

Volume 1 of 2

Intelligent Transport Systems Maintenance Contract - Metro East Zone

Roads and Maritime Services

ABN 76 236 371 088

and

LT Joint Venture Pty Limited

ACN 169 720 718



CONTENTS

CLAUSE	PAGE
PART AA – CONDITIONS PRECEDENT	1
1A. CONDITIONS PRECEDENT	1
1A.1 Conditions precedent	1
1A.2 Waiver of conditions precedent	1
1A.3 Termination due to failure to satisfy conditions precedent	1
PART A – CONTRACT FRAMEWORK	2
1. FUNDAMENTAL RIGHTS AND OBLIGATIONS	2
1.1 RMS Objectives	2
1.2 Stewardship Principles	2
1.3 Contract Framework	3
1.4 ITS Contractor's fundamental obligations	4
1.5 RMS' fundamental obligations	4
1.6 Right to direct the ITS Contractor	4
1.7 Duty not to hinder performance	5
1.8 Co-operation	5
1.9 RMS as an Authority	5
1.10 Compliance with the terms of the ITS Maintenance Transitional Agreement	5
2. CONTRACT TERM AND COMMENCEMENT OF SERVICES	5
2.1 Duration of the Contract Term	5
2.2 Extension of the Contract Term	6
2.3 Holding over	6
2.4 Commencement of Services	6
2.5 Failure to complete the Transition Services prior to the Full Services Commencement Date	6
2.6 Failure to agree Initial Forward Works Program	7
3. SECURITY	7
3.1 Security Bonds	7
3.2 Requirements for Security Bonds	8
3.3 Recourse to Security	8
3.4 Return of Security	8
3.5 Replacement of Security	9
3.6 No injunction	9
3.7 Deed of Guarantee and Indemnity	10
4. ACCESS	10
4.1 RMS grants access	10
4.2 Access for RMS, its contractors and others	10
4.3 Road closure	10
4.4 Lane Closures	11
4.5 Compliance with Road Occupancy Licence	11
4.6 Directions to re-open a Lane or Lanes	11
4.7 Instructions from Emergency Services	11
4.8 Access to property and Roads	11
4.9 RMS Interface Agreements	11
5. RMS ASSETS	12
5.1 RMS Plant and Equipment	12
5.2 RMS Leased Plant and Equipment	12
5.3 RMS Depots	13

6.	THE SERVICES	13
6.1	General.....	13
6.2	Scope of Services.....	13
6.3	Services for third parties	14
6.4	RMS may engage other contractors to carry out works and services within the Zone	15
7.	FORWARD WORKS PROGRAMS.....	15
7.1	Compliance with the Forward Works Program	15
7.2	Completion of the Services contemplated by the Forward Works Program	15
7.3	Development of the Forward Works Program	16
7.4	Failure to agree the Forward Works Program	16
8.	SPECIAL PROJECTS	17
8.1	General.....	17
8.2	Special Project Proposal	18
8.3	Special Project Orders.....	19
8.4	Special Projects to be carried out concurrently with other Services	19
9.	PROJECT WORKS.....	19
9.1	Work Terms.....	19
9.2	Expiry of the Contract Term.....	19
10.	CHANGES	20
10.1	RMS may direct Changes.....	20
10.2	Proposed Changes.....	20
10.3	Valuation of Changes	20
10.4	Carrying out a Change	20
10.5	Claim for Change by the ITS Contractor	20
10.6	Omissions	21
10.7	Change Events.....	21
11.	LAW GUIDELINES AND GOVERNMENT REQUIREMENTS	21
11.1	Law	21
11.2	Relevant Authorities	22
11.3	Other Authorities.....	22
11.4	Compliance with policies, codes and guidelines	22
11.4A	NSW Code and NSW Guidelines.....	23
11.5	Accreditation and prequalification	25
11.6	Work health and safety management.....	25
11.7	Engagement as Principal Contractor under the WHS Regulation	25
11.8	Industrial relations management.....	27
11.9	Quality management	27
11.10	Long service levy	27
11.11	Registration and licences.....	27
11.12	Liability under the NGER Legislation.....	28
11.13	Emissions and Energy Data	28
12.	SUBCONTRACTING	29
12.1	ITS Contractor's responsibility	29
12.2	Engaging Subcontractors.....	29
12.3	Responsibility for Subcontractors.....	30
12.4	Subcontract provisions.....	30
PART B – CONTRACT MANAGEMENT.....		31
13.	INTEGRATED CONTRACT MANAGEMENT SYSTEM (ICMS).....	31
13.1	Purpose	31

13.2	ICMS	31
13.3	Monitoring and auditing	32
14.	SERVICE PLANS	32
14.1	Service Plans	32
14.2	Review of Service Plans	33
14.3	No restriction on RMS' rights	34
14.4	No relief.....	34
PART C – ADMINISTRATION.....		35
15.	MANAGEMENT REVIEW GROUP	35
15.1	Structure, purpose and role of the Management Review Group	35
15.2	Mobilisation of Management Review Group	35
15.3	Meetings of Management Review Group	36
15.4	Quorum and voting	36
15.5	Minutes.....	36
15.6	Resolutions.....	36
15.7	Non-delegation of power	36
16.	REPRESENTATIVES	36
16.1	ITS Contractor's Authorised Person.....	36
16.2	RMS' Representative.....	36
17.	MANAGEMENT TEAM	37
17.1	Structure, purpose and role of the Management Team	37
17.2	Meetings of Management Team.....	38
17.3	Minutes.....	38
17.4	Resolutions.....	38
17.5	Non-delegation of power.....	38
18.	PERSONNEL.....	38
18.1	Requirements for Personnel.....	38
18.2	Key Personnel.....	39
18.3	Removal of persons	39
PART D – PERFORMANCE MANAGEMENT.....		40
19.	PERFORMANCE REPORTING	40
19.1	Monthly Report	40
19.2	Annual Report.....	40
19.3	Performance improvement plan.....	40
20.	ANNUAL PERFORMANCE REVIEWS	41
20.1	Annual performance review meeting	41
20.2	Review and updating of the Forward Works Program	41
20.3	Annual review of Spares holdings.....	41
21.	ACCESS TO INFORMATION	42
21.1	Access to Data	42
21.2	Access to AMS	42
22.	AUDIT.....	43
22.1	RMS audit	43
22.2	ITS Contractor must assist	43
22.3	Audit of Performance Data.....	44
22.4	Method of accounting.....	44
22.5	Owner's Estimator.....	44
22.6	Financial Auditor	45

23.	BENCHMARKING ACROSS ZONES	45
PART E – FINANCIAL PROVISIONS.....		46
24.	PRICING.....	46
24.1	Reference Pricing Schedule.....	46
24.2	Pricing Schedule for each Works Period.....	46
25.	PAYMENT	46
25.1	General.....	46
25.2	Deductions and set off	47
25.3	Payment Claims and payment.....	47
25.4	Unfixed Materials	48
25.5	Payment on account	49
25.6	Correction of Payment Schedule.....	49
25.7	Interest on overdue monies.....	49
25.8	Goods and Services Tax	49
26.	WORKERS AND SUBCONTRACTORS	51
26.1	Direct payment	51
27.	FINAL PAYMENT CLAIMS	51
27.1	Final Forward Works Program Payment Claim	51
27.2	Final Special Project Payment Claim	51
27.3	Effect of Final Certificates.....	52
PART F – CARE OF WORK, INDEMNITIES, INSURANCE AND LIABILITY		52
28.	CARE OF PEOPLE, PROPERTY AND ENVIRONMENT	52
28.1	ITS Contractor to prevent damage	52
28.2	Safety and protection of persons and property.....	53
28.3	Urgent Protection	54
28.4	Control of traffic.....	54
29.	INDEMNITIES	54
29.1	General indemnity.....	54
29.2	Reduction of ITS Contractor's liability.....	55
29.3	Intellectual Property indemnity	55
29.4	Environmental indemnity.....	55
29.5	Product Liability indemnity	55
29.6	Survival and enforcement of indemnities.....	56
29.7	Obligations and rights not affected	56
30.	INSURANCE.....	56
30.1	Insurances to be provided by RMS.....	56
30.2	Insurances provided by ITS Contractor	57
30.3	Other insurance requirements.....	57
30.4	Notices from or to the insurer	58
30.5	Insurance claim procedures	58
31.	LIABILITY.....	59
31.1	Limitation of liability	59
31.2	Exclusion of certain loss	60
31.3	Civil Liability Act.....	60
PART G – WARRANTIES.....		60
32.	WARRANTIES.....	60
32.1	General warranties	60

32.2	ITS Contractor's warranties (performance)	61
32.3	ITS Contractor's warranties (general)	62
32.4	No warranty by RMS	63
32.5	Non-merger and survival of warranties	64
32.6	Collusive arrangements.....	64
32.7	Conflict of interest.....	64
PART H – INTELLECTUAL PROPERTY, CONFIDENTIALITY AND PRIVACY		65
33.	INTELLECTUAL PROPERTY	65
33.1	RMS Material	65
33.2	Data	65
33.3	Deliverables	65
33.4	Further requirements.....	66
33.5	Pre-Existing Material.....	66
33.6	Know-how and methodologies	66
33.7	Licence by RMS for the purpose of the Services.....	67
33.8	Licence by RMS for other purposes	67
33.9	ITS Contractor warranty.....	67
34.	CONFIDENTIALITY	68
34.1	Use and disclosure of confidential information.....	68
34.2	Provision of information to other NSW Government Authorities and ministries	69
34.3	Publicity	69
34.4	Communication and Stakeholder Engagement.....	69
35.	PRIVACY	70
35.1	Privacy Acts.....	70
PART I – DISPUTE RESOLUTION		70
36.	DISPUTE RESOLUTION.....	70
36.1	Dispute.....	70
36.2	Notice of Dispute.....	70
36.3	Referral to representatives	70
36.4	Management Review Group	71
36.5	Executive negotiations	71
36.6	Expert determination	71
36.7	Payments	71
36.8	ITS Contractor to continue performing obligations	71
36.9	Urgent relief	71
36.10	Survive termination	71
PART J – SUSPENSION AND FORCE MAJEURE		72
37.	SUSPENSION	72
37.1	RMS' power to suspend Services	72
38.	FORCE MAJEURE	72
38.1	Notification.....	72
38.2	Meeting.....	73
38.3	Suspension of obligations.....	73
38.4	Payments.....	74
38.5	Best endeavours to mitigate effect	74
38.6	Alternative arrangements.....	74
38.7	Cessation of Force Majeure Event.....	74
38.8	No financial relief to the ITS Contractor.....	74
38.9	No compensation to RMS.....	74
PART K – STEP-IN, TERMINATION, DEMOBILISATION AND HANDOVER		74

39.	RMS STEP-IN	74
	39.1 Notice to remedy breach	74
	39.2 RMS step-in.....	74
	39.3 Suspension of ITS Contractor's obligations	75
	39.4 ITS Contractor must assist RMS	75
	39.5 Step-in right ceases.....	75
	39.6 RMS not required to remedy breach	75
	39.7 ITS Contractor to compensate RMS	75
	39.8 No payments by RMS.....	75
	39.9 RMS may suspend ITS Contractor's authorisation	75
	39.10 No prejudice to other rights.....	75
40.	TERMINATION FOR DEFAULT OR INSOLVENCY OF THE ITS CONTRACTOR	76
	40.1 Termination for ITS Contractor's Default	76
	40.2 Termination for insolvency of the ITS Contractor or the Guarantor	76
	40.3 Consequences of termination	76
41.	TERMINATION FOR CONVENIENCE	76
	41.1 RMS may terminate Contract for convenience	76
	41.2 ITS Contractor's obligations.....	77
	41.3 Payments on termination for convenience	77
	41.4 Return of Security following termination for convenience.....	77
42.	TERMINATION FOR RMS DEFAULT	78
	42.1 ITS Contractor may terminate.....	78
	42.2 Sole remedy	78
43.	TERMINATION FOR CONTINUED FORCE MAJEURE EVENTS	78
	43.1 Either party may terminate	78
44.	DEMOBILISATION AND HANDOVER	78
	44.1 Demobilisation and Handover Services.....	78
	44.2 ITS Contractor's obligations.....	78
	44.3 End of Contract Term obligations.....	79
	44.4 Pricing of the Demobilisation and Handover Services	80
	44.5 Spares holdings at the end of the Contract Term.....	80
PART L – GENERAL		80
45.	NOTICES	80
	45.1 How to give a notice	80
	45.2 When a notice is given.....	81
	45.3 Address for notices.....	82
46.	ASSISTANCE BY ITS CONTRACTOR.....	82
	46.1 RMS' legal and public obligations.....	82
	46.2 Public and Ministerial inquiries	82
47.	AMENDMENT AND ASSIGNMENT.....	83
	47.1 Amendment.....	83
	47.2 Assignment	83
48.	GENERAL.....	83
	48.1 Governing law.....	83
	48.2 Survival of terms.....	83
	48.3 Relationship of parties	83
	48.4 Liability for expenses, duty, taxes and other imposts	83
	48.5 Attorneys	83

48.6	Giving effect to this document	84
48.7	Waiver of rights	84
48.8	Operation of this document	84
48.9	Consents	84
48.10	Entire Agreement	84
48.11	Counterparts	84

Schedules

1	Definitions and Interpretation	85
2	ITS MC Service Requirements	109
3	Commercial Framework.....	110
4	Performance Framework	111
5	Payment Schedule	112
6	Reference Pricing Schedule.....	118
7	Brief for Transition Services.....	119
8	Procedure for developing and updating the Forward Works Program	120
9	Initial Forward Works Program Brief	123
10	Draft Initial Forward Works Program	124
11	Overarching Asset Maintenance Plan	125
12	Work Terms.....	126
13	Key Personnel	127
14	Procedure for expert determination	128
15	Form of Security Bond	131
16	Deed of Guarantee and Indemnity.....	132
17	Insurance Schedule and Policy Summaries	133
18	Statutory Declaration and Subcontractors Statement.....	136
19	RMS Interface Agreements	143
20	Sale Agreement	144
21	RMS Depot Licence	145

Exhibits

1	Asset Definition Specification
2	Initial Service Plans
3	Information Documents
4	RMS Specifications

THIS DEED is made on *30 May* 2014

BETWEEN:

- (1) **Roads and Maritime Services** ABN 76 236 371 088 ("**RMS**"); and
- (2) **LT Joint Venture Pty Limited** ACN 169 720 718 ("ITS Contractor")

RECITALS:

- (A) RMS requires the Assets to be maintained and operated (where required) in a manner consistent with:
 - (1) the Stewardship Principles; and
 - (2) the achievement of the RMS Objectives.
- (B) This document sets out the terms upon which the ITS Contractor will:
 - (1) perform the Services and its other obligations in a manner consistent with the Stewardship Principles; and
 - (2) achieve the RMS Objectives.

THE PARTIES AGREE AS FOLLOWS:

PART AA – CONDITIONS PRECEDENT

1A. CONDITIONS PRECEDENT

1A.1 Conditions precedent

- (a) Subject to paragraph (b), the rights and obligations of the parties under this document will not commence unless and until the following conditions precedent have been satisfied or waived:
 - (i) the ITS Contractor has provided to RMS the Security Bonds in accordance with clause 3.1;
 - (ii) the ITS Contractor has provided to RMS an ITS Maintenance Transitional Agreement executed by the ITS Contractor; and
 - (iii) the ITS Contractor has provided to RMS a Deed of Guarantee and Indemnity executed by an entity acceptable to RMS.
- (b) The rights and obligations of the parties under clauses 1A, 1, 2, 3, 29, 30, 31, 32, 33, 34, 35, 36, 39, 40, 41, 42, 45, 46, 47, 48 of these General Conditions and clauses 1 to 6 of Schedule 1 commence on the date of execution of this document.

