction

This agreement is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of New South Wales.

28.11 Severability

If any part or provision of this agreement is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remainder of this agreement will continue to operate.

28.12 Further assurance

Each party agrees to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the party and any other person intended to be bound under this agreement; and
- (b) to give effect to the intentions of the parties and the transactions contemplated by this agreement, including execution and delivery of documents and other instruments.

28.13 Entire agreement

This agreement constitutes the entire agreement of the parties about its subject matter and supersedes any previous understandings or agreements on that subject matter.

28.14 Transfer of RMS Contracts to Transport for NSW

Notwithstanding any other provision of this Agreement, the Supplier acknowledges that the NSW Government has announced its intention to merge RMS with Transport for NSW (TfNSW), whereupon RMS will cease to exist upon such occurrence and:

- (a) all assets, rights and liabilities (including contracts) of RMS will vest in TfNSW by operation of law (that is, without the need for any deed of assignment or novation or other assurance);
- (b) anything done by RMS is deemed to have been done by TfNSW; and
- (c) all references in any documents to RMS will be deemed to be a reference to TfNSW from the vesting date.

Schedule 1 - Dictionary

1 Definitions

1.1 Definitions

Amount of the Consideration means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a supply, the GST Exclusive Market Value of that consideration as reasonably determined by the party making the supply.

Business Days means a day other than a Saturday, Sunday, public holiday in Sydney or 24 or 31 December.

Business Continuity Plan means the plan for the continued supply of the Goods and the Services by the Supplier to RMS in the event of a Disaster Recovery Event.

Change is defined in clause 13.1 (Change request).

Change of Control occurs, in respect of an entity when:

- (a) a person who did not have Control of the entity at the Commencement Date acquires Control of the entity; or
- (b) a person who did have Control of the entity at the Commencement Date ceases to have Control of the entity.

Change Notice means a notice executed by the parties setting out an agreed Change and the variations to this agreement relating to that Change.

Change Proposal means a proposal issued by the Supplier detailing the variations which would be applicable to implement a Change.

Charges means:

- (a) in respect of the Goods set out in Schedule 2, the charges set out in Schedule 2 (Goods);
- (b) in respect of Services set out in Schedule 3, the charges set out in Schedule 3 (Services); and
- (c) in respect of Other Goods and Other Services, the charges set out in the applicable Other Goods and Services Order.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether

present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Commencement Date means the date identified in the Contract Details as the Commencement Date.

Confidential Information in relation to RMS means RMS Confidential Information and in relation to the Supplier means the Supplier Confidential Information.

Consequential Loss has the meaning given in clause 18.4 (Consequential Loss Definition).

Contract Details means the contract details set out at the front of this agreement.

Control of an entity includes the direct or indirect power to:

- (a) direct the management or policies of the entity; or
- (b) control the membership of the board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of that corporation or otherwise.

Controller has the meaning it has in the Corporations Act.

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

Delivery Address means the address specified in the Order for delivery of the Goods.

Delivery Timeframe means the timeframe for delivery of the Goods set out in Schedule 2 (Goods) or the Other Goods and Services Order (as applicable).

Disaster Recovery Event means an event or disaster (including industrial action) outside the Supplier's control, interrupting the Supplier's supply of the Goods and the Services as defined in the Business Continuity Plan.

Discloser is defined in clause 15.1 (Disclosure of Confidential Information).

Dispute includes any dispute, controversy, difference or claim arising out of or in connection with this agreement or the subject matter of this agreement, including any question concerning its formation, validity, interpretation, performance, breach and termination.

Documentation means the documentation set out in the Schedule 2 (Goods) or the Other Goods and Services Order (as applicable) and all other documentation which, in RMS's reasonable opinion, is necessary to enable RMS to make full and proper use of the Goods.

Early Termination Fee means the fee calculated in accordance with the Contract Details.

Excluded Information means Information which:

- (a) is in or becomes part of the public domain otherwise than through breach of this agreement or an obligation of confidence owed to the Discloser; or
- (b) Recipient can prove was already known to it at the time of disclosure by the Discloser or its Representatives (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) Recipient acquires from a source other than the Discloser where such source is entitled to disclose the Information.

Force Majeure Event means any of the following causes provided that they are outside the reasonable control of the affected party and could not have been prevented or avoided by that party taking all reasonable steps:

- (a) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought or meteor;
- (d) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (e) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (f) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority; or
- (g) a labour dispute other than a labour dispute that only involves the party's personnel.

Further Term means the period identified in the Contract Details as the Further Term.