1A.2 Waiver of conditions precedent

The conditions precedent set out in clauses 1A.1(a) are solely for the benefit of RMS and may only be waived by RMS in its absolute discretion.

1A.3 Termination due to failure to satisfy conditions precedent

The parties acknowledge and agree that if the conditions precedent set out in clause 1A.1(a) are not satisfied or waived by the Condition Precedent Deadline Date:

- (a) RMS may immediately terminate this document by notice in writing to the ITS Contractor; and
- (b) neither party will have any liability to the other arising out of or in connection with this document or its termination.

PART A – CONTRACT FRAMEWORK

1. FUNDAMENTAL RIGHTS AND OBLIGATIONS

1.1 RMS Objectives

The parties acknowledge and agree that the primary objectives of RMS in entering into this document are to:

- (a) consider customer and stakeholder requirements in all decision making;
- (b) drive efficiency through competition and business process and productivity improvements;
- (c) improve effectiveness of intelligent transport systems maintenance through improved planning and Asset management;
- (d) ensure RMS retains systems and network knowledge and capability to make intelligent decisions as an informed client;
- (e) improve Asset performance and innovation through focused delivery of Services to achieve the desired outcomes;
- (f) develop and sustain competition in contractor and supply markets;
- (g) create an environment that values and promotes teamwork and collaboration between the ITS Contractor and RMS;
- (h) provide flexibility to readily adapt to changing priorities and operating environments; and
- (i) promote stewardship, with a shared set of values, attitudes and behaviours between RMS and the ITS Contractor, which will enable the ITS Contractor to manage the Assets on RMS' behalf.

1.2 Stewardship Principles

- (a) In the context of this document, "Stewardship Principles" are a broad set of values, attitudes and behaviours, required of the ITS Contractor to effectively manage the Assets on RMS' behalf.
- (b) The parties acknowledge and agree that the key "Stewardship Principles" applying include:
 - (i) putting RMS' customers first and being responsive to them;
 - (ii) performing the Services in the best interests of RMS as the owner as well as the users of the Assets;
 - (iii) being responsible and accountable for the outcomes resulting from the management of the Assets;

- (iv) managing the Assets diligently, efficiently and effectively with limited direction from RMS;
- (v) working collaboratively with RMS to deliver Services that are tailored to best meet RMS' evolving needs; and
- (vi) acting with integrity and transparency in the performance of the Services and all other obligations under this document.

1.3 Contract Framework

The parties acknowledge and agree that:

- (a) the Initial Forward Works Program and future Forward Works Programs will describe:
 - (i) the Services to be carried out by the ITS Contractor; and
 - (ii) how the ITS Contractor will be paid for those Services;
- (b) this document sets out the basis upon which the parties will agree the Initial Forward Works Program and future Forward Works Programs;
- (c) in seeking to reach agreement on both the Initial Forward Works Program and future Forward Works Programs, the parties will have due regard to:
 - (i) the RMS Objectives;
 - (ii) the Stewardship Principles; and
 - (iii) RMS' requirements as detailed in the Overarching Asset Maintenance Plan, the Initial Forward Works Program Brief and subsequent Forward Works Program Briefs (as appropriate);
- (d) the ITS Contractor may be required to carry out Services which are additional to those described in any Forward Works Program as Special Projects;
- (e) this document sets out the basis upon which the parties will agree the Services the subject of a Special Project and the basis on which the ITS Contractor will be paid for such Services;
- (f) the Services will be paid for by a mix of Payment Types which will be specified by RMS in the Initial Forward Works Program Brief and each subsequent Forward Works Program Brief having regard to:
 - (i) the RMS Objectives;
 - (ii) the Stewardship Principles;
 - (iii) the principle that as the ITS Contractor's knowledge of the Assets increases, more Services will be priced on a Priced Component basis; and
 - (iv) the principle that the Margin Rates for different Payment Types will reflect that where the ITS Contractor takes less risk, the Margin that it receives will be lower;
- (g) the performance of the ITS Contractor will be measured against simple and easily measurable Key Performance Indicators with a proportion of the Margin staked against performance; and

- (h) the ITS Contractor will provide RMS with open book access to all financial information in any way connected with this document, including details of:
 - (i) all costs incurred by the ITS Contractor in carrying out the Services, regardless of the basis upon which RMS is paying for the Services;
 - (ii) all amounts claimed by the ITS Contractor in any Payment Claim regardless of the basis upon which RMS is paying for the Services; and
 - (iii) all cost estimates prepared by the ITS Contractor under this document.

1.4 **ITS Contractor's fundamental obligations**

- (a) The ITS Contractor must:
 - (i) carry out the Services and its other obligations in accordance with the requirements of this document;
 - (ii) act in a timely and expeditious manner;
 - (iii) manage and maintain all Assets in accordance with the terms of this document so that they are in safe, efficient and reliable operation for the benefit of road users;
 - (iv) operate specified Assets safely and efficiently for the benefit of road users; and
 - (v) support the Transport Management Centre in managing impacts on the road network resulting from incidents.
- (b) RMS, as the owner of the Assets, will determine the strategic direction for its Assets. RMS will provide the ITS Contractor with a Forward Works Program Brief which details the outcomes required for Assets under the ITS Contractor's stewardship. The ITS Contractor must manage the Assets accordingly, including developing and delivering programs of routine maintenance, capital renewals and asset improvements to achieve these outcomes.
- (c) The ITS Contractor must, in carrying out its obligations under paragraph (a), have regard to the Forward Works Program Brief, however, the obligations under paragraph (a) are not limited by the content of the Forward Works Program Brief.

1.5 **RMS' fundamental obligations**

RMS must:

- (a) pay the ITS Contractor for the performance of the Services and its other obligations under this document in accordance with and subject to the terms of this document; and
- (b) perform and observe its other obligations under this document.

1.6 **Right to direct the ITS Contractor**

RMS and RMS' Representative may give directions to the ITS Contractor concerning the Services and anything connected with the Services and the ITS Contractor must comply with such directions.

1.7 **Duty not to hinder performance**

- (a) Each party must do all it reasonably can to avoid hindering the performance of the other under this document.
- (b) In undertaking the Services, the ITS Contractor must:
 - (i) not interfere, or cause interference, with the exercise or performance by RMS of any of its powers or duties under any applicable Law except to the extent necessary for the proper performance by the ITS Contractor of its obligations under this document; and
 - (ii) carry out its obligations under this document so as to ensure performance of those obligations and functions imposed on RMS under any applicable Law which are, by virtue of this document, to be performed by the ITS Contractor.

1.8 **Co-operation**

- (a) The parties must do all they reasonably can to co-operate in all matters relating to this document, but their rights and responsibilities under this document (or otherwise) remain unchanged unless the parties agree in writing to change them.
- (b) The ITS Contractor must:
 - (i) fully co-operate with other contractors and RMS employees carrying out work within or in the vicinity of the Zone, whether for RMS or for a third party;
 - (ii) carefully coordinate and interface the Services with the work carried out by such other contractors and RMS employees; and
 - (iii) perform the Services so as to avoid interfering with, disrupting or delaying the work of other contractors and RMS employees.

1.9 **RMS as an Authority**

The ITS Contractor acknowledges and agrees that:

- (a) this document will not restrict or affect the unfettered discretion of RMS to exercise any of its statutory functions or powers; and
- (b) anything RMS does, fails to do or purports to do, pursuant to its statutory functions and powers will be deemed to not be an act or omission of RMS under or in connection with this document (including a breach of contract) and will not entitle the ITS Contractor to make any Claim against RMS.

1.10 **Compliance with the terms of the ITS Maintenance Transitional Agreement**

The ITS Contractor must comply with the terms of the ITS Maintenance Transitional Agreement.

2. **CONTRACT TERM AND COMMENCEMENT OF SERVICES**

2.1 **Duration of the Contract Term**

The Contract Term commences on the Commencement Date and expires on:

- (a) the Expiry Date; or

- (b) 3 months after the issue of a notice under clause 2.3(c),
unless terminated earlier.

2.2 **Extension of the Contract Term**

- (a) RMS may, at its absolute discretion, extend the Expiry Date by the First Option Period and the Second Option Period, as applicable, by issuing a written notice to the ITS Contractor no later than 6 months prior to the current Expiry Date.
- (b) If RMS does not issue a notice under paragraph (a), the Contract Term will expire in accordance with clause 2.1.

2.3 **Holding over**

If RMS and the ITS Contractor agree that the ITS Contractor is to continue to perform any part of the Services after the Expiry Date:

- (a) the terms of this document will continue to apply in respect of those parts of the Services;
- (b) the ITS Contractor will be entitled to be paid for performing such parts of the Services on:
 - (i) the basis set out in the Forward Works Program for the final Works Period of the Contract Term; or
 - (ii) such other basis as may be agreed between the parties; and
- (c) either party may terminate the continued performance of the Services by the ITS Contractor by giving no less than 3 months prior written notice to the other or as otherwise specified in this document.

2.4 **Commencement of Services**

The ITS Contractor must:

- (a) commence provision of the Transition Services on the Commencement Date;
- (b) use its best endeavours to carry out and complete the Transition Services prior to the Full Services Commencement Date;
- (c) subject to the terms of this document, commence provision of the Services (other than the Transition Services) on the Full Services Commencement Date and thereafter provide the Services throughout the Contract Term; and
- (d) if required by RMS, commence provision of any part of the Services prior to the Full Services Commencement Date.

2.5 **Failure to complete the Transition Services prior to the Full Services Commencement Date**

If the ITS Contractor does not complete the Transition Services by the Full Services Commencement Date the amounts which the ITS Contractor is entitled to be paid in respect of Management Services for the Initial Forward Works Program will be reduced on a pro-rata basis, having regard to:

- (a) the number of days between the Full Services Commencement Date and the date on which the Transition Services are completed; and

- (b) the duration of the Initial Works Period.

2.6 Failure to agree Initial Forward Works Program

- (a) If the parties are unable to agree the Initial Forward Works Program by the date which is 10 Business Days prior to the Full Services Commencement Date, then, unless RMS issues a notice under paragraph (b) this document will automatically terminate on that date.
- (b) RMS may, in its absolute discretion, extend the period for development of the Initial Forward Works Program by such further period as RMS considers appropriate. RMS may do so by issuing a written notice to the ITS Contractor prior to the date contemplated by paragraph (a).
- (c) If RMS issues a notice under paragraph (b):
 - (i) the process set out in section 1 of Schedule 8 will continue to apply in respect of those parts of the Initial Forward Works Program not agreed; and
 - (ii) RMS may, in its absolute discretion, direct the ITS Contractor to carry out:
 - (A) such elements of the Initial Forward Works Program as have been agreed between the parties, specifying the ITS Contractor's entitlement to payment in respect of these elements; and/or
 - (B) such maintenance of intelligent transport systems within the Zone as are required by RMS in consideration for payments calculated in accordance with the rates set out in Pricing Tables 8A, 8B, 8C and 9A.
- (d) If RMS and the ITS Contractor have not agreed the Initial Forward Works Program by the period specified in a notice issued under paragraph (b) and:
 - (i) RMS has not issued a direction under paragraph (c)(ii), this document will automatically terminate on the expiry of such period; or
 - (ii) RMS has issued a direction under paragraph (c)(ii):
 - (A) RMS may by notice in writing require the ITS Contractor to continue providing such services for a period required by RMS, which will not exceed the duration of the Initial Works Period; and
 - (B) following the expiry of such period this document will automatically terminate.

3. SECURITY

3.1 Security Bonds

- (a) On or before the Conditions Precedent Deadline Date, the ITS Contractor must provide to RMS Security of \$1.5 million in the form of two Security Bonds each for an amount of \$750,000.
- (b) The ITS Contractor must pay all costs (including stamp duty or other taxes) of and incidental to providing the Security.
- (c) The ITS Contractor must ensure that the Security remains valid and enforceable until such date as RMS is required under this document to return the Security to the ITS Contractor.

3.2 Requirements for Security Bonds

Each Security Bond must be:

- (a) in the form of Schedule 15 or as otherwise approved by RMS;
- (b) in favour of RMS;
- (c) given by a financial institution acceptable to RMS that is regulated by the Australian Prudential Regulation Authority and maintains the Mandatory Credit Rating;
- (d) payable at an office of the bank or financial institution in Sydney (or such other place as RMS may approve); and
- (e) a continuing liability without expiry or, if the Security Bond is to have an expiry date, such date must be no earlier than the Original Expiry Date.

3.3 Recourse to Security

RMS may have recourse to any Security provided by the ITS Contractor under this document:

- (a) when RMS has a bona fide claim against the ITS Contractor arising out of or in connection with this document or the performance of the Services by the ITS Contractor; or
- (b) upon termination of this document under clause 40.

3.4 Return of Security

- (a) Subject to its rights under this document, including any right of setoff, RMS must return the Security in accordance with this clause 3.4.
- (b) RMS must return 50% of the Security then held to the ITS Contractor within 40 Business Days of the latest of:
 - (i) the end of the Contract Term; and
 - (ii) the completion of the Demobilisation and Handover Services.
- (c) Within 40 Business Days of the date which is 12 months after the end of the Contract Term, RMS must return the balance of the Security to the ITS Contractor less the amount that RMS determines, in its absolute discretion, as being required as security for:
 - (i) all Project Works that have not achieved Completion;
 - (ii) all Defect Liability Periods that have not yet expired for Project Works; and
 - (iii) the performance of any Services that are required to be performed by the ITS Contractor after the expiry of the Contract Term under clause 7.2(b)(ii).
- (d) RMS must return any remaining Security to the ITS Contractor within 40 Business Days of the later of:
 - (i) the expiry of all Defect Liability Periods for Project Works;
 - (ii) rectification of all Defects notified to the ITS Contractor in accordance with the Work Terms; and

- (iii) completion of any Services that are required to be performed by the ITS Contractor after the expiry of the Contract Term under clause 7.2(b)(ii).
- (e) If this document terminates under clause 1A.3 or clause 2.6, RMS must return the Security to the ITS Contractor within 20 Business Days of such termination.

3.5 Replacement of Security

- (a) Not less than 30 Business Days before:
 - (i) the expiry of any Security Bond; or
 - (ii) RMS is required to return any Security under clause 3.4 or 41.4,
the ITS Contractor must procure the issue to RMS of a Security Bond which:
 - (iii) has a face value equal to the amount of Security that RMS is entitled to hold in accordance with clause 3.1, 3.4 or 41.4(b), as applicable;
 - (iv) satisfies the requirements of clause 3.2 (other than clause 3.2(e)); and
 - (v) is a continuing liability without expiry or, if the Security Bond is to have an expiry date, such date must be no earlier than 12 months from the date of issue of the replacement Security Bond,

and RMS must promptly surrender the relevant Security Bond to the ITS Contractor following the issue of the replacement Security Bond.

- (b) If the ITS Contractor fails to replace any Security Bond when required under paragraph (a), RMS may have recourse to the Security. RMS may hold any such proceeds as security in lieu of the replacement Security Bond until the Security Bond is replaced in accordance with paragraph (a).
- (c) If the issuer of any Security Bond ceases to have the Mandatory Credit Rating, the ITS Contractor must:
 - (i) promptly notify RMS of that circumstance; and
 - (ii) within 15 Business Days of being requested to do so, procure the issue to RMS of a replacement Security Bond which must have a face value equal to that of the Security Bond being replaced and must satisfy the requirements of clause 3.2,

and RMS will promptly surrender the Security Bond being replaced to the ITS Contractor following the issue of the replacement Security Bond.

3.6 No injunction

The ITS Contractor must not institute any proceedings, exercise any right or take any steps to injunct or otherwise restrain:

- (a) the issuer of a Security Bond from paying RMS pursuant to that Security Bond;
- (b) RMS from having recourse to the Security or receiving payment under the Security;
or
- (c) RMS from using the proceeds of the Security,

even when the ITS Contractor disputes RMS' right to have recourse to the Security or to payment (including where the dispute resolution procedure in clause 36 has been commenced).

3.7 **Deed of Guarantee and Indemnity**

On or before the Condition Precedent Deadline Date, the ITS Contractor must provide to RMS a Deed of Guarantee and Indemnity executed by an entity acceptable to RMS.

4. **ACCESS**

4.1 **RMS grants access**

RMS will allow the ITS Contractor and its Subcontractors sufficient access to:

- (a) the Zone;
- (b) applicable areas outside the Zone; and
- (c) the Assets,

to enable the ITS Contractor to carry out the Services on the terms set out in this document.

4.2 **Access for RMS, its contractors and others**

- (a) The access granted to the ITS Contractor and its Subcontractors under clause 4.1 is not exclusive.
- (b) RMS and its employees, contractors and agents may access the Zone, relevant areas outside the Zone and any Assets at any time, including:
 - (i) for RMS' operational purposes;
 - (ii) for the purpose of inspecting and verifying the ITS Contractor's performance of the Services; and
 - (iii) to perform work which is outside the scope of this document.
- (c) RMS may also give approval to other contractors to access any Assets to perform works for third parties.

4.3 **Road closure**

- (a) A Relevant Body may require that any Road within the Zone or any part of any Road within or in the vicinity of the Zone (including a Lane or Lanes) is closed for a specified period of time.
- (b) Where a Relevant Body closes any Road within or in the vicinity of the Zone or any part of any Road within or in the vicinity of the Zone (including a Lane or Lanes), for the period that the Road or part of the Road is closed, the ITS Contractor must, if directed by a Relevant Body:
 - (i) cease provision of the Services to the extent specified by the Relevant Body; and/or
 - (ii) remove any ITS Contractor's Plant and Materials from any Road or part of any Road that is closed.

4.4 Lane Closures

- (a) Where the ITS Contractor proposes to undertake any Services which will or are likely to obstruct or have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any Lane of any Road, it must obtain a Road Occupancy Licence in accordance with the process set out in section 4.14 of the ITS MC Service Requirements.
- (b) Notwithstanding that the ITS Contractor is entitled to close any Lane, RMS may at any time direct the ITS Contractor to temporarily cease any work and to re-open the Lane of any Road.

4.5 Compliance with Road Occupancy Licence

In undertaking any Services which result in a closure of a Lane or Lanes, the ITS Contractor must comply with the terms of the applicable Road Occupancy Licence and all other necessary Approvals.

4.6 Directions to re-open a Lane or Lanes

- (a) A Relevant Body may at any time direct the ITS Contractor to cease any Services the subject of a Road Occupancy Licence and to re-open any closed Lane or Lanes, notwithstanding the terms of any Road Occupancy Licence issued by TMC to the ITS Contractor.
- (b) The ITS Contractor must ensure that any re-opened Lane is clean and tidy and, if directed by a Relevant Body, remove any ITS Contractor's Plant and Materials from any re-opened Lane and the surrounding area.

4.7 Instructions from Emergency Services

Notwithstanding any other provision of this document, the ITS Contractor:

- (a) must not restrict, close, interfere with or obstruct the free flow of traffic on any Lane contrary to the instructions of any Emergency Service; and
- (b) in restricting, closing, interfering with or obstructing the free flow of traffic on any Lane or Lanes, must act in accordance with any instructions of an Emergency Service including to cease any of the Services and to re-open the Lane or Lanes.

4.8 Access to property and Roads

- (a) The ITS Contractor must obtain all necessary permissions, permits, licences and consents to enter upon any property for the purpose of performing the Services.
- (b) The ITS Contractor must use all reasonable endeavours not to interfere with the operation and use of any Roads, including without limitation, any privately owned and operated Roads.

4.9 RMS Interface Agreements

The ITS Contractor must:

- (a) ensure that it has read and understood the terms of all RMS Interface Agreements; and
- (b) carry out and complete the Services so as to enable RMS to comply with the terms of the RMS Interface Agreements.

5. RMS ASSETS

5.1 RMS Plant and Equipment

- (a) During the Mobilisation Stage the ITS Contractor may purchase RMS Plant and Equipment in accordance with the procedure set out in section 7.2 of the Brief for Transition Services.
- (b) RMS makes no representation and gives no warranty as to the adequacy or suitability of any RMS Plant and Equipment and nothing in this document will constitute or imply a warranty or undertaking by or on behalf of RMS as to the fitness or suitability of the RMS Plant and Equipment for the performance of the Services or any other purpose.
- (c) If the ITS Contractor elects to purchase any RMS Plant and Equipment:
 - (i) the parties must enter into a Sale Agreement in respect of such RMS Plant and Equipment;
 - (ii) RMS will:
 - (A) transfer and surrender to the ITS Contractor all of RMS' right, title and interest in and to such RMS Plant and Equipment free of any Security Interests;
 - (B) cooperate with the ITS Contractor in connection with the transfer of ownership of the RMS Plant and Equipment; and
 - (C) use its best endeavours to provide the ITS Contractor with the benefit of any warranties which RMS holds with respect to the RMS Plant and Equipment to the extent that RMS is permitted to do so by Law or under the terms of the relevant warranties; and
 - (iii) the ITS Contractor:
 - (A) accepts the RMS Plant and Equipment in its condition and state of repair at the time of purchase; and
 - (B) releases RMS from all Claims that the ITS Contractor may have which in any way arise out of or are connected with the RMS Plant and Equipment or the ITS Contractor's use of the RMS Plant and Equipment.

5.2 RMS Leased Plant and Equipment

- (a) During the Mobilisation Stage the ITS Contractor may negotiate with RMS and any RMS Plant and Equipment Lessor to take over the lease of any RMS Leased Plant and Equipment.
- (b) RMS makes no representation and gives no warranty as to the adequacy or suitability of any RMS Leased Plant and Equipment and nothing in this document will constitute or imply a warranty or undertaking by or on behalf of RMS as to the fitness or suitability of the RMS Leased Plant and Equipment for the performance of the Services or any other purpose.
- (c) If the ITS Contractor elects to take over the lease for any RMS Leased Plant and Equipment:
 - (i) RMS will:

- (A) cooperate with the ITS Contractor in connection with any negotiations with the RMS Plant and Equipment Lessor; and
 - (B) execute such deeds of novation or other documents as may be requested by the ITS Contractor to enable the ITS Contractor to take over the lease for such RMS Leased Plant and Equipment; and
- (ii) the ITS Contractor:
- (A) accepts the RMS Leased Plant and Equipment in its condition and state of repair at the time of taking over the lease; and
 - (B) releases RMS from all Claims that the ITS Contractor may have which in any way arise out of or are connected with the RMS Leased Plant and Equipment or the ITS Contractor's use of the RMS Leased Plant and Equipment.

5.3 **RMS Depots**

- (a) During the Mobilisation Stage the ITS Contractor may negotiate with RMS to use the RMS Depots for the purpose of providing the Services.
- (b) If the ITS Contractor and RMS agree that the ITS Contractor may use any RMS Depots the ITS Contractor must:
 - (i) enter into an RMS Depot Licence in respect of such RMS Depots; and
 - (ii) access and use the RMS Depots subject to the terms of the RMS Depot Licence.

6. **THE SERVICES**

6.1 **General**

Without limiting clauses 1.1, 1.2 and 1.4, the ITS Contractor must:

- (a) perform the Services in accordance with this document;
- (b) exercise and cause to be exercised all reasonable skill, care, judgment and diligence in the performance of the Services and its other obligations under this document;
- (c) keep the Zone and all Assets and any ITS Contractor's Plant clean and tidy and regularly remove from any place where the Services are being performed any Waste arising from such performance or surplus ITS Contractor's Plant or Material;
- (d) maintain and promptly update the AMS; and
- (e) comply with its other obligations under this document.

6.2 **Scope of Services**

- (a) Without limiting clauses 1.1, 1.2 and 1.4, the Services include:
 - (i) all works and services specifically referred to in or otherwise contemplated by this document;
 - (ii) all works and services not specifically referred to or described in this document which nonetheless are required to complete the Services;

- (iii) all works and services referred to in this document or otherwise necessary for the Services to meet the standards required by this document but omitted from this document (those omitted items are included in the Services unless the context requires otherwise); and
 - (iv) all works and services reasonably inferred from this document as necessary to properly execute and complete the Services.
- (b) The ITS Contractor acknowledges and warrants that:
- (i) it is both experienced and expert in services of the type and scale of the Services; and
 - (ii) each Forward Works Program and Special Project Proposal makes full allowance for the matters referred to in this clause 6.2.

6.3 **Services for third parties**

- (a) The ITS Contractor may provide maintenance services in respect of intelligent transport systems for third parties inside or outside of the Zone which utilise ITS MC Resources subject to the terms of this clause 6.3.
- (b) Prior to providing any services of the nature contemplated by paragraph (a) for any third party, the ITS Contractor must notify RMS in writing and provide details regarding:
 - (i) the services that are proposed to be provided;
 - (ii) the third party for which services are proposed to be provided;
 - (iii) the ITS MC Resources that are proposed to be utilised to provide such services; and
 - (iv) any benefits or cost savings to the ITS Contractor which will arise from the utilisation of the ITS MC Resources to provide the services.
- (c) Following receipt by RMS of a notice under paragraph (b), the parties must meet and seek to agree the operational and commercial basis upon which the ITS Contractor will utilise the relevant ITS MC Resources to provide the maintenance services in respect of intelligent transport systems for the third party.
- (d) The ITS Contractor acknowledges and agrees that:
 - (i) it may not utilise ITS MC Resources to provide maintenance services in respect of intelligent transport systems for any third party where doing so would adversely affect:
 - (A) the ITS Contractor's ability to perform the Services or any of its other obligations under this document in accordance with the requirements of this document; or
 - (B) RMS' ability to utilise any RMS Depots (which are shared by RMS and the ITS Contractor) to carry out works or services not otherwise connected with this document;
 - (ii) any benefits or cost savings to the ITS Contractor which may arise from the use of any ITS MC Resources to provide maintenance services in respect of intelligent transport systems for any third party must be shared equally with RMS.

- (e) If:
 - (i) the parties are unable to agree the matters contemplated by paragraph (c); or
 - (ii) RMS, acting reasonably, considers that the requirements of paragraph (d) are not satisfied,

RMS may direct that the ITS Contractor not use all or part of the relevant ITS MC Resources to provide the maintenance services in respect of intelligent transport systems to the relevant third party and the ITS Contractor must comply with such direction.

6.4 **RMS may engage other contractors to carry out works and services within the Zone**

The ITS Contractor acknowledges and agrees that:

- (a) this document does not grant the ITS Contractor an exclusive right to carry out all works and services required to maintain, repair, upgrade or improve the intelligent transport system assets and infrastructure within the Zone; and
- (b) RMS may engage other contractors to carry out any such works and services within the Zone for any reason.

7. **FORWARD WORKS PROGRAMS**

7.1 **Compliance with the Forward Works Program**

The ITS Contractor must:

- (a) carry out and complete the Services contemplated by the Forward Works Program prior to the expiry of the relevant Works Period; and
- (b) comply with the Forward Works Program.

7.2 **Completion of the Services contemplated by the Forward Works Program**

- (a) No later than 20 Business Days after the expiry of each Works Period, RMS will provide the ITS Contractor with written notice which:
 - (i) states that all Services contemplated by the Forward Works Program have been carried out and completed; or
 - (ii) notifies the ITS Contractor of the Services contemplated by the Forward Works Program that have not been carried out and/or completed.
- (b) If RMS issues a notice under paragraph (a)(ii) and the expiry of the Works Period:
 - (i) is earlier than the Expiry Date:
 - (A) the ITS Contractor must complete the Services specified in the notice and the terms of the Forward Works Program for the expired Works Period will continue to apply; and
 - (B) without limiting paragraph (A), RMS, at its absolute discretion, may direct that any element of such Services not commenced by the ITS Contractor prior to the expiry of the Works Period will form part of the Forward Works Program for the next Works Period, in which case

RMS will direct a Change to the Forward Works Programs for the current Works Period and the expired Works Period (to the extent that it is necessary to do so); or

- (ii) corresponds with the Expiry Date, RMS may, at its absolute discretion, direct the ITS Contractor to carry out and complete any Services remaining to be completed following the Expiry Date and the terms of this document will continue to apply.
- (c) A notice issued by RMS under paragraph (a) will not:
 - (i) constitute an approval by RMS of the ITS Contractor's performance of its obligations under this document;
 - (ii) be taken as an admission or evidence that the Services, or any part of the Services complies with the requirements of this document; or
 - (iii) prejudice any rights or powers of RMS under this document or otherwise at law.
- (d) If RMS issues a notice under clause 7.2(a)(ii), the ITS Contractor will not be entitled to any additional payment for the provision of:
 - (i) such elements of the Services; and
 - (ii) Program Management in respect of such elements of the Services.
- (e) Paragraph (d) will apply irrespective of whether or not RMS directs under clause 7.2(b)(i)(B) that such elements of the Services will form part of the next Forward Works Program.

7.3 Development of the Forward Works Program

- (a) The parties will develop and agree the Forward Works Program for each Works Period in accordance with the process set out in section 1 of Schedule 8.
- (b) The Forward Works Program for each Works Period must be finalised by no later than 3 months prior to the expiry of the current Works Period.

7.4 Failure to agree the Forward Works Program

- (a) If the parties are unable to agree the Forward Works Program by the time contemplated by clause 7.3(b), then, unless RMS issues a notice under paragraph (c):
 - (i) the ITS Contractor must immediately commence provision of the Demobilisation and Handover Services; and
 - (ii) this document will automatically terminate at the end of the current Works Period.
- (b) Following termination as contemplated by paragraph (a)(ii), the ITS Contractor will be entitled to payment of:
 - (i) the amounts contemplated by clauses 41.3(a)(i) to 41.3(a)(iii); and
 - (ii) any other amounts payable under the terms of this document for Services performed after termination.

- (c) RMS may, in its absolute discretion, extend the period for development of the Forward Works Program by such further period as RMS considers appropriate. RMS may do so by issuing a written notice to the ITS Contractor.
- (d) If RMS issues a notice under paragraph (c):
 - (i) the process set out in section 1 of Schedule 8 will continue to apply in respect of those parts of the Forward Works Program not agreed; and
 - (ii) following the expiry of the current Works Period, RMS, at its election, may:
 - (A) direct the ITS Contractor to carry out:
 - (aa) such elements of the Forward Works Program as have been agreed between the parties; and/or
 - (bb) such maintenance services in respect of intelligent transport systems within the Zone as are required by RMS in consideration for payments calculated in accordance with Pricing Tables 8A, 8B, 8C and 9A; or
 - (B) carry out itself, or engage other contractors to carry out any maintenance services within the Zone.
- (e) If RMS directs the ITS Contractor under paragraph (d)(ii)(A)(aa) to carry out agreed elements of the Forward Works Program, the ITS Contractor will be paid for such Services:
 - (i) if the basis of payment for such Services has been agreed between the parties, on such agreed basis; or
 - (ii) if the basis of payment for such Services has not been agreed between the parties, on the basis contemplated by the previous Forward Works Plan.
- (f) If RMS and the ITS Contractor have not agreed the Forward Works Program by the period specified in a notice issued under paragraph (c):
 - (i) if RMS has not issued a direction under paragraph (d)(ii)(A), this document will automatically terminate on the expiry of such period; or
 - (ii) if RMS has issued a direction under paragraph (d)(ii)(A):
 - (A) RMS may by notice in writing require the ITS Contractor to continue providing such services for a period required by RMS which will not exceed the duration of the next Works Period; and
 - (B) following the expiry of such period this document will automatically terminate.