General Terms means the general terms set out in clauses 1 to 28 of this agreement, including the schedules.

Goods means all goods set out in Schedule 2 (Goods) as required to be provided by the Supplier under this agreement pursuant to an Order, together with any Other Goods set out in an Other Goods and Services Order.

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

GST means the tax imposed by the GST Act and the related imposition Acts of the Commonwealth.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*, as amended from time to time.

GST Exclusive Market Value has the meaning given to it in the GST Act.

Initial Term means the period identified in the Contract Details as the Initial Term.

Information means all information relating to or developed in connection with:

- (a) the business, technology or other affairs of the Discloser;
- (b) the Goods, the Services or this agreement;
- (c) any systems, technology, ideas, concepts, know-how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including without limitation, computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property owned or used by, or licensed to, the Discloser.

Infringement Claim means any Claim which would, if true, involve a breach of a warranty under clause 17.2(c) or 17.2(d).

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it has had a Controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Input Tax Credit has the meaning it has in the GST Act.

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Invoice Timing means the timing for issue of invoices set out in Schedule 2 (Goods) for Standard Goods, in Schedule 3 (Services) for Standard Services and in the Other Goods and Services Order for Other Goods and Other Services.

Moral Rights means any moral rights including the rights described in Article 6bis of the *Berne Convention for Protection of Literary and Artistic Works 1886* (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any statute (including the *Copyright Act 1968 (Cwth)* or any other law of the Commonwealth of Australia), that exist or that may come to exist, anywhere in the world.

Other Goods means additional goods which are not set out in Schedule 2 (Goods).

Other Services means additional services which are not set out in Schedule 3 (Services).

Other Goods and Services Order means an order which may be in the form set out in Attachment B which has been executed on behalf of RMS and the Supplier in respect of the supply of Other Goods or Other Services or both.

Order means a Standard Order or an Other Goods and Services Order.

Ordering Process means the process for ordering Standard Goods and Standard Services set out in Schedule 5.

Probity Event has the meaning given to it by clause 21 (Conflict of Interest & Probity).

Proof of Delivery has the meaning given to it by clause 4.4 (Delivery).

Rates means the Other Services rates set out in the Contract Details.

Receiver includes a receiver or receiver and manager.

Recipient is defined in clause 15.1 (Disclosure of Confidential Information).

Records means records and documentation relating to this agreement (including Goods, Services, Service Levels, Service Credits and/or Charges).

Rejection Notice means a notice in accordance with clause 4.6 (Errors and Defects).

Related Body Corporate has the meaning it has in the Corporations Act.

Relevant Offence means any offence which:

- (a) involves an element of dishonesty or violence;
- (b) involves behaviour which is, in the reasonable opinion of RMS, inconsistent with the inherent requirements of the roles which the relevant person will be required to perform; or
- (c) an offence which RMS reasonably considers is of a nature that if a person who has been convicted of it were to perform services under this agreement would reflect adversely on the reputation of RMS or expose RMS to adverse public comment.

Repair Location means the location set out in the Contract Details as the Repair Location.

Representative of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer, contractor or sub-contractor of that party.

RMS Confidential Information means all Information disclosed (including inadvertently) by RMS or any of its Representatives in connection with this agreement, all Information disclosed by a third party which RMS is required to keep confidential and all Information created by the Supplier in the course of providing the Services or in respect of Intellectual Property Rights owned by RMS including:

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of RMS or a third party to whom RMS owes an obligation of confidentiality;
- (b) information derived partly or wholly from the Information including without limitation any calculation, conclusion, summary and computer modelling; and
- (c) trade secrets or information which is capable of protection at law or equity as confidential information,

but excludes the Excluded Information.

RMS IP means Intellectual Property Rights owned by or licensed to RMS and made available to the Supplier or a Subcontractor for the purposes of the performance by the Supplier of its obligations under this agreement.

RMS Representative means the person identified the Contract Details as the RMS Representative, as varied by notice to the Supplier from time to time.

Service Credits means an amount calculated in accordance with Schedule 4 (Service Levels) or in an Other Goods and Services Order in respect of the failure by the Supplier to meet one or more Service Levels in accordance with that Schedule.

Service Levels means the minimum performance levels set out in Schedule 4 (Service Levels) or in an Other Goods and Services Order.

Services means all services set out in Schedule 3 (Services) required to be provided by the Supplier under this agreement pursuant to an Order, together with any Other Services set out in an Other Goods and Services Order.

Small and Medium Enterprises Policy means the NSW Government's procurement policy from time to time concerning Small and Medium Enterprises.