8. SPECIAL PROJECTS

8.1 General

The parties acknowledge and agree that during the Contract Term RMS:

- (a) may require works to be undertaken inside or outside the Zone as Special Projects which are in addition to the Services contemplated by the Forward Works Program;

- (b) may, in its absolute discretion, seek a Special Project Proposal from the ITS Contractor in respect of such works; and
- (c) is under no obligation to engage the ITS Contractor to undertake such works as a Special Project and may carry out such works itself or engage any other person to carry out such works.

8.2 **Special Project Proposal**

- (a) RMS may, at any time during the Contract Term, issue to the ITS Contractor a notice in respect of a proposed Special Project entitled "Special Project Proposal Request".
- (b) Within 10 Business Days of receipt of a notice under paragraph (a), the ITS Contractor must, at its cost, provide RMS with:
 - (i) a scope of works for the preparation of the Special Project Proposal;
 - (ii) a program for the preparation of the Special Project Proposal;
 - (iii) an estimate of the costs of preparing the Special Project Proposal which are additional to the amounts payable in respect of Program Management for the current Forward Works Program; and
 - (iv) the effect (if any) which the ITS Contractor anticipates that the performance of the Special Project will have on the ITS Contractor's current Forward Works Program and any other Services which are required to be performed by the ITS Contractor under this document.
- (c) Within the time set out in the program contemplated by paragraph (b)(ii) (or such other period agreed between the parties) and following the issue by RMS of a notice to proceed, the ITS Contractor must provide RMS with a Special Project Proposal which must set out:
 - (i) a proposal for delivery of the Special Project;
 - (ii) details of the scope and proposed specifications for the Special Project;
 - (iii) the ITS Contractor's proposed method and program for the Special Project;
 - (iv) the ITS Contractor's estimate for the cost of undertaking the Special Project calculated in accordance with the Pricing Schedule having regards to the Payment Type for the Special Project specified by RMS in its Special Project Proposal Request;
 - (v) further details regarding the effect (if any) which the ITS Contractor anticipates that the performance of the Special Project will have on the ITS Contractor's current Forward Works Program and any other Services which are required to be performed by the ITS Contractor under this document; and
 - (vi) any other details specified by RMS in its "Special Project Proposal Request".
- (d) RMS and the ITS Contractor must seek to agree within 10 Business Days of the ITS Contractor's notice under paragraph (c):
 - (i) the price for the Special Project calculated in accordance with the Pricing Schedule; and

- (ii) the inputs for Schedule 1 of the Work Terms applicable to the Special Project (including the Date for Completion).
- (e) RMS will, if the parties agree the terms on which the ITS Contractor will carry out the Special Project, issue a Special Project Order.
- (f) If the parties cannot reach agreement within the time specified in paragraph (d) or such other period as the parties may agree, RMS may seek competitive tenders for the work comprising the Special Project.
- (g) In the circumstances set out in paragraph (f), RMS will pay the ITS Contractor the reasonable and properly incurred cost of preparing its Special Project Proposal provided that RMS, acting reasonably, considers that the Special Project Proposal, despite not being acceptable to RMS, was nevertheless technically and commercially reasonable.

8.3 **Special Project Orders**

- (a) The ITS Contractor must not commence the carrying out of a Special Project unless RMS has issued a Special Project Order.
- (b) RMS may issue a Special Project Order by email, facsimile, post or verbally. RMS will only issue a Special Project Order verbally where RMS considers it appropriate to do so and where the work is urgently required. RMS will confirm the Special Project Order issued verbally in writing as soon as possible.

8.4 **Special Projects to be carried out concurrently with other Services**

The ITS Contractor acknowledges and agrees that, except as specified in a Special Project Proposal and agreed by RMS, the ITS Contractor must carry out Special Projects concurrently with other work and must ensure that Special Projects do not impact on any other elements of the Services.

9. **PROJECT WORKS**

9.1 **Work Terms**

- (a) The ITS Contractor must carry out all Project Works in accordance with the relevant Work Terms and this document.
- (b) The terms of the General Conditions will take precedence over the Work Terms to the extent of any inconsistency.

9.2 **Expiry of the Contract Term**

To the extent that the ITS Contractor has not, prior to the Expiry Date, satisfied any of its obligations under the Work Terms or this document for:

- (a) any Special Project; or
- (b) any Minor Improvement Works or Strategic ITS Asset Renewal and Replacement Works that are the subject of a direction under clause 7.2(b)(ii),

such obligations will survive the expiry of the Contract Term.

10. CHANGES

10.1 RMS may direct Changes

- (a) RMS may direct a Change in writing at any time during the Contract Term, and the ITS Contractor must comply with such direction.
- (b) Without limiting the generality of paragraph (a), the ITS Contractor acknowledges and agrees that during the Contract Term RMS may direct a Change which arises out of or is connected with any projects commissioned by RMS, TfNSW or any other Authority and the ITS Contractor must comply with such direction.

10.2 Proposed Changes

- (a) If requested by RMS, the ITS Contractor must advise RMS in writing of:
 - (i) the cost and quality implications (if any) of a proposed Change; and
 - (ii) any other effect on the Services or on any matter specified, within the time specified in the request.
- (b) In advising RMS of its effect on the Services, the ITS Contractor acknowledges its responsibilities under clause 10.4.

10.3 Valuation of Changes

- (a) The parties must endeavour to agree the value and effect of a Change or a proposed Change having regard to the Pricing Schedule.
- (b) The ITS Contractor must not implement any proposed Change until:
 - (i) the parties have agreed on its cost, time and quality implications and other effects (if any) on the Services; or
 - (ii) RMS directs the ITS Contractor to proceed under clause 10.1.
- (c) If RMS has directed a Change under clause 10.1 and the parties are unable to agree the value and effect of the Change under this clause 10.3:
 - (i) the ITS Contractor must implement the Change if directed to do so by RMS; and
 - (ii) either party may refer the matter for resolution under clause 36.

10.4 Carrying out a Change

In carrying out a Change, the ITS Contractor must:

- (a) carry out any additional work associated with the Change concurrently with other work wherever possible; and
- (b) otherwise minimise the effect of the Change on the carrying out of the Services.

10.5 Claim for Change by the ITS Contractor

- (a) Regardless of any other provision of this document, if the ITS Contractor considers that a Change applies but RMS has not directed a Change, the ITS Contractor may, by notice in writing to RMS, make a claim within 10 Business Days from the occurrence of the event giving rise to the Change, or from the time when the event

should have become known to the ITS Contractor with reasonable diligence on its part.

- (b) If an event that is the subject of a notice issued by the ITS Contractor under paragraph (a) constitutes a Change, such Change will be valued under clause 10.3.

10.6 **Omissions**

If RMS directs a Change decreasing or omitting any work or services from the Services:

- (a) RMS may thereafter either perform such work or services itself or employ or engage another person or persons to do so; and
- (b) RMS will not be liable in respect of any Claim (insofar as is permitted by Law) by the ITS Contractor as a result of any work or services being omitted or deleted from the Services whether or not RMS thereafter performs such work or services itself or employs or engages another person or persons to do so.

10.7 **Change Events**

- (a) If the ITS Contractor considers that a Change Event has occurred, the ITS Contractor may, by notice in writing to RMS, make a claim within 5 Business Days from the occurrence of the Change Event, or from the time when the Change Event should have become known to the ITS Contractor with reasonable diligence on its part. Any notice issued by the ITS Contractor under this paragraph (a) must include details of the Change Event.
- (b) As soon as practicable but no later than 15 Business Days after the issue of notice under paragraph (a), the ITS Contractor must provide RMS with details of:
 - (i) the impact of the Change Event on:
 - (A) the Services;
 - (B) the cost to the ITS Contractor of providing the Services; and
 - (C) the program for provision of the Services, including any Milestone; and
 - (ii) any other matters that the ITS Contractor considers relevant or are required by RMS.
- (c) Following receipt of the information under paragraph (b), the parties must endeavour to agree the value and effect of a Change Event having regard to the Change Benchmarking Guide and the Pricing Schedule.
- (d) If the parties are unable to agree the value and effect of a Change Event either party may refer the matter for resolution under clause 36.
- (e) The ITS Contractor must take all reasonable steps to avoid or minimise the consequences of any Change Event.

11. **LAW GUIDELINES AND GOVERNMENT REQUIREMENTS**

11.1 **Law**

The ITS Contractor must:

- (a) in carrying out the Services comply with all Law;

- (b) give all notices necessary to comply with all Law; and
- (c) pay all fees, charges and other imposts necessary to comply with the requirements of all Law, including all Approvals.

11.2 **Relevant Authorities**

- (a) Unless otherwise provided in this document, the ITS Contractor must, before carrying out any Services, notify all relevant Authorities whose approval is required for the Services or whose interests may be affected by the carrying out of the Services.
- (b) The ITS Contractor must:
 - (i) obtain and maintain all Approvals necessary for the performance of the Services; and
 - (ii) give all notices necessary to comply with the requirements of any Authority.
- (c) The ITS Contractor must give to RMS upon request copies of documents issued to the ITS Contractor by any Authority or to any Authority by the ITS Contractor, in respect of the Services and in particular, any Approvals in connection with the Services. The ITS Contractor must provide the original documents to RMS at the end of the Contract Term.

11.3 **Other Authorities**

The ITS Contractor acknowledges and agrees that:

- (a) there are Authorities (other than RMS) with jurisdiction over parts of the Zone or aspects of the Services; and
- (b) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Services.

11.4 **Compliance with policies, codes and guidelines**

Without limiting its other obligations under this document, the ITS Contractor must:

- (a) comply with:
 - (i) all RMS policies that are applicable to the Services and which are notified to the ITS Contractor;
 - (ii) the RMS Statement of Business Ethics;
 - (iii) the RMS Customer Charter;
 - (iv) NSW Government Policy Documents;
 - (v) all relevant statutory reporting requirements; and
 - (vi) its obligations under clauses 11.4A to 11.13; and
- (b) demonstrate to RMS its compliance with paragraph (a) whenever RMS requests it to do so.

11.4A NSW Code and NSW Guidelines

(a) **Interpretation of this clause**

In addition to terms defined in this document, terms used in this clause 11.4A have the same meaning as is attributed to them in the NSW Code and the NSW Guidelines. The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

(b) **Primary obligations**

- (i) The ITS Contractor must at all times comply with, and meet any obligations imposed by, the NSW Code and NSW Guidelines.
- (ii) The ITS Contractor must notify the CCU and RMS of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (iii) Where the ITS Contractor engages a subcontractor or consultant, the ITS Contractor must ensure that that contract imposes on the subcontractor or consultant equivalent obligations to those in this clause 11.4A (under the heading NSW Code and NSW Guidelines), including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (iv) The ITS Contractor must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

(c) **Access and information**

- (i) The ITS Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors, consultants and related entities.
- (ii) The ITS Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (A) enter and have access to sites and premises controlled by the ITS Contractor, including but not limited to the project site;
 - (B) inspect any work, material, machinery, appliance, article or facility;
 - (C) access information and documents;
 - (D) inspect and copy any record relevant to the project;
 - (E) have access to personnel; and
 - (F) interview any person,as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the ITS Contractor, its subcontractors, consultants, and related entities.
- (iii) The ITS Contractor, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

(d) **Sanctions**

- (i) The ITS Contractor warrants that at the time of entering into this document, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (ii) The ITS Contractor acknowledges that:
 - (A) if the ITS Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
 - (B) where a sanction is imposed:
 - (aa) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (bb) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - (cc) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
 - (dd) take them into account in the evaluation of future procurement processes and responses that may be submitted by the ITS Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

(e) **Compliance**

- (i) The ITS Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The ITS Contractor is not entitled to make a claim for reimbursement or an extension of time from RMS or the State of NSW for such costs.
- (ii) Compliance with the NSW Code and NSW Guidelines does not relieve the ITS Contractor from responsibility to perform the works and any other obligation under the contract, or from liability for any defect in the works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (iii) Where a change in the contract or works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the ITS Contractor must immediately notify RMS (or nominee) of the change, or likely change and specify:
 - (A) the circumstances of the proposed change;
 - (B) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
 - (C) what steps the ITS Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to the Industrial Relations Plan or the WHS Management Plan)

- (iv) RMS will direct the ITS Contractor as to the course it must adopt within 10 Business Days of receiving notice.

11.5 Accreditation and prequalification

- (a) The ITS Contractor (or one or more of the entities that comprise the ITS Contractor) must achieve and maintain the prequalification levels required by RMS from time to time for each Prequalified Area of Work.
- (b) Without limiting paragraph (a), the ITS Contractor (or one or more of the entities that comprise the ITS Contractor) must achieve and maintain prequalification in the F15 category throughout the Contract Term.

11.6 Work health and safety management

- (a) The ITS Contractor is responsible for and must comply with the requirements of this document for work health and safety in accordance with the express provisions of the WHS Act and the WHS Regulation. This includes the NSW Government "Work Health and Safety Management Systems and Auditing Guidelines" (**WHS Management Systems and Auditing Guidelines**).
- (b) The ITS Contractor must have in place a work health and safety system and ensure such system complies with, and is accredited in accordance with, the WHS Management Systems and Auditing Guidelines.
- (c) The ITS Contractor must systematically manage its work health and safety management processes in accordance with the systems, plans, standards and codes specified in this document.
- (d) The ITS Contractor must review and update the WHS Management Plan so that it remains at all times compliant with Law.

11.7 Engagement as Principal Contractor under the WHS Regulation

- (a) To the extent that the ITS Contractor carries out construction work as part of the Services or as otherwise required under this document, RMS:
 - (i) engages the ITS Contractor as the principal contractor under clause 293 of the WHS Regulation for the construction project(s) which form the relevant parts of the Services, and the ITS Contractor accepts such engagement; and
 - (ii) authorises the ITS Contractor to have management or control of those workplaces necessary to discharge the duties of a principal contractor under Chapter 6 of the WHS Regulation.
- (b) The ITS Contractor shall carry out and ensure compliance with its duties as principal contractor under the WHS Regulation in respect of the engagement referred to in paragraph (a).
- (c) If the ITS Contractor fails to comply with any of its duties referred to in paragraph (b), RMS may have the ITS Contractor's obligations carried out by RMS or by others and the cost incurred by RMS in having those obligations carried out will be a debt due from the ITS Contractor to RMS.
- (d) To the extent permitted by Law, the ITS Contractor indemnifies RMS from and against any damage, expense, loss, liability or claim suffered or incurred by or against RMS to the extent caused or contributed to by a breach by the ITS Contractor of its obligations under this clause 11.7.

- (e) Without limiting the ITS Contractor's obligations elsewhere under this document, the ITS Contractor must, so far as is reasonably practicable:
 - (i) manage risks associated with the carrying out of the construction project(s); and
 - (ii) ensure that all workplaces are secured from unauthorised access, and in doing so, have regard to all relevant matters including risks to health and safety arising from unauthorised access to the workplace, the likelihood of unauthorised access occurring and to the extent that unauthorised access to the workplace cannot be prevented, how to isolate hazards within the workplace.

- (f) Without limiting the ITS Contractor's reporting or other obligations elsewhere under this document, the ITS Contractor must promptly provide RMS with a copy of:
 - (i) the written WHS Management Plan for the workplace, including any revisions that are made to the WHS Management Plan under clause 311 of the WHS Regulation;
 - (ii) the site induction process;
 - (iii) any safe work method statements which have been obtained under clause 312 of the WHS Regulation;
 - (iv) the ITS Contractor's records in relation to the steps the ITS Contractor has taken to make persons carrying out work aware of the content of the WHS Management Plan in accordance with clause 310 of the WHS Regulation;
 - (v) the ITS Contractor's records in relation to the steps the ITS Contractor has taken to comply with clause 314 of the WHS Regulation;
 - (vi) the ITS Contractor's records in relation to the steps the ITS Contractor has taken to comply with clause 315 of the WHS Regulation; and
 - (vii) any other registers, records and documents,

that the ITS Contractor prepares, maintains, keeps or obtains in connection with its obligations as a principal contractor under the WHS Regulation.

- (g) Nothing in this clause 11.7 or elsewhere in this document in any way limits or excludes the obligations the ITS Contractor has as a principal contractor under the WHS Regulation.

- (h) Nothing in this clause 11.7 requires RMS to monitor the ITS Contractor's compliance with this clause 11.7 and the WHS Regulation. Any monitoring or review by RMS is solely for the benefit of RMS and no monitoring, review or approval (or failure to do those actions) by RMS will relieve the ITS Contractor from its obligations under this clause 11.7 and/or the WHS Regulation.

- (i) In this clause 11.7:
 - (i) the terms principal contractor and construction project have the same meanings given to those terms under the WHS Regulation; and
 - (ii) the term workplace has the meaning given to that term under the WHS Act.

11.8 Industrial relations management

- (a) The ITS Contractor must manage all aspects of industrial relations on the Zone and otherwise in connection with this document, and keep RMS informed of industrial relations issues which affect or are likely to affect the carrying out of the Services.
- (b) Subject to the provisions of any Law and the express provisions of this document, the ITS Contractor must comply with the NSW Government "Industrial Relations Management Guidelines".

11.9 Quality management

- (a) The ITS Contractor must systematically manage its processes in accordance with the Quality Management Plan and monitor its own performance and compliance with the systems, processes and procedures specified in the Quality Management Plan.
- (b) The ITS Contractor must:
 - (i) review and update the ITS Contractor's quality management procedures and documentation (including the Quality Management Plan) so as to ensure the quality of the Services complies with the requirements of this document;
 - (ii) establish, maintain and keep records of all activities related to the management of quality; and
 - (iii) provide sufficient access to the workplace, and to information, records and other relevant documentation, resources (including personnel) and all other things necessary to allow RMS to carry out reviews, surveillance and audit of the ITS Contractor's procedures and conformance with the quality management requirements under this document.

11.10 Long service levy

- (a) The ITS Contractor must:
 - (i) pay to the Long Service Corporation or its agent, the amount of the long service levy payable in respect of the construction work under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and
 - (ii) produce to RMS the documentary evidence of payment of the levy, unless RMS agrees to pay the levy directly to the Long Service Corporation.
- (b) If the ITS Contractor applies to the Long Service Corporation to pay the long services levy by instalments, RMS will provide documentation to support the ITS Contractor's application for instalment payment on an annual basis to the Long Service Corporation. This will include RMS' determination of the cost for the purpose of calculating the levy.
- (c) Following receipt of documentary evidence of payment of the levy, RMS will reimburse the ITS Contractor in accordance with Schedule 5.

11.11 Registration and licences

- (a) The ITS Contractor must register all vehicles and ITS Contractor's Plant used in performing work in connection with this document which are required by Law to be registered.

- (b) The ITS Contractor must ensure that all drivers who operate vehicles and ITS Contractor's Plant in performing work in connection with this document are properly and appropriately licensed as required by Law to operate the vehicles or ITS Contractor's Plant.

11.12 Liability under the NGER Legislation

- (a) The ITS Contractor and RMS acknowledge and agree that, subject to paragraph (c), if any of the Services constitute a "facility" within the meaning of the NGER Legislation, then for the purposes of the NGER Legislation, the ITS Contractor has operational control of that facility or facilities.
- (b) If, despite the operation of paragraph (a), RMS incurs a liability under the NGER Legislation as a result of or in connection with the Services, and the NGER Legislation provides that such liability can be transferred by RMS to the ITS Contractor, the ITS Contractor must, upon the request of RMS, do all things reasonably necessary to transfer the liability to the ITS Contractor.
- (c) Nothing in this clause 11.12 is intended to confer any liability on the ITS Contractor under the NGER Legislation in respect of the:
 - (i) operation of any Road within the Zone; or
 - (ii) use of any Road within the Zone by the public.

11.13 Emissions and Energy Data

- (a) If requested by RMS, the ITS Contractor must provide RMS with a copy of the ITS Contractor's Emissions and Energy Data in accordance with paragraph (b). The ITS Contractor acknowledges and agrees that RMS may use the ITS Contractor's Emissions and Energy Data for any purpose as it sees fit.
- (b) The ITS Contractor must:
 - (i) provide the ITS Contractor's Emissions and Energy Data to RMS in the same manner, form and level of detail and based on the same methods as if the ITS Contractor were obliged under the NGER Legislation or any other applicable Law to provide Emissions and Energy Data to an Authority and RMS was that Authority;
 - (ii) retain records of its activities that are the basis of the ITS Contractor's Emissions and Energy Data for any financial year, for a period of not less than 7 years from the end of the year in which the relevant activities take place; and
 - (iii) permit the ITS Contractor's Emissions and Energy Data to be examined, monitored, measured, copied, audited and verified by any persons appointed or authorised for that purpose by RMS or any Authority, and co-operate with and provide all reasonable assistance to any such persons, including giving access to premises and materials, producing and giving access to documents (including any records kept and retained under this paragraph (b)) and answering questions.
- (c) Without limiting paragraph (b), the ITS Contractor must assist RMS to comply with the NGER Legislation in relation to any aspect of the Services.
- (d) The ITS Contractor acknowledges and agrees that RMS may provide or otherwise disclose the ITS Contractor's Emissions and Energy Data to any Authority.

- (e) The ITS Contractor warrants that any Emissions and Energy Data provided to RMS under this clause 11.13 is not false or misleading.

12. **SUBCONTRACTING**

12.1 **ITS Contractor's responsibility**

- (a) The ITS Contractor is solely responsible for:
 - (i) all Personnel and all Subcontractor's subcontractors, consultants and suppliers (of any tier in this contracting chain) and their officers, employees and agents, including any act or omission by such persons; and
 - (ii) the consequences of the termination of any Subcontract.
- (b) The ITS Contractor must not subcontract the whole of the Services, but may subcontract parts of the Services in accordance with this clause 12.
- (c) The ITS Contractor must employ, and must ensure that its Subcontractors employ, in connection with the Services only such persons as are careful, skilled and experienced in their respective trades and callings and who are competent to perform any work or services for which they are engaged.
- (d) The ITS Contractor must maintain a register of all Subcontractors engaged in the provision of the Services, which must include:
 - (i) the names and addresses of all Subcontractors; and
 - (ii) details of the scope of work for all Subcontractors.

12.2 **Engaging Subcontractors**

- (a) Before engaging any Subcontractor the ITS Contractor must:
 - (i) provide RMS with:
 - (A) the name and address of the proposed Subcontractor; and
 - (B) details of the proposed scope of work for the Subcontractor; and
 - (ii) if requested by RMS, provide to RMS copies of any Subcontracts (including all pricing information).
- (b) RMS may object to the appointment of any proposed Subcontractor on reasonable grounds. If RMS objects to any proposed Subcontractor the ITS Contractor must at its own cost propose another Subcontractor.
- (c) For each trade or area of work or services which is a Prequalified Area of Work the ITS Contractor must use only Subcontractors prequalified in that category unless:
 - (i) the ITS Contractor is itself prequalified in that category; or
 - (ii) RMS provides the ITS Contractor with written permission to use a particular Subcontractor that is not prequalified for a specified time period.

Upon request, RMS will provide to the ITS Contractor a list of prequalified contractors for each Prequalified Area of Work.

- (d) If the ITS Contractor terminates a Subcontract, this clause 12 will apply to any replacement Subcontract.
- (e) The ITS Contractor may permit a Subcontractor to subcontract part, but not all, of its work.

12.3 Responsibility for Subcontractors

- (a) The ITS Contractor must ensure that all workers who may at any time be employed on activities connected with the Services, either by the ITS Contractor or any Subcontractor, are engaged on terms which are no worse than those prescribed by any:
 - (i) relevant Law;
 - (ii) award applicable to the worker; or
 - (iii) determination, judgment or agreement,concerning the worker's minimum terms of employment.
- (b) The ITS Contractor must include in any Subcontract a clause requiring the Subcontractor to:
 - (i) comply with the provisions of paragraph (a);
 - (ii) include clauses to the effect of this clause in that Subcontract or any subsequent Subcontract or consultancy agreement; and
 - (iii) cooperate with and provide access to the ITS Contractor or any auditor appointed pursuant to paragraph (d) all books, ledgers and other records relating to the payment of wages and other benefits to workers engaged by that Subcontractor in performing any part of the Services so as to verify compliance by the Subcontractor with the requirements of paragraph (a).
- (c) The ITS Contractor must enforce the provisions required by paragraph (b) for each and any part of the Services.
- (d) RMS is entitled to inspect all books, ledgers and other records of wages or other payments made to any persons employed by the ITS Contractor on any Services in respect of that employment, to verify compliance by the ITS Contractor with the requirements of paragraph (a). If directed by RMS, the ITS Contractor must commission a third party auditor (whose identity must first be approved by RMS) to audit the payment of wages and other benefits to all workers engaged on any Services.

12.4 Subcontract provisions

- (a) The ITS Contractor must ensure that each Subcontract includes the following provisions:
 - (i) **(payment)**: payment terms which require the ITS Contractor to make all payments to its Subcontractors within 20 Business Days of receipt of a valid claim for payment from any Subcontractor;
 - (ii) **(audit)**: audit provisions which require the Subcontractor to permit RMS and the ITS Contractor to carry out audits and inspections of the Subcontractors records on the same terms as clause 22;

- (iii) **(novation)**: provisions to allow the novation of each Subcontract to RMS in the circumstances contemplated by clause 44.2(a)(vi); and
 - (iv) **(step-in)**: provisions which will require the Subcontractor to co-operate with and assist RMS if RMS exercises its step-in rights under clause 39.2.
 - (v) **(insurance)**: provisions relating to insurance which will enable the ITS Contractor to comply with its obligations under clause 30.2.
- (b) Where the ITS Contractor is a joint venture, the ITS Contractor must ensure that each Subcontract between the ITS Contractor and any of its joint venture participants includes provisions which require the Subcontractor to provide the ITS Contractor and RMS with open book access to all financial information in any way connected with the Subcontract, including details of:
- (i) all costs incurred by the Subcontractor in carrying out any part of the Services, regardless of the basis upon which the ITS Contractor is paying for such parts of the Services; and
 - (ii) all cost estimates prepared by the Subcontractor under the Subcontract.

PART B – CONTRACT MANAGEMENT

13. INTEGRATED CONTRACT MANAGEMENT SYSTEM (ICMS)

13.1 Purpose

- (a) The intended purpose of and requirements for the ICMS is set out in section 5.1 of the ITS MC Service Requirements.
- (b) The ITS Contractor warrants that the ICMS will at all times be fit for its intended purpose.

13.2 ICMS

The ITS Contractor must establish and implement the ICMS, which must:

- (a) cover all management systems required for the performance of the Services and its other obligations under this document (including the interface with RMS' management systems);
- (b) satisfy the requirements of, as applicable:
 - (i) AS/NZS ISO 9001:2008 for quality management;
 - (ii) AS/NZS ISO 14001:2004 for environmental management;
 - (iii) AS4801:2001 for occupational health and safety;
 - (iv) AS4360:2004 for risk management;
 - (v) all amendments and updates to the standards listed in paragraphs (b)(i) to (b)(iv) (both inclusive) (as from the date of issue of the relevant amendment or update); and
 - (vi) any applicable Authority;
- (c) align the management processes of the ITS Contractor, its Subcontractors and RMS;

- (d) satisfy the other requirements of this document, including section 5 of the ITS MC Service Requirements; and
- (e) maximise the understanding and acceptance by the ITS Contractor, its Subcontractors and RMS of the management processes to be used for the performance of the Services and other obligations under this document.

13.3 **Monitoring and auditing**

The ITS Contractor must allow RMS, and persons authorised by RMS, access to the ICMS and the document management systems of each Subcontractor and their subcontractors, consultants and suppliers (of any tier in this documenting chain) to enable monitoring and auditing. RMS will carry out any such inspections in a manner which does not unreasonably interfere with the ITS Contractor's performance of the Services.

14. **SERVICE PLANS**

14.1 **Service Plans**

- (a) Each Service Plan must:
 - (i) comply with the requirements of the ITS MC Service Requirements; and
 - (ii) be consistent with the Initial Service Plans.
- (b) The ITS Contractor:
 - (i) must comply with the Service Plans; and
 - (ii) agrees that complying with the Service Plans will not in any way lessen or affect:
 - (A) its liabilities or responsibilities under this document or otherwise according to Law; or
 - (B) RMS' rights against the ITS Contractor, whether under this document or otherwise according to Law.
- (c) The ITS Contractor acknowledges and agrees that the Service Plans will require ongoing development, amendment and updating during the Contract Term, including to take into account:
 - (i) the requirements of any Forward Works Program;
 - (ii) updates to any Forward Works Program;
 - (iii) updates to the Overarching Asset Maintenance Plan;
 - (iv) Changes;
 - (v) Changes in Law;
 - (vi) the carrying out of any Special Projects;
 - (vii) the outcomes from each performance review meeting contemplated by clause 20.1; and

- (viii) any other events or circumstances which occur or come into existence and which have, or may have, an effect on the manner in which the ITS Contractor carries out the Services.
- (d) The ITS Contractor warrants that each Service Plan:
- (i) will:
 - (A) contain the contents required by the ITS MC Service Requirements;
 - (B) be fit for its intended purpose; and
 - (C) otherwise comply with the requirements of this document; and
 - (ii) does not infringe any Intellectual Property Rights and any use by RMS (or any person authorised by RMS) of that Service Plan for its intended purpose will not infringe any Intellectual Property Rights.
- (e) The ITS Contractor must promptly develop, amend or update each Service Plan:
- (i) to take into account:
 - (A) the circumstances and events referred to in paragraph (c) as those circumstances and events occur or come into existence; and
 - (B) any breach or potential breach of the warranties referred to in paragraph (d); and
 - (ii) as otherwise required by this document,
- and submit to RMS the developed, amended or updated Service Plan as soon as the further development, amendment or updating is complete. Clause 14.2 will apply to RMS' review of the developed, amended or updated Service Plan.

14.2 **Review of Service Plans**

- (a) The ITS Contractor must submit the Service Plans to RMS:
- (i) no later than 30 Business Days prior to the end of the Mobilisation Stage;
 - (ii) within 10 Business Days of the end of each performance review meeting contemplated by clause 20.1; and
 - (iii) in accordance with clause 14.1(e) when the Service Plans are developed, amended or updated.
- (b) The ITS Contractor must, if required by RMS, ensure that appropriate personnel are available to:
- (i) explain the Service Plans; and
 - (ii) provide such information regarding the Service Plans as RMS reasonably requests.
- (c) Within 20 Business Days after submission by the ITS Contractor of a Service Plan to RMS, RMS will notify the ITS Contractor in writing that:
- (i) the Service Plan is "Not Rejected"; or

- (ii) the Service Plan is "Rejected", if in the reasonable opinion of RMS, that Service Plan does not comply with the requirements of this document, and provide written reasons for the rejection.
- (d) If RMS does not issue a notice under paragraph (c) within the required timeframe, the relevant Service Plan will be deemed to be "Not Rejected".
- (e) The ITS Contractor must, within 10 Business Days of receipt of notice from RMS that a Service Plan is "Rejected", amend that Service Plan and submit it to RMS.
- (f) Paragraph (c) will reapply to the amended Service Plan submitted under paragraph (e), except that the amended Service Plan may be "Rejected" by RMS only in respect of a failure by the ITS Contractor to address the reasons given by RMS when it notified the ITS Contractor that such Service Plan was "Rejected".