Specifications means the specification for the Goods sets out in or annexed to Schedule 2 (Goods) or set out in the applicable Other Goods and Services Order (as applicable).

Standard Goods means all goods set out in Schedule 2 (Goods).

Standard Order means a valid order issued under clause 3.1 (Standard Orders).

Standard Services means all services set out in Schedule 3 (Services).

Subcontractor means subcontractors of the Supplier

Supplier Confidential Information means all Information, other than RMS Confidential Information, disclosed to RMS by the Supplier or any Representative of the Supplier for or in connection with this agreement including:

- (a) information which, either orally or in writing, is designated or indicated as being the property or confidential information of the Supplier;
- (b) information derived partly or wholly from the Information including without limitation any calculation, conclusion, summary and computer modelling; and
- (c) trade secrets and information which is capable of protection at law or equity as confidential information,

but excludes the Excluded Information.

Supplier IP means Intellectual Property Rights owned by or licensed to the Supplier or a Subcontractor for the provision of Goods and Services to RMS

Supplier Liability Cap means the Supplier liability cap set out in the Contract Details.

Supplier Personnel means employees, partners, agents and sub-contractors (including employees of sub-contractors) of the Supplier.

Supplier Representative mean the person identified in the Contract Details as the Supplier Representative, as varied by notice to RMS from time to time.

Tax Invoice has the meaning given to it in the GST Act.

Taxes means taxes, levies, imposts, charges and duties (including, stamp and transaction duties) imposed by any Government Agency, together with any

related interest, penalties, fines and expenses in connection with them except if imposed on, or calculated having regard to, the overall net income of RMS, but excluding GST.

Term means the period commencing from the Commencement Date and ending on the date that this agreement is terminated or expires.

Tested Goods means the model or sample of goods which was provided to RMS for testing purpose as a representation of the Goods, if any.

Use means to load, run, execute, display, distribute, copy, perform or access.

Warranty Period means the periods set out in Schedule 2 (Goods) and Schedule 3 (Services).

1.2 References to certain general terms

Unless the contrary intention appears, a reference in this agreement to:

- (a) **(variation or replacement)** a document (including this agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, Schedule, Annexure, Attachment or Exhibit is a reference to a clause in, or a Schedule, Annexure, Attachment or Exhibit to, this agreement;
- (c) **(references to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors and substitutes (including, persons taking by novation) and assigns;
- (h) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) **(dollars)** an amount of money is a reference to the lawful currency of Australia;

- (j) **(calculation of time)** a period of time that dates from a given day or the day of an act or event is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to a calendar day and is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind;
- (m) **(next day)** if an act under this agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day; and
- (n) **(time of day)** time is a reference to Sydney time.

1.3 Headings

Headings are included for convenience only and are not to affect the interpretation of this agreement.

Schedule 2 – Goods

Criminal Record Search and Investigation

Required for these goods? No

Yes, for all Supplier Personnel involved in:

Manufacturing Packaging Delivery Other: _____ of the Goods.

Deed of Confidentiality

Required for these goods? No

Yes, for all Supplier Personnel involved in:

Manufacturing Packaging Delivery Other: _____ of the Goods.

TIRTL and HARE COSTS

Sales Code	Product Description	Cost (A\$)
TIRTL-2h	<ul style="list-style-type: none"> • TIRTL Pair including antenna & cable • Cables: power: Tx, Rx & data-Rx and post-cap 	████
TIRTL-3h	<ul style="list-style-type: none"> • New Slim TIRTL Pair including antenna & cable (release 2019) • Cables: power: Tx, Rx & data-Rx and post-cap 	████
HARE	<ul style="list-style-type: none"> • HARE: ITS monitoring and emulation system • Digital I/O ports, Ethernet, serial ports, protection • Cabinet, wiring looms and ancillary hardware 	████
AUDIT-HARE	<ul style="list-style-type: none"> • AUDIT-HARE: ITS monitoring and emulation system • Industrial PC and software platform AND 3G modem • Digital I/O ports, Ethernet, serial ports, protection • Cabinet, wiring looms and ancillary hardware 	████
Cables, Enclosures & Fittings		
TIRTL-CABLE-D	Standard data cable for Rx	████
TIRTL-CABLE-P	Standard power cable for Tx OR Rx	████
TIRTL-CABLE-ETH-1M	M12 Ethernet to RJ45 cable, 1m	████
TIRTL-CABLE-ETH-7M	M12 Ethernet to RJ45 cable, 7m	████
TIRTL-CABLE-MOB/GPS	Standard RF cable (Mobile Comms OR GPS)	████
TIRTL-ANT	3G/GSM/GPS antenna (1m cable tail)	████
TIRTL-ANT-KIT	3G/GSM/GPS antenna, cables & post-cap	████
TIRTL-OH-FIT(2)	Two sets: OH TIRTL-2h install fittings	████
TIRTL-EXT(1)-150/200	One set: aluminium enclosure, steel frame, plate (150/200mm)	████
TIRTL-EXT-A(1)-150/200	One aluminium enclosure (150mm OR 200mm)	████
TIRTL-EXT-S(1)-150/200	One steel frame + checker plate (150mm OR 200mm)	████
TIRTL-EXT-T(1)-600	One tall aluminium enclosure (600mm)	████
TIRTL-EXT-T(1)-600F	One frangible tall aluminium enclosure (600mm + 200mm)	████
TIRTL-EXT-T(1)-800	One tall aluminium enclosure (800mm)	████
TIRTL-EXT-T(1)-800F	One frangible tall aluminium enclosure (800mm + 200mm)	████
TIRTL-EXT-B(1)	One barrier enclosure with mounting accessories	████
TIRTL-EXT-BN(1)	One narrow barrier enclosure	████
TIRTL-EXT-N(1)	One narrow kerbside enclosure	████
Options and Accessories		
TIRTL-CERT	Speed measurement compliance certification (enforcement)	████
TIRTL-EIW	Extended 1 year warranty incl software upgrades	████
TIRTL-CONT-CL	Contact closure (Industrial temp rated) inc: <ul style="list-style-type: none"> • Moxa PLC, Ethernet I/O 8DI/8DIO (M IOLOGIK series) • 3 x Finder Relay, 16A, SPDT, 12VAC/DC (38 series) • Finder Off Delay Timer, Signal (80 series), Wiring 	████
TIRTL-SBS	Secondary battery system: converter, charger, battery	████
TIRTL-SBS-ENC	Cabinet for TIRTL-SBS with circuit breaker & GPO	████
TIRTL-BAT-48(2)	Two 48Ah battery systems & case (7 days)	████
TIRTL-BAT-14(2)	Two 14Ah battery systems & case (2 days)	████
TIRTL-SHIELD(2)	Two TIRTL sunshields and Rx antenna (portable)	████
TIRTL-TRIPOD(2)	Two tripods & mounting heads (portable)	████
TIRTL-ALIGN(2)	Two optical sights, risers, USB-RS232 adaptor & cable	████
TIRTL-SIGHT(1)	One optical sight	████
TIRTL-RISER(1)	One riser block for optical sights	████
TIRTL-CASE	Storm case with insert for a TIRTL pair	████
TIRTL-BH	Beam height detection tool	████
TIRTL-TS	Tube spanner (enclosure installation)	████
TIRTL-EXT-S-SAK	Security Allen key for steel frame / checker plate	████
TIRTL-AKS	Allen key for SIM Cover (TIRTL-2h)	████
TIRTL-EXT-SWIVEL(1)	One swivel kit (swivel plate, alignment plate & nuts)	████
TIRTL-EXT-PLATE(1)	One alignment plate & nuts	████

Spares: Windows and Gaskets		
TIRTL-EXT-T-W-600	One tall enclosure window (600mm)	
TIRTL-EXT-T-W-800	One tall enclosure window (800mm)	
TIRTL-EXT-B-W	One barrier enclosure window with gasket	
TIRTL-EXT-W-150	One enclosure window (150mm)	
TIRTL-EXT-W-200	One enclosure window (200mm)	
TIRTL-EXT-CG-150	One enclosure cover gasket (150mm)	
TIRTL-EXT-CG-200	One enclosure cover gasket (200mm)	
TIRTL-EXT-B-CG	One barrier enclosure cover gasket	
TIRTL-EXT-WG-150	One enclosure window gasket (150mm)	
TIRTL-EXT-WG-200	One enclosure window gasket (200mm)	