14.3 **No restriction on RMS' rights**

RMS and the ITS Contractor acknowledge and agree that:

- (a) RMS and RMS' Representative do not owe a duty to the ITS Contractor:
 - (i) to review any Service Plan submitted by the ITS Contractor to RMS for errors or compliance with the requirements of this document;
 - (ii) in any review undertaken of any Service Plan; or
 - (iii) to consult with the ITS Contractor or to make any comments regarding any Service Plan;
- (b) RMS' or RMS' Representative's review or rejection of, or consultation or comments on, or any other direction or act or omission with respect to any Service Plan (including any failure by RMS or RMS' Representative to review, reject, consult or comment regarding any Service Plan), will not lessen or otherwise affect:
 - (i) the ITS Contractor's warranties under clause 14.1(d) and any of its obligations or liabilities under this document or according to Law; or
 - (ii) RMS' rights against the ITS Contractor under this document or according to Law; and
- (c) RMS' exercise of (or failure to exercise) any of its rights under clause 14.2 will not preclude RMS from subsequently asserting that a Service Plan does not comply with the requirements of this document.

14.4 **No relief**

- (a) The ITS Contractor will not be relieved from any of its obligations under this document or from any of its liabilities under this document or according to Law as a result of:
 - (i) complying with its obligations under clauses 14.1 and 14.2 to develop, amend, update and submit to RMS each Service Plan; or
 - (ii) RMS, or anyone acting on behalf of RMS, failing to detect any non-compliance in any Service Plan or the ITS Contractor's obligations under clauses 14.1 and 14.2, including where any failure arises from any negligence on the part of RMS, RMS' Representative or any other person.

- (b) The ITS Contractor complying with its obligations under clauses 14.1 and 14.2 is not evidence of the ITS Contractor complying with its other obligations under this document.

PART C – ADMINISTRATION

15. MANAGEMENT REVIEW GROUP

15.1 Structure, purpose and role of the Management Review Group

- (a) The Management Review Group will consist of two high level executives from each of RMS and the ITS Contractor.
- (b) The members of the Management Review Group must not have any role in the day to day management of the Services.
- (c) The purpose and role of the Management Review Group is to:
 - (i) provide:
 - (A) leadership to the relationship between RMS and the ITS Contractor;
 - (B) strategic direction to ensure:
 - (aa) the achievement of the RMS Objectives; and
 - (bb) that the Services are carried out in a manner consistent with the Stewardship Principles;
 - (C) high level review of the ITS Contractor's performance of the Services including the achievement of all Milestones; and
 - (D) a forum for resolving those Disputes referred to it pursuant to clause 36.3(b).
 - (ii) determine the matters referred to it in accordance with the terms of this document, including the ITS Contractor's performance against the KPIs and KRAs; and
 - (iii) approve each Forward Works Program.
- (d) The Management Review Group may obtain expert assistance, the cost of which will be borne equally by the parties unless the Management Review Group resolves otherwise.

15.2 Mobilisation of Management Review Group

- (a) For the purposes of the Management Review Group, each party appoints its respective Initial MRG Appointees as its Management Review Group members for a period of no less than two years.
- (b) Each party may replace their appointed Management Review Group members on 10 Business Days' notice with a new member or members of equivalent or higher seniority.
- (c) RMS will nominate one of its appointed Management Review Group members to be the Management Review Group Chairperson.

15.3 **Meetings of Management Review Group**

- (a) Meetings of the Management Review Group must be held:
 - (i) at intervals not exceeding 3 months; or
 - (ii) within 10 Business Days of:
 - (A) any Management Review Group member requesting a meeting; or
 - (B) a Dispute being referred to it pursuant to clause 36.3(b).
- (b) The Management Review Group Chairperson (or their delegate) will convene and chair meetings of the Management Review Group.

15.4 **Quorum and voting**

- (a) A quorum for meetings of the Management Review Group is four members.
- (b) Any resolution of the Management Review Group must be unanimous.
- (c) There is no obligation on any member of the Management Review Group to agree to any resolution.

15.5 **Minutes**

The Management Review Group Chairperson or their delegate will produce minutes which record in writing all resolutions of the Management Review Group and any other agreed matters within one week of each Management Review Group meeting.

15.6 **Resolutions**

Resolutions of the Management Review Group are binding on both parties.

15.7 **Non-delegation of power**

No member of the Management Review Group may delegate any of the member's rights or duties under this clause 15.7 except where:

- (a) the proposed delegate is of equivalent or higher seniority; and
- (b) the other members of the Management Review Group agree in writing to such delegation.

16. **REPRESENTATIVES**

16.1 **ITS Contractor's Authorised Person**

- (a) The ITS Contractor must ensure that at all times there is a person appointed to act with its full authority in all matters relating to this document as the ITS Contractor's Authorised Person.
- (b) If RMS reasonably objects to the person appointed as the ITS Contractor's Authorised Person, the ITS Contractor must replace that person.

16.2 **RMS' Representative**

- (a) RMS must:

- (i) ensure that there is a person appointed to act on behalf of RMS in relation to this document as RMS' Representative;
 - (ii) advise the ITS Contractor in writing of any limitations or qualifications to the powers of RMS' Representative; and
 - (iii) keep the ITS Contractor informed in writing of the name of RMS' Representative and promptly notify the ITS Contractor if the person appointed as RMS' Representative is changed.
- (b) RMS' Representative:
- (i) acts only as an agent of RMS; and
 - (ii) does not act as an independent certifier, assessor or valuer.
- (c) RMS' Representative may delegate any of its powers to others except the power to delegate. RMS will advise the ITS Contractor in writing if RMS' Representative delegates any of its powers to others.

17. **MANAGEMENT TEAM**

17.1 **Structure, purpose and role of the Management Team**

- (a) The Management Team will consist of RMS' Representative and the ITS Contractor's Authorised Person.
- (b) The purpose and role of the Management Team is to:
 - (i) discuss and review the progress of the ITS Contractor's delivery of the Services (including the performance against the Performance Framework) and to identify priorities for improvement;
 - (ii) discuss and review matters addressed in the Monthly Report;
 - (iii) prepare agenda items for discussion at meetings of the Management Review Group and, where appropriate, prepare recommendations for the Management Review Group;
 - (iv) measure, forecast and report performance to the Management Review Group and others, as required;
 - (v) implement the resolutions of the Management Review Group;
 - (vi) review the ITS Contractor's performance against the agreed program and its achievement of all Milestones;
 - (vii) review issues arising out of community relations and community concerns;
 - (viii) review issues arising out of the quality of the Services;
 - (ix) review environmental issues; and
 - (x) review safety issues.
- (c) The Management Team will evaluate and monitor performance of the ITS Contractor's obligations under the Contract.

17.2 **Meetings of Management Team**

- (a) Meetings of the Management Team must be held at intervals not exceeding one month or within 5 Business Days of any member of the Management Team requesting a meeting.
- (b) RMS' Representative will convene and chair the first meeting of the Management Team. Thereafter, RMS' Representative and the ITS Contractor's Authorised Person will alternate to convene and chair meetings of the Management Team.
- (c) RMS' Representative may direct the ITS Contractor to procure the attendance at Management Team meetings of:
 - (i) any Key Personnel;
 - (ii) any Personnel; and
 - (iii) any Subcontractor's subcontractor(s), supplier(s) or consultant(s) (of any tier in the contracting chain) concerned with the matters to be discussed at such meeting.
- (d) The parties must decide jointly on participation in Management Team meetings by other persons concerned with the Services, such as representatives of Authorities, Road users and local community representatives. Participation in meetings does not give the participants any additional rights or responsibilities.
- (e) Each party and any others who participate in the Management Team meetings must meet their own costs for attendance at the meetings and the parties will share equally the other costs.

17.3 **Minutes**

The person chairing the Management Team meeting or their delegate must, within one week of the Management Team meeting, produce minutes which record in writing the discussions and resolutions of the Management Team and any other agreed matters.

17.4 **Resolutions**

Resolutions of the Management Team are binding on both parties, except to the extent RMS has under clause 16.2(a)(ii) relevantly limited or qualified RMS' Representative's powers.

17.5 **Non-delegation of power**

No member of the Management Team may delegate any of their duties under this clause 17 except where:

- (a) the proposed delegate is of equivalent or higher seniority; and
- (b) the other member of the Management Team agrees in writing to such delegation.

18. **PERSONNEL**

18.1 **Requirements for Personnel**

- (a) The ITS Contractor must engage Personnel who:
 - (i) are appropriately qualified, competent and experienced in the provision of the type of services required under this document; and

- (ii) hold and maintain all necessary licences and registrations (if applicable).
- (b) The ITS Contractor must not permit a person appointed in respect of this document to undertake any other assignment which would conflict with the ITS Contractor's obligations under this document or RMS' interests generally.
- (c) The ITS Contractor's responsibility for the performance of the Services and for the performance of its Personnel is not altered in any way by this clause 18 or by anything done in accordance with this clause 18.
- (d) The ITS Contractor must promptly replace any member of its team involved in carrying out the Services who in the reasonable opinion of RMS does not fulfil the criteria set out in paragraph (a).

18.2 Key Personnel

The ITS Contractor must:

- (a) employ the Key Personnel in the jobs specified in Schedule 13;
- (b) ensure that its Subcontractors employ the Key Personnel in the jobs specified in Schedule 13;
- (c) if no name has been specified for a particular position, promptly employ, or ensure that its Subcontractors promptly employ (as applicable), in that position a person:
 - (i) possessing at least the experience, ability and expertise required in relation to the relevant job, as set out in the "Position Description Attributes" column of the table set out in Schedule 13; and
 - (ii) approved by RMS (such approval not to be unreasonably withheld);
- (d) subject to paragraph (e) and clause 15.2(a), not replace, or permit its Subcontractors to replace, any Key Personnel without the prior written approval of RMS; and
- (e) if any Key Personnel dies, becomes seriously ill or resigns from the employment of the ITS Contractor or a Subcontractor (as the case may be), replace, or procure that the relevant Subcontractor replaces, him or her in a timely manner with a person:
 - (i) possessing at least the experience, ability and expertise required in relation to the relevant job, as set out in the "Position Description Attributes" column of the table set out in Schedule 13; and
 - (ii) approved by RMS, which approval must not be unreasonably withheld, (except in the case of the ITS Contractor's Authorised Person, in which case RMS may withhold its approval in its absolute discretion).

18.3 Removal of persons

- (a) RMS may direct the ITS Contractor to remove from any activity connected with the Services, within such time as RMS may direct, any person employed or engaged in connection with the Services who, in the opinion of RMS, is guilty of misconduct or is incompetent or negligent. Misconduct under this clause includes discourteous behaviour towards a member of the public or other user of the Assets.
- (b) Any person who is the subject of:

- (i) a direction under paragraph (a); or
- (ii) a similar direction issued by RMS under any other maintenance contract between RMS and any other service provider,

must not be re-employed on activities connected with the Services without the prior written approval of RMS, which approval will not be unreasonably withheld or delayed.

- (c) The ITS Contractor must not allow any Personnel to use the Zone or any of the Assets for any purpose other than in connection with the Services or in connection with their rights as members of the public.

PART D – PERFORMANCE MANAGEMENT

19. PERFORMANCE REPORTING

19.1 Monthly Report

By no later than 10 Business Days after the end of each month, the ITS Contractor must provide RMS with a Monthly Report which includes:

- (a) the details required by section 4.12.3 of the ITS MC Service Requirements; and
- (b) such other information reasonably requested by RMS.

19.2 Annual Report

By no later than 20 Business Days after the end of each Contract Year, the ITS Contractor must provide RMS with an Annual Report which includes:

- (a) the details required by section 4.12.9 of the ITS MC Service Requirements; and
- (b) such other information reasonably requested by RMS.

19.3 Performance improvement plan

- (a) No later than 2 years prior to the Original Expiry Date, the ITS Contractor must submit to RMS a report which:

- (i) details the ITS Contractor's performance against the Performance Framework prior to this date, including details of:

- (A) KPI Scores;
- (B) KRA Scores;
- (C) Overall Performance Scores; and
- (D) any other performance related information reasonably required by RMS; and

- (ii) sets out a plan outlining the measures that the ITS Contractor proposes to implement for the remainder of the Contract Term to improve its performance.

- (b) RMS may have regard to the report contemplated by paragraph (a) when considering whether or not to exercise its discretion to extend the Contract Term under clause 2.2.

20. ANNUAL PERFORMANCE REVIEWS

20.1 Annual performance review meeting

- (a) No later than 20 Business Days after the end of each Contract Year, RMS and the ITS Contractor must meet to review and discuss the ITS Contractor's performance of the Services and its other obligations under this document during the past Contract Year.
- (b) At the meeting contemplated by paragraph (a), the parties must review and discuss:
 - (i) the ITS Contractor's general performance against the current Forward Works Program;
 - (ii) the ITS Contractor's performance against the Performance Framework, including:
 - (A) KPI Scores;
 - (B) KRA Scores; and
 - (C) Overall Performance Scores; and
 - (iii) any other matters required by RMS.

20.2 Review and updating of the Forward Works Program

- (a) As part of the annual performance review contemplated by clause 20.1, RMS and the ITS Contractor must agree if any amendments are required to the current Forward Works Program.
- (b) If RMS and the ITS Contractor agree that amendments to the Forward Works Program are:
 - (i) required, the process in section 2 of Schedule 8 will apply and the parties must agree any amendments to the Forward Works Program by no later than 2 months after the meeting contemplated by clause 20.1 or such other period as may be agreed between the parties; or
 - (ii) not required, the Forward Works Program will, subject to the terms of this document, remain unchanged for the remainder of the Contract Year.
- (c) If, through the process set out in section 2 of Schedule 8, the parties are unable to agree amendments to the Forward Works Program within the time contemplated by paragraph (b)(i), the Forward Works Program will, subject to the terms of this document, remain unchanged for the remainder of the Contract Year.

20.3 Annual review of Spares holdings

- (a) As part of the annual performance review contemplated by clause 20.1, RMS and the ITS Contractor must meet to review and discuss the ITS Contractor's Spares holding for each Asset Type.
- (b) At least 5 Business Days prior to the meeting contemplated by paragraph (a), the ITS Contractor must provide RMS with details of:
 - (i) actual Spares usage for each Asset Type in all previous Contract Years;

- (ii) forecast Spares usage for each Asset Type for the remainder of the Contract Term;
 - (iii) the acquisition cost and current market value of the current Spares holding for each Asset Type; and
 - (iv) the Spares for each Asset Type that the ITS Contractor plans to hold at the end of the Contract Term.
- (c) The ITS Contractor's participation in the meeting contemplated by paragraph (a) and provision of the information contemplated by paragraph (b) does not in any way lessen or affect the ITS Contractor's obligation to review and update the Asset Management Plans in accordance with clause 14 and section 4.3.6 of the ITS MC Service Requirements.