HAREcam COSTS

Sales Code	Product Description	Cost (A\$)
HAREcam-CA	Fixed HAREcam cabinet and control system + ANPR - Computer, memory, software platform, ANPR module - GigE switch, 3G modem + GPS, WiFi, antennae, UPS (24V)	█
HAREcam-C	Fixed HAREcam cabinet and control system - Computer, memory, software platform - GigE switch, 3G modem + GPS, WiFi, antennae, UPS (24V)	█
HAREcam-A	HAREcam ANPR module	█
HAREcam-P2	Fixed HAREcam black+white plate camera, 2MP	█
HAREcam-S2	Fixed HAREcam black+white scene camera, 2MP	█
HAREcam-P5	Fixed HAREcam black+white plate camera, 5MP	█
HAREcam-S5	Fixed HAREcam black+white scene camera, 5MP	█
HAREcam-P12	Fixed HAREcam black+white plate camera, 12MP	█
HAREcam-S12	Fixed HAREcam black+white scene camera, 12MP	█
HAREcam-AC	Fixed HAREcam mount and cabling	█
HAREcam-F	External Infra-Red LED flash	█
HAREcam-FAC	Flash mount, sun-shield and cabling	█
HAREcam-PA	Portable camera (plate+scene)+ANPR - Black+White plate camera and colour scene camera - Computer, memory, software platform + ANPR module - 3G modem, GPS, WiFi, mounted antennae, Internal IR flash	█
HAREcam-PC	Portable camera (plate+scene)+ANPR - Black+White plate camera and colour scene camera - Computer, memory, software platform + ANPR module - 3G modem, GPS, WiFi, antennae connectors, Internal IR flash	█

Schedule 3 – Services

Criminal Record Search and Investigation			
Required for these services?	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes, for all Supplier Personnel involved in:	
		<input type="checkbox"/> Planning	<input type="checkbox"/> Performance
			<input type="checkbox"/> Other: _____ of the Services.
Deed of Confidentiality			
Required for these services?	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes, for all Supplier Personnel involved in:	
		<input type="checkbox"/> Planning	<input type="checkbox"/> Performance
			<input type="checkbox"/> Other: _____ of the Services.

Work: Operational Support of TIRTL, HARE, HAREcam and WIM Devices

The quantities shown in this Schedule of Rates are estimated quantities only and are not to be taken as actual or correct quantities of work to be carried out or paid for under the various items of work. All items must be extended to show total amounts.

Pay Item	Description of work	Qty	Unit	Rate ≤100	Rate >100	Amount
P1	Operational Support					
P1.1a	TIRTL/HARE software maintenance, hardware warranty	84	pair	█	▨	█
P1.1b		320	pair	▨	█	█
P1.2a	TIRTL / HARE / LTI monitoring, alarms & review	84	pair	█	▨	█
P1.2b		280	pair	▨	█	█
P1.3a	TIRTL / HARE / LTI / WIM data warehousing & reporting (TIRTL, HARE & LTI is per device, WIM is per lane)	84	pair	█	▨	█
P1.3b		280	pair	▨	█	█
P1.4	Speed measurement certification (incl delivery)	170	pair	█	▨	█
P1.5	Project Management & Operational Support	20	Day	█	▨	█
P1.6	Technical Support	18	Day	█	▨	█
P1.7	Travel costs (inc travel, accommodation and incidentals)	1	Trip	█	▨	█
P1.8a	HAREcam software maintenance, hardware warranty: per lane	60	unit	█	▨	█
P1.8b		0	unit	▨	█	█
P1.9a	HAREcam operations and support (monitor, data, VOI): per lane	60	unit	█	▨	█
P1.9b		0	unit	▨	█	█
P1.10a	VOI Portal: non HAREcam data-warehouse, report, VOI: per lane	100	lane	█	▨	█
P1.10b		65	lane	▨	█	█
Monthly Total of P1 (ex GST)						█
12 Month Sub-Total of P1 (Exclusive of GST)						\$ █
Add GST at 10%						\$ █
TOTAL AMOUNT (Inclusive of GST):						█

Schedule 4 – Service Levels

Service Levels are as set out in section 2.4 (Work order service levels) of the Scope of Works.

Schedule 5 - Ordering Process

1 Ordering Process

The Ordering Process in respect of Goods and Services is as follows.

2 Authorised Representatives

All employees of RMS with authority to act under the relevant NSW Government Instrument of Delegation are authorised by RMS to place Orders under this Agreement (**Authorised Representatives**).

The Supplier must not accept an Order unless it has been place by an Authorised Representative.

3 Form of Orders

Each Order must be in substantially the form of:

- (a) in the case of Standard Orders, Attachment A - Standard Order Template; or
- (b) in the case of Other Goods and Services Orders, Attachment B - Other Goods and Services Order,

and must contain:

- issue date; and
- unique reference ID.

4 Method of ordering

The Authorised Representatives may place an Order by:

- Facsimile;
- Email; or
- Post.

Schedule 6 – RMS Data

1 RMS Data

- 1.1 **RMS Data** means all data, records and information relating to the operations, facilities, customers, clients, personnel, assets and programs of RMS in whatever form that information can exist and whether collected, entered into, stored in, generated by or processed as part of the provision of the Goods or Services.
- 1.2 **(Ownership of RMS Data)** RMS Data is and will remain the property of the RMS at all times, including during and after completion of this agreement. The Supplier must not place any lien, charge or other encumbrance over the RMS Data.
- 1.3 **(Use of RMS Data)** Except as required by statutory requirements, the Supplier must:
- (a) not use RMS Data for any purpose other than directly to perform its obligations under this agreement;
 - (b) not, and must ensure that its personnel will not, sell, commercially exploit, hire, assign rights in, dispose of, or otherwise deal with any RMS Data in a way that is not in accordance with this agreement;
 - (c) not make any RMS Data available to a third party other than a subcontractor approved by the RMS and then only to the extent necessary to enable the approved subcontractor to perform its part of the Supplier's obligations under this agreement.
- 1.4 **(RMS Data Safeguards)** The Supplier must establish and maintain safeguards against the destruction, loss, unauthorised disclosure or alteration of any RMS Data in the possession or control of the Supplier according to the specifications. At a minimum, those safeguards must:
- (a) be consistent with and no less rigorous than those maintained by RMS to secure its data; and
 - (b) comply with all policies and procedures concerning RMS Data as specified by the RMS from time to time.
- 1.5 **(Return of RMS Data)**
- (a) Subject to (b) below, the Supplier must return RMS Data to RMS immediately on termination or expiration of this agreement or on request by RMS at any time.

- (b) The Supplier will comply with any requirements set out in the Specifications in relation to the retention and disposal of RMS Data. If there is RMS Data that is required by the Supplier to perform its obligations that survive the termination or expiration of this agreement (e.g. RMS Data required to perform warranty services), the Supplier may retain that RMS Data according to this agreement until the Supplier is no longer required to perform those obligations or on request by RMS at any time.

1.6 **(Other RMS Data requirements and obligations)** The Supplier must:

- (a) **(compliance with requirements and service levels)** comply with the information management (including data security) requirements and service levels set out in the specifications, and any other reasonable requirements in relation to RMS Data as notified to it by RMS in writing from time to time;
- (b) **(compliance with statutory requirements)** comply with statutory requirements, including not do any act or engage in any practice that would breach any statutory requirements in relation to State Records and Personal Information (as defined in the relevant legislation), or which if done or engaged in by RMS, would be a breach of those statutory requirements;
- (c) **(preventing unauthorised personnel access)** prohibit and prevent any person who does not have the appropriate level of security clearance within the Supplier's organisation from gaining access to RMS Data;
- (d) **(notification of any breach)** notify RMS immediately and comply with all directions of RMS, if the Supplier becomes aware of the contravention of any of RMS Data security requirements;
- (e) **(implement business continuity plan)** implement and comply with the Business Continuity plan, as agreed with RMS, that includes RMS Data responsibilities;
- (f) **(notification of any non-compliance)** notify RMS and provide sufficient details where the Supplier is unable to or anticipates it will be unable to comply with any RMS Data responsibilities, requirements and obligations under this agreement;
- (g) **(backup and disaster recovery measures)** make backup copies of RMS Data and store and retain backup copies, and have adequate disaster recovery measures in place, in accordance with the Specifications (including Service Levels);
- (h) **(security measures)** provide such security and encryption measures in accordance with best practice industry standards appropriate for RMS Data and in accordance with the Specifications;

- (i) **(access)** ensure RMS has access to RMS Data at the times, and in the manner set out in the Specifications, whilst RMS Data is in the possession or under the control of the Supplier. (If the Specifications do not set out the times and manner in which RMS can access RMS Data, it will be taken as at reasonable times and in a reasonable manner.)
- (j) **(location of RMS Data)** store, hold, process or otherwise deal with any RMS Data in the countries and jurisdictions set out in the Specifications;
- (k) **(retention and disposal)** implement and comply with the retention and disposal requirements in relation to RMS Data as set out in the Specifications. The Supplier may delete, purge and/or disclose RMS Data where it is required to do so under any applicable law. Where there is a legal requirement for the Supplier to delete, purge and/or disclose any part of the RMS Data, it must promptly notify RMS of the request to enable RMS to respond and deal with the request;
- (l) **(deletion of RMS Data and certification)** delete RMS Data within the period specified in the Specifications, and if requested by RMS, provide certification within 5 business days of such request that RMS Data has been deleted;
- (m) **(reporting, meetings and audit)**
 - (i) provide reports and attend meetings as set out in the Specifications and agreed contract management plan, including in relation to compliance with the Supplier's RMS Data obligations under this agreement; and
 - (ii) on reasonable notice by RMS to the Supplier, permit and assist RMS and/or its representative to conduct an audit in relation to the Supplier's compliance with its RMS Data obligations under this agreement. Such audit may involve access to RMS Data in the control or possession of the Supplier, access to the Supplier's site(s), facilities, operations, systems, personnel and documentation to evidence and to verify the Supplier's processes and controls in relation to the RMS Data that is dealt with by the Supplier under this agreement. Unless otherwise agreed, each party will pay its own costs in relation to the audit.