21. ACCESS TO INFORMATION

21.1 Access to Data

The ITS Contractor must:

- (a) give RMS access to Data at all reasonable times;
- (b) provide Data:
 - (i) in a readable format acceptable to RMS (acting reasonably); and
 - (ii) in respect of Performance Data, via an online portal if so requested by RMS;
- (c) ensure the availability and continuous integrity of the Data;
- (d) ensure that all Data is not amended or deleted without RMS' consent; and
- (e) ensure that all Data is accurate; and
- (f) retain a copy of all Data for no less than 3 years after the expiry of the Contract Term.

21.2 Access to AMS

- (a) The ITS Contractor must provide:
 - (i) RMS' Representative; and
 - (ii) four other persons nominated by RMS,

with sufficient access to the AMS to enable those persons to audit, inspect and carry out surveillance:

 - (iii) of the ITS Contractor's performance under this document, including compliance with its obligations in relation to the AMS; and
 - (iv) to check that the AMS complies with section 5.8 of the ITS MC Service Requirements.
- (b) The persons set out in paragraph (a) must be able to access the AMS online at any time.
- (c) RMS will provide written notice to the ITS Contractor confirming the details of the persons it nominates to have access to the AMS pursuant to paragraph (a).

- (d) RMS may, at any time, by written notice to the ITS Contractor replace any person with access to the AMS pursuant to paragraph (a)(ii) with another person nominated by RMS. Once access to the AMS has been given to the replacement person nominated by RMS, the ITS Contractor may cancel the access rights to the AMS of the RMS nominee that has been replaced.

22. **AUDIT**

22.1 **RMS audit**

- (a) RMS (or any person authorised by RMS) may audit, inspect and carry out surveillance of (as relevant) the ITS Contractor's:
 - (i) performance under this document, including performance against the KPIs and KRAs;
 - (ii) compliance with the systems, processes and procedures specified in the ICMS, the Service Plans and any requirements of this document; and
 - (iii) records and Data, to verify the accuracy of any Data, reports and claims provided to RMS, including the Performance Data, the Performance Reports, the Performance Adjustments and the Performance Incentives.
- (b) RMS may carry out audit, inspection and surveillance contemplated by paragraph (a) at any time up to 24 months after the end of the Contract Term.

22.2 **ITS Contractor must assist**

The ITS Contractor must:

- (a) give RMS and any person authorised by RMS access to all accounts and records relating to the carrying out of the Services to the extent necessary to enable an audit as contemplated by this document;
- (b) allow RMS and any person authorised by RMS to have access to the ITS Contractor's premises and Personnel to the extent necessary to inspect or audit the ITS Contractor's documents relating to the carrying out of the Services;
- (c) procure for RMS and any person authorised by RMS access to:
 - (i) Subcontractor's documents relating to any Subcontract and, where reasonably necessary to inspect or audit the Subcontractor's documents, access to a Subcontractor's premises and personnel; and
 - (ii) documents relating to any contract in respect of the carrying out of the Services by a subcontractor, consultant or supplier (of any tier in the contracting chain) of a Subcontractor and, where reasonably necessary to inspect or audit such documents, access to the premises and personnel of that subcontractor, consultant or supplier;
- (d) provide RMS and any person authorised by RMS with such assistance as they may reasonably require in connection with their inspection or audit, including making the ITS Contractor's documents available and installing and operating any compatible audit software; and
- (e) supply to RMS and any person authorised by RMS, at the reasonable cost of RMS, photocopies or electronic copies of information requested.

22.3 **Audit of Performance Data**

If an audit of the Performance Data or the Performance Reports reveals any error in, or inaccuracy of, the Performance Data or the Performance Report, the ITS Contractor must:

- (a) fix the inaccuracy or error and reissue the relevant data or report to RMS;
- (b) use the reissued data or report to:
 - (i) reassess any KRA Scores, KPI Scores or Overall Performance Scores; and
 - (ii) recalculate any Performance Adjustment or Performance Incentive affected by the error or inaccuracy in the Performance Data or the Performance Report;
- (c) pay an amount to RMS equal to:
 - (i) any underpayment of the Performance Adjustment; or
 - (ii) any overpayment of:
 - (A) the Performance Incentive; or
 - (B) any payment under this document received by the ITS Contractor as a result of the error in, or inaccuracy of, the Performance Data or the Performance Report,

together with interest at the Default Rate; and
- (d) pay the costs of the audit incurred by RMS.

22.4 **Method of accounting**

The ITS Contractor must maintain a method of accounting in accordance with generally accepted accounting principles and practices in respect of all matters pertinent to this document and on all the ITS Contractor's costs in relation to the Services.

22.5 **Owner's Estimator**

- (a) RMS may, at any time, appoint an Owner's Estimator to:
 - (i) verify any estimates or commercial proposals prepared by the ITS Contractor for any works or services which form part of:
 - (A) a Forward Works Program Proposal;
 - (B) a Forward Works Program Amendment Proposal; or
 - (C) a Special Project Proposal; or
 - (ii) assist with any benchmarking activities carried out by RMS under clause 23.
- (b) The ITS Contractor must provide the Owner's Estimator with such assistance as it may reasonably require in connection with its verification activities, including making available all cost estimation files, supporting cost databases and supporting records which are required by the Owner's Estimator to verify the ITS Contractor's estimates or commercial proposals.

22.6 Financial Auditor

- (a) RMS may, at any time, appoint a Financial Auditor to audit or verify any financial transactions under or in connection with this document, including:
 - (i) auditing any payment claims to confirm that:
 - (A) Margin Rates have been correctly applied;
 - (B) unit rates are in accordance with the Payment Schedule;
 - (C) actual costs have been reasonably and properly incurred; and
 - (D) the ITS Contractor has made all payments due to employees, Subcontractors and other third parties;
 - (ii) auditing calculations of the KPI Scores, KRA Scores, Overall Performance Scores, Performance Adjustments and Performance Incentives; and
 - (iii) verifying any benchmarking conducted by the ITS Contractor.
- (b) The ITS Contractor must provide the Financial Auditor with such assistance as it may reasonably require in connection with its verification activities, including providing the Financial Auditor with access to all necessary people, systems and information required for the purpose of conducting the audit.

23. BENCHMARKING ACROSS ZONES

- (a) The ITS Contractor acknowledges that RMS will benchmark the ITS Contractor's performance of the Services against that of:
 - (i) providers of similar services to RMS in other parts of New South Wales; and
 - (ii) providers of similar services to other government bodies in other jurisdictions.
- (b) When benchmarking the performance of the ITS Contractor under paragraph (a), RMS will consider:
 - (i) the ITS Contractor's performance against the KPIs and KRAs;
 - (ii) the cost to RMS of the Services;
 - (iii) any innovations implemented by the ITS Contractor;
 - (iv) the safety and environmental performance of the ITS Contractor;
 - (v) the effect that the Services have on traffic on any Road within the Zone; and
 - (vi) any other matters that RMS considers relevant.
- (c) RMS may use the benchmarking information to assess the overall performance of the ITS Contractor and in negotiations and discussions with the ITS Contractor regarding the development and amendment of Forward Works Programs and Special Projects.

PART E – FINANCIAL PROVISIONS

24. PRICING

24.1 Reference Pricing Schedule

The ITS Contractor acknowledges and agrees that:

- (a) the Reference Pricing Schedule will be used as a basis for agreeing the Pricing Schedules for the Initial Works Period and (to the extent relevant) each subsequent Works Period; and
- (b) each of:
 - (i) the Margin Rates set out in Pricing Table 3A of the Reference Pricing Schedule; and
 - (ii) the escalation mechanism set out in section 12 of the Reference Pricing Schedule; and
 - (iii) the Efficiency Commitment set out in section 13 of the Reference Pricing Schedule,

are fixed for the Contract Term.

24.2 Pricing Schedule for each Works Period

The parties acknowledge and agree that the Pricing Schedule for each Works Period will be agreed in accordance with the process set out in section 1 of Schedule 8.

25. PAYMENT

25.1 General

- (a) In consideration for the ITS Contractor carrying out its obligations under this document, RMS will pay the ITS Contractor in accordance with the provisions of this document, subject to the ITS Contractor satisfying the requirements of this clause 25 and any right of RMS to withhold payment (including under clause 25.3(e)) or to set off any part of the payment in accordance with this document.
- (b) Except as expressly provided in this document, where the ITS Contractor is obliged to do anything under this document:
 - (i) it must do so at no additional cost to RMS; and
 - (ii) the only consideration the ITS Contractor is entitled to is payment of the amounts specified in paragraph (a).
- (c) The ITS Contractor acknowledges and agrees that:
 - (i) it has no entitlement under this document to payment of any Excluded Costs and RMS has no liability to pay such costs to the ITS Contractor; and
 - (ii) subject to clause 44.5, it is not permitted claim payment for any Spares until the Spares are incorporated into the Assets.

25.2 Deductions and set off

RMS may deduct from any payment under this document:

- (a) any debt due or other amount payable by the ITS Contractor to RMS; or
- (b) any bona fide claim to money which RMS may have against the ITS Contractor, whether for damages or otherwise,

whether under this document or any other contract between RMS and the ITS Contractor.

25.3 Payment Claims and payment

- (a) During the Contract Term, the ITS Contractor may submit a Payment Claim to RMS no later than 5 Business Days after the end of each month in respect of those Services for which it is entitled to payment as determined by reference to the Payment Schedule.
- (b) The ITS Contractor must submit Payment Claims:
 - (i) at the times permitted by the Payment Schedule;
 - (ii) in such form as is acceptable to RMS;
 - (iii) supported by any information reasonably required by RMS; and
 - (iv) accompanied by:
 - (A) details of the Services provided in the period covered by the Payment Claim;
 - (B) all relevant calculations and other information required for assessment of the Payment Claim;
 - (C) details of payments to all Subcontractors, including:
 - (aa) amounts payable to all Subcontractors in respect of the Services the subject of the Payment Claim;
 - (bb) a summary of:
 - (a) amounts paid to date; and
 - (b) total contract value,for each Subcontract;
 - (cc) any other information required by RMS in relation to Subcontractor payments; and
 - (D) a statutory declaration and statements in the form of Schedule 18, signed not before the date of the Payment Claim, relating to the payment of employees, Subcontractors, workers compensation insurance premiums and payroll tax payments, which meets the requirements of the *Industrial Relations Act 1996 (NSW)*, *Pay Roll Tax Act 2007 (NSW)*, *Workers Compensation Act 1987 (NSW)*, *Building and Construction Industry Security of Payment Act 1999 (NSW)* and all other relevant legislation.

- (c) RMS will, within 10 Business Days after receipt of a Payment Claim (including the documents and information referred to in paragraph (b) above, as applicable) issue to the ITS Contractor a Payment Schedule. The Payment Schedule must identify the Payment Claim to which it relates. If a Payment Schedule shows a Scheduled Amount less than the claimed amount (excluding payments already made), the Payment Schedule must state why the amount is less.
- (d) Subject to paragraph (e), RMS will, within 15 Business Days of receipt of a Payment Claim that complies with the requirements of paragraph (b) above, and provided the ITS Contractor has complied with its obligations under clauses 3, 19.1 and 30, pay to the ITS Contractor the Scheduled Amount.
- (e) Without limiting clause 25.2, where RMS receives a payment withholding request from a Subcontractor, RMS may withhold:
 - (i) from any payment under this document the amount of the Subcontractor's payment claim set out in the payment withholding request; or
 - (ii) the amount then owed by RMS to the ITS Contractor under this Contract where that amount is less than the amount of the Subcontractor's payment claim set out in the payment withholding request.

In this paragraph (e), "payment withholding request" has the meaning given to that term in the *Building and Construction Industry Security of Payment Act 1999* (NSW).

- (f) RMS will not be liable in respect of any Claim by the ITS Contractor arising out of or in connection with RMS withholding payment under paragraph (e), including any claim under clause 25.7 for interest on such amounts.

25.4 **Unfixed Materials**

- (a) The ITS Contractor may not include the value of unfixed Materials in a Payment Claim (and RMS is under no obligation to pay such value) unless:
 - (i) the ITS Contractor:
 - (A) has provided to RMS at the same time as the relevant Payment Claim an unconditional undertaking in a form satisfactory to RMS for an amount equal to the Payment Claim for the unfixed Materials; and
 - (B) gives RMS such evidence as may be required by RMS that title to the unfixed Materials will vest in RMS on payment;
 - (ii) the Materials are clearly marked as the property of RMS and are in the ITS Contractor's possession; and
 - (iii) the Materials are properly stored in a secure place approved by RMS.
- (b) Upon payment of the Scheduled Amount which includes unfixed Materials, title in the unfixed Materials will vest in RMS.
- (c) If the ITS Contractor provides an unconditional undertaking for payment for unfixed Materials, RMS must release the unconditional undertaking to the ITS Contractor within 5 Business Days of the Materials:
 - (i) being incorporated into any Asset; and
 - (ii) complying with the requirements of this document.

25.5 **Payment on account**

- (a) A payment made under this document does not prejudice the right of either party to dispute the amount properly due and payable. If the amount determined to be due and payable differs from that paid, the difference between the amount paid and the amount which was properly due and payable will be payable or repayable, as the case may be, as a debt due.
- (b) No payment by RMS will be evidence of the value of work, an admission of liability or that the work has been executed satisfactorily or meets any standard, including any standard of fitness for purpose, which the ITS Contractor has agreed to achieve under this document, but will be a payment on account only.
- (c) The ITS Contractor acknowledges and agrees that:
 - (i) its entitlement to the Margin at Risk in each Contract Year will be determined in accordance with section 3 of the Commercial Framework; and
 - (ii) all payments of Margin in respect of a Contract Year made prior to such determination are on account only.

25.6 **Correction of Payment Schedule**

RMS may at any time correct any error which has been discovered in a Payment Schedule or in any payment under this document.

25.7 **Interest on overdue monies**

Subject to clause 25.3(f), interest at the Default Rate is payable on any monies due under this document which remain unpaid after the date upon which they should have been paid. Interest is payable from, but excluding the date upon which payment should have been made, up to and including the date of payment.

25.8 **Goods and Services Tax**

- (a) Words defined in the GST Law have the same meaning in clauses about GST, unless it is clear that a different meaning is intended.
- (b) Unless otherwise expressly stated in this document, all amounts, prices, rates or other sums payable or for which payment is to be made to the ITS Contractor under or in accordance with this document, are exclusive of GST.
- (c) If GST is or will be payable on a supply made under or in connection with this document, to the extent the consideration otherwise provided for that supply under this document is not expressly stated to be inclusive of GST:
 - (i) where the consideration provided for that supply under this document is expressed as an amount of money, the consideration is increased by the amount of the GST relating to the amount of money otherwise payable; and
 - (ii) the recipient must make payment of the increase as and when it is required to pay or provide the consideration for the supply (or relevant part of it) in accordance with this document or, if the consideration has already been paid or provided, within 7 days of receiving a written demand from the supplier.
- (d) Any contract entered into by a party to this document with a third party which involves supplies being made, the cost of which will affect the cost of any supplies made under or in connection with this document, must include a clause including equivalent terms to this paragraph (d) and paragraphs (b), (c) and (l).