1.7 (After termination)

- (a) **(Access)** Within the period after termination of this agreement as set out in the Specifications, the Supplier must, at no additional cost to RMS, provide RMS with a copy of all RMS Data in the format specified, or if no format is specified, in the standard format as usually provided by the Supplier.

- (b) **(Transition Out)** The Supplier must provide the transition out services as set out in the Specifications. The transition out services may include returning or, if requested by RMS, destroying documents or materials containing RMS Data together with any backups or other reproduction of those documents or materials.

Attachment A - Standard Order Template

ROADS AND MARITIME SERVICES, of 101 Miller Street, North Sydney, New South Wales (RMS); and

CEOS Industrial Pty Ltd, ABN 64 095 186 468, of Unit 3, 17 Burgundy Street, Heidelberg VIC 3084 (Supplier).

2 Order Details

Date of Order

Purchase Order Number

RMS Cost Centre Number

RMS General Ledger Code

GOODS

Goods (Clause 4)

Goods	Quantity

Delivery Address
(Clause 4.4)

SERVICES

Services (Clause 5)

Services

**Order placed by ROADS &
MARITIME SERVICES**

Name: _____

Position: _____

Signature

Attachment B - Other Goods and Services Order Template

ROADS AND MARITIME SERVICES, of 101 Miller Street, North Sydney, New South Wales (RMS); and

CEOS Industrial Pty Ltd, ABN 64 095 186 468, of Unit 3, 17 Burgundy Street, Heidelberg VIC 3084 (Supplier).

1 Other Goods and Service Order Details

Date of Order

Purchase Order Number

RMS Cost Centre Number

RMS General Ledger Code

GOODS

Other Goods
(Clause 3.3)

Goods				Charges (excluding GST)	Warranty Period	Delivery Timeframe	Invoice Timing
Name	Quantity	Specifications	Documentation				

**Delivery
Address
(Clause 4.4)**

Services

**Other
Services
(Clause 3.3)**

Services		Charges (excluding GST)	Warranty Period	Performance Timeframe	Invoice Timing
Name	Description of services				


Attachment C - Contractor Statement Template

NOTE: this form is available online at
<http://home.rta.nsw.gov.au/forms/categories/contractandroadworks/45062893.html>

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).

Workers Compensation Insurance Certificate of Currency for the work period in question. Unless the contractor is exempt 

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

Tick one in each row

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);	<input type="checkbox"/>
• 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	<input type="checkbox"/>
• the Contractor is an exempt employer for workers compensation purposes (see Note 7);	<input type="checkbox"/>
• 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	<input type="checkbox"/>
• the Contractor is not required to be registered;	<input type="checkbox"/>
• The Contractor has not engaged any subcontractors for the works; or	<input type="checkbox"/>
• 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)	<input type="checkbox"/>
• I am authorised to make this declaration and I am in a position to know the truth of its contents	<input type="checkbox"/>

Signature of Authorised Person

Date

Name of Signatory (print)

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

(see Notes on page 2)



Workers Compensation Insurance Certificate of Currency for the work period in question. Unless the contractor is exempt

Notes

1. A Contractor is any person or company who carries out work under a contract of any kind for any business of RMS. References to "Subcontractor" and "Principal Contractor" in the legislation mentioned below have been changed in this Statement to "Contractor" and "RMS" respectively to avoid confusion.
2. This form is prepared for the purposes of section 127 of the *Industrial Relations Act 1996* ("IRA"), section 175B of the *Workers Compensation Act 1987* ("WCA") and Schedule 2 Part 5 of the *Payroll Tax Act 2007* ("PTA"). These provisions allow RMS to withhold payment from a Contractor without any penalty unless and until the Contractor provides to RMS a Statement declaring that:
 - a. All workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid, and
 - b. all remuneration payable to relevant employees for work under the contract has been paid; and
 - c. all payroll tax payable relating to the work undertaken has been paid.
3. Section 127 of the IRA says that the Statement must state the period to which it relates. For sequential statements ensure that the dates provide continuous coverage.
4. The person signing this declaration must be a person who is authorised by the Contractor either to sign this Statement (or to sign statements of this kind) and must be a person who is in a position to know the truth of the statements. The Contractor's principal accounting/financial officer may be appropriate. An individual project manager will normally not be appropriate. If the Contractor is a company then the person signing should be a director unless the company has delegated the power to sign such statements to another person (eg the principal accounting officer).
5. A Statement is not required where RMS is making payment to a receiver, liquidator or trustee in bankruptcy (see section 127(10) of the IRA, section 175B(12) of the WCA and Sch 2 Part 5 (20) of the PTA).
6. Section 127(8) 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:
http://www.industrialrelations.nsw.gov.au/pdfs/subcontractor_statement_form.pdf; or
<http://www.osr.nsw.gov.au/lib/doc/forms/opt011.pdf>.

Record Retention

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

These notes are not intended as legal advice and Contractors should obtain their own professional advice if they have any questions about this Statement or these Notes. For more information, refer to OSR Revenue Ruling PT 59 at <http://www.osr.nsw.gov.au/lib/doc/rulings/rpt59.pdf>, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or the Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

NOTE: this form is available online at
<http://home.rta.nsw.gov.au/forms/categories/contractandroadworks/45062893.html>

Attachment D - Insurance Policy Requirements

See Contract Details section for the required insurance amounts			
TYPES OF INSURANCES	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	STATE IF REQUIRED
Broadform Public Liability and Product Liability	Annually for the duration of the contract plus the duration of any warranty or maintenance periods.	<ul style="list-style-type: none"> (a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below; (b) is governed by the law of New South Wales and subject to Australian jurisdictions as defined in clause 2 of the Definitions and Notes below; (c) lists RMS as an additional named insured; and (d) includes a cross liability clause as defined in clause 3 of the Definitions and Notes below. 	Required if selected in the Contract Details
Motor Vehicle Comprehensive or Third Party Property Damage	Annually for the duration of the contract.	<ul style="list-style-type: none"> (a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below; (b) covers motor vehicles owned or used by the Contractor or its subcontractors directly or indirectly engaged in performance of the Services; and (c) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below. 	Required if selected in the Contract Details
Professional Indemnity	From time contract is awarded to completion of the contract plus 6 years following completion of the contract The Insurance can be taken out as annual covers where the cover is to include a retroactive date being the commencement date of the contract	<ul style="list-style-type: none"> (a) Is an approved insurer as defined in clause 1 of the Definitions and Notes below; (b) a description of the risk covered by the policy; (c) one automatic restatement per period of insurance; and (d) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below. 	Required if selected in the Contract Details
Workers Compensation	Annually.	As per relevant Workers Compensation legislation.	Required if selected in the Contract Details
Fire and Extraneous Perils including Accidental Damage, Burglary, Theft and Transit Insurance (or similar Industrial Special Risks Insurance) whilst in the care, custody and	Annually for the duration of the contract	<ul style="list-style-type: none"> (a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below; (b) Is governed by the law of New South Wales and subject to Australian jurisdictions as defined in clause 2 of the Definitions and Notes below; and (c) lists the Service Provider and all subcontractors for their respective rights, interests and liabilities as named insureds. 	Required if selected in the Contract Details

See Contract Details section for the required insurance amounts

TYPES OF INSURANCES	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	STATE IF REQUIRED
control of the Service Provider.			
Personal Accident & Illness	Minimum of 104 weeks		Required if selected in the Contract Details

Definitions & Notes

1	<p>Approved Insurer means</p> <p>(a) An Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia;</p> <p>(b) Lloyds Underwriters;</p> <p>(c) A Treasury Managed Fund insurance scheme with the NSW State Government; or</p> <p>(d) The Comcover insurance scheme for the Australian Federal Government.</p> <p>Note that where the insurance risk is insured by a 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).</p>
2	Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.
3	A Cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit under the policy
4	References in this Insurance Schedule to the "contractor" and the "contract" are to be interpreted to harmonise with the terminology used in the contract in which this Insurance Schedule is used (eg "Service Provider" and "Agreement" or as the case may be).

Advice to RMS Staff

Contact the RMS Insurance Team (Ph: 853852777) for further information and advice on this schedule or to check if additional insurances are required or whether an insurance policy complies with this schedule.