- (e) RMS will issue a tax invoice for each taxable supply it makes to the ITS Contractor without request.
- (f) RMS will issue to the ITS Contractor a recipient created tax invoice (**RCTI**) for each taxable supply (other than an excluded supply) made by the ITS Contractor to RMS under or in connection with this document and will issue an adjustment note for any adjustment event. The parties may agree in writing from time to time which supplies are excluded supplies.
- (g) The ITS Contractor must not issue a tax invoice or adjustment note in respect of any supply it makes to RMS other than for an excluded supply. The ITS Contractor must give RMS a tax invoice for an excluded supply at or before the time the ITS Contractor invoices RMS for that supply.
- (h) Each party must immediately notify the other party if it ceases to be registered for GST or it ceases to comply with any of the requirements relating to the creation of RCTIs.
- (i) Each party acknowledges and warrants that at the time of:
 - (i) entering into this document;
 - (ii) each supply under this document occurring or being deemed to have occurred; and
 - (iii) each RCTI or adjustment note being issued by RMS to the ITS Contractor under this document,
 it is registered for GST.
- (j) The supplier indemnifies the recipient against any loss resulting from the supplier not being registered in accordance with paragraph (i).
- (k) RMS will not issue a document that will otherwise be an RCTI or adjustment note on or after the date when the ITS Contractor or the Australian Taxation Office notifies RMS that either RMS or the ITS Contractor does not comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.
- (l) Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is:
 - (i) required to be reimbursed or indemnified by another party; or
 - (ii) used as the basis for calculation of consideration for a supply under this document,
 must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue. RMS may treat the ITS Contractor as entitled to full input tax credits unless the ITS Contractor provides evidence satisfactory to RMS to the contrary.
- (m) If the ITS Contractor does not quote its ABN in its tender or on its Payment Claims or invoices, or the ITS Contractor does not otherwise advise RMS of its ABN relating to the service, RMS may withhold tax from payments in accordance with the *Taxation Administration Act 1953* (Cth).

26. **WORKERS AND SUBCONTRACTORS**

26.1 **Direct payment**

- (a) Where RMS is entitled to or is required to make payment to a subcontractor of a sum certified by RMS as owing to the Subcontractor under a Subcontract, RMS may, on behalf of the ITS Contractor, make the payment directly to the Subcontractor and the amount so paid will be a debt due from the ITS Contractor to RMS.
- (b) If any worker or Subcontractor obtains a court order in respect of money referred to in clause 25.3(b)(iv)(C) and produces to RMS the court order and a statutory declaration that it remains unpaid, RMS may pay the amount of the order, and costs included in the order, to the worker or Subcontractor and the amount paid will be a debt due from the ITS Contractor to RMS.

27. **FINAL PAYMENT CLAIMS**

27.1 **Final Forward Works Program Payment Claim**

- (a) Within 40 Business Days of completion of all Services contemplated by each Forward Works Program, the ITS Contractor must submit to RMS a Payment Claim endorsed 'Final Forward Works Program Payment Claim'.
- (b) The ITS Contractor must include in the Final Forward Works Program Payment Claim, in addition to claims required to be included in a payment claim under clause 25.3, all other claims for money in connection with the applicable Forward Works Program.
- (c) With the exception of any Claims which a competent and experienced contractor could not have reasonably anticipated prior to the expiry of the period for submission of the Final Forward Works Program Payment Claim, all Claims in relation to the Forward Works Program, whether under clause 25.3 or this clause 27.1, will be barred after the expiry of the period for submission of the Final Forward Works Program Payment Claim.
- (d) Within:
 - (i) 10 Business Days after receipt of the Final Forward Works Program Payment Claim; or
 - (ii) 50 Business Days after completion of all Services contemplated by each Forward Works Program, if the ITS Contractor has not submitted a Final Forward Works Program Payment Claim,

RMS will issue to the ITS Contractor a Final Certificate which, subject to 27.3, evidences the moneys due and payable between the ITS Contractor and RMS on any account whatsoever in connection with the Services that are the subject of the applicable Forward Works Program.

27.2 **Final Special Project Payment Claim**

- (a) Within 40 Business Days of the expiry of the last Defects Liability Period applicable to any Special Project, the ITS Contractor must submit to RMS a Payment Claim endorsed 'Final Special Project Payment Claim'.
- (b) The ITS Contractor must include in the Final Special Project Payment Claim, in addition to claims required to be included in a payment claim under clause 25.3, all other claims for money in connection with the applicable Special Project.

- (c) Within:
 - (i) 10 Business Days after receipt of the Final Special Project Payment Claim; or
 - (ii) 50 Business Days after the expiry of the last Defects Liability Period applicable to the Special Project, if the ITS Contractor has not submitted a Final Special Project Payment Claim,

RMS will issue to the ITS Contractor a Final Certificate which, subject to subject to 27.3, evidences the moneys due and payable between the ITS Contractor and RMS on any account whatsoever in connection with the Special Project.

27.3 **Effect of Final Certificates**

The parties agree that a Final Certificate is conclusive evidence of the amounts due and payable by either party in connection with a Forward Works Program or a Special Project, as applicable, except:

- (a) for:
 - (i) fraud, dishonesty or fraudulent concealment relating to the Services;
 - (ii) the cost of rectifying any Defect in any Project Works which:
 - (A) was not apparent on completion of such Project Works; or
 - (B) would not have been disclosed upon reasonable inspection at the time of issue of the Final Certificate; or
 - (iii) any accidental or erroneous inclusion or exclusion of any work, plant, materials or figures in any computation or any arithmetical error in any computation; or
- (b) to the extent that:
 - (i) the parties have otherwise agreed that there are amounts which need to be reconciled or amended after the Final Certificate, including in respect of Defects notified on Completion of Project Works and any Pain Gain Adjustment, Performance Adjustment or Performance Incentive; and/or
 - (ii) a Dispute has been raised under clause 36 by either party:
 - (A) in connection with the applicable Forward Works Program or Special Project and which remains outstanding; or
 - (B) in relation to the Final Certificate.

PART F – CARE OF WORK, INDEMNITIES, INSURANCE AND LIABILITY

28. **CARE OF PEOPLE, PROPERTY AND ENVIRONMENT**

28.1 **ITS Contractor to prevent damage**

- (a) The ITS Contractor must, in carrying out the Services:
 - (i) not cause, and to the extent reasonably practicable, prevent:

- (A) personal injury or death, or loss or damage to any Asset and the physical works undertaken by the ITS Contractor as part of the Services (including temporary works); and
 - (B) loss or damage to any other property and the environment; and
- (ii) locate and prevent damage to or interruption of existing Utilities.
- (b) The ITS Contractor is responsible for the care of and must provide all storage and other protection necessary to preserve the condition of:
 - (i) anything entrusted to the ITS Contractor by RMS for the purpose of carrying out any Services;
 - (ii) anything brought within or in the vicinity of the Zone by any person for the purpose of carrying out the Services;
 - (iii) all physical works undertaken by the ITS Contractor while carrying out the Services (including temporary works); and
 - (iv) all ITS Contractor's Plant.
- (c) The ITS Contractor must:
 - (i) at its cost, repair or make good loss or damage to any Asset and the environment arising out of:
 - (A) the carrying out of the Services; or
 - (B) any other act or omission of the ITS Contractor or of any person for whom the ITS Contractor is responsible; and
 - (ii) bear the cost of repairing, or making good, loss or damage to any property (being property other than any Asset) arising out of:
 - (A) the carrying out of the Services; or
 - (B) any other act or omission of the ITS Contractor or of any person for whom the ITS Contractor is responsible.

28.2 Safety and protection of persons and property

- (a) The ITS Contractor must, in carrying out the Services:
 - (i) ensure, to the extent reasonably practicable, the safety of motorists, pedestrians, cyclists and any other users of the Roads within the Zone or persons or property otherwise affected by the performance of the Services;
 - (ii) minimise the impact of the Services on motorists, pedestrians and other users of the Roads within or in the vicinity of the Zone;
 - (iii) coordinate its activities so as to ensure that no unnecessary interference is caused to members of the public or the operations of RMS or other Authorities;
 - (iv) provide all things and take all measures necessary to protect people and property; and

- (v) prevent nuisance and unreasonable noise and disturbance (except to the extent any of them are the unavoidable consequence of performing the Services in accordance with this document).
- (b) The ITS Contractor must immediately notify RMS as soon as it becomes aware of any Asset which is defective and threatens the health and safety of members of the public.

28.3 **Urgent Protection**

- (a) RMS may take any action necessary (without relieving the ITS Contractor of its obligations) to:
 - (i) protect any Asset or the environment;
 - (ii) avoid death or injury to any person or loss or damage to any property; or
 - (iii) keep any Road within or in the vicinity of the Zone open to the public for the continuous, safe and efficient passage of vehicles,which the ITS Contractor must take but does not take.
- (b) The amount of any Loss RMS suffers or incurs in taking the action contemplated in this clause 28.3 or as a result of the ITS Contractor's failure to take such action will be a debt due from the ITS Contractor to RMS.

28.4 **Control of traffic**

The ITS Contractor:

- (a) is responsible for the control, direction and protection of all traffic in any way affected by the Services or the ITS Contractor's carrying out of its obligations under this document;
- (b) must manage all such traffic to ensure:
 - (i) its continuous, safe and efficient movement;
 - (ii) the traffic carrying capacity of the Roads within or in the vicinity of the Zone is maintained (except for closure of a Lane or Lanes in accordance with this document); and
 - (iii) that any delay and disruption to traffic and the movement of traffic are kept to an absolute minimum;
- (c) must at all times comply with the Traffic Management and Safety Plan and the requirements of the ITS MC Service Requirements in respect of traffic management and safety; and
- (d) must comply with the directions of all Relevant Bodies with respect to such management.

29. **INDEMNITIES**

29.1 **General indemnity**

- (a) The ITS Contractor is responsible for, and bears the risk of, and must indemnify RMS, its officers and employees against any and all Claims and Losses arising out of or in connection with:

- (i) loss of, loss of use of (whether partial or total), destruction of or damage to property of RMS, including the Roads within or in the vicinity of the Zone, any Asset and existing property in or upon which the ITS Contractor is carrying out the Services;
- (ii) any loss of, loss of use of (whether partial or total), or any destruction of or damage to any real or personal property (other than property covered under paragraph (a)(i));
- (iii) bodily injury, illness, disease or death; and
- (iv) disruption of any Utilities,

arising out of or as a consequence of the ITS Contractor or any of its Personnel or Subcontractor's subcontractors, consultants and suppliers (of any tier in the contracting chain) and their officers, employees and agents carrying out or failing to carry out the Services.

- (b) The ITS Contractor is responsible for and must indemnify RMS, its officers and employees against all Claims and Loss arising out of or in connection with any:
 - (i) breach of the terms of this document by the ITS Contractor; or
 - (ii) wrongful act or omission or wilful misconduct by the ITS Contractor or any person for whom it is responsible.

29.2 Reduction of ITS Contractor's liability

- (a) The ITS Contractor's liability and responsibility to indemnify RMS its officers and employees under clause 29.1 is reduced to the extent that an Excepted Risk contributes to loss, loss of use, damage, destruction, death, disease, illness or personal injury.
- (b) The ITS Contractor's liability and responsibility to indemnify RMS its officers and employees under clauses 29.3, 29.4 and 29.5 is reduced to the extent that an Excepted Risk contributes to the Claim or Loss.

29.3 Intellectual Property indemnity

The ITS Contractor must indemnify RMS against any and all Claims and Losses arising out of or in connection with any infringement or alleged infringement of any Intellectual Property Right which occurs as a result of the carrying out of the Services or a breach by the ITS Contractor of its obligations or warranties under this document other than for Claims or Losses arising from the use by the ITS Contractor of RMS Material in accordance with this document.

29.4 Environmental indemnity

The ITS Contractor must indemnify RMS against any and all Claims and Losses arising out of or in connection with a Hazardous Discharge or Environmental Event which occurs as a result of the carrying out of the Services or a breach by the ITS Contractor of its obligations or warranties under this document.

29.5 Product Liability indemnity

The ITS Contractor must indemnify RMS against any and all Claims and Losses arising out of the failure or defect of any product, materials or equipment supplied by the ITS Contractor either directly or through a Subcontractor and irrespective of whether the failure is caused by design, manufacture, construction or installation.

29.6 **Survival and enforcement of indemnities**

- (a) The indemnities in this document survive the expiry or termination of this document.
- (b) It is not necessary for RMS to incur expense or make any payment before enforcing a right of indemnity conferred by this document.
- (c) RMS holds the indemnities in this clause 29.1 in favour of RMS' officers and employees on trust for its officers and employees and can enforce them on behalf of its officers and employees.

29.7 **Obligations and rights not affected**

The indemnities in this clause 29:

- (a) do not lessen the ITS Contractor's other obligations under this document; and
- (b) will not apply to exclude any other right of RMS under this document or according to Law.

30. **INSURANCE**

30.1 **Insurances to be provided by RMS**

- (a) RMS has effected contract works and public and products liability insurance on the terms set out in Schedule 17.
- (b) RMS may in its discretion have other insureds named or included in the policy or policies referred to in paragraph (a), including any other government entity with an interest in the Services or the Zone.
- (c) RMS will maintain contract works and public and products liability insurance until expiry of the Contract Term.
- (d) The ITS Contractor must contact RMS' insurance broker (as nominated in writing to the ITS Contractor) before the earlier of:
 - (i) 10 Business Days after the Commencement Date; or
 - (ii) the ITS Contractor commencing any part of the Services,to provide all details reasonably requested for the purposes of the insurances referred to in paragraph (a).
- (e) The ITS Contractor will be responsible for paying or bearing all excesses, deductibles, self insured retentions and co-insurance amounts in relation to insured matters under any policy referred to in paragraph (a) as set out in Schedule 17. The ITS Contractor may effect its own insurance to cover the amount of any excesses, deductibles, self-insured retentions and co-insurance amounts.
- (f) The ITS Contractor acknowledges that:
 - (i) the insurances referred to in paragraph (a) have been obtained at RMS' cost; and
 - (ii) the ITS Contractor will not be entitled to payment of any allowance for the cost of obtaining such insurances or any additional insurance cover it

considers necessary in relation to the risks the subject matter of that insurance.

- (g) The obtaining of insurance by RMS in accordance with this clause 30.1 will not reduce, vary or otherwise affect the ITS Contractor's liabilities and obligations pursuant to clause 29, warranties given or otherwise under this document or in connection with the Services.
- (h) If there is a claim for significant damage or destruction to physical works the subject of the Services under the contract works policy of insurance referred to in paragraph (a) (as determined by RMS acting reasonably):
 - (i) all amounts recovered from insurers must be paid directly to RMS;
 - (ii) RMS may decide to have the physical works the subject of the Services reinstated, or may decide not to proceed with the physical works the subject of the Services, without creating any default by RMS under this document; and
 - (iii) the ITS Contractor must reinstate the physical works the subject of the Services if directed by RMS and except as otherwise provided in this document may only make a claim for payment of reinstatement for the physical works the subject of the Services up to the amount of any insurance recovery.

30.2 **Insurances provided by ITS Contractor**

- (a) The ITS Contractor must effect and maintain (or cause to be effected and maintained) and pay all premiums for motor vehicle and workers compensation insurance on the terms set out in Schedule 17.
- (b) The ITS Contractor must ensure that every Subcontractor is insured at all times for workers compensation and related liability in accordance with the requirements of the *Workers Compensation Act 1987* (NSW).
- (c) The ITS Contractor must ensure that each policy required to be effected and maintained by the ITS Contractor or its Subcontractors under this document or Subcontracts is in effect for the Contract Term.
- (d) All policies (other than statutory policies) to be effected by the ITS Contractor must require the insurer to notify the insured at least 7 days before any proposed cancellation or non-renewal by the insurer of the policy.
- (e) If the ITS Contractor fails to comply with paragraph (a), RMS may effect and maintain that insurance and pay the necessary premiums. RMS may recover from the ITS Contractor the cost of the premiums and RMS' reasonable costs of effecting and maintaining the insurance, as a debt due from the ITS Contractor.

30.3 **Other insurance requirements**

- (a) Any other insurances required by the Management Review Group will be taken out by either the ITS Contractor or RMS as directed by the Management Review Group.
- (b) The effecting or approval of any or all insurance as required under this document will not in any way limit the liabilities or obligations of the ITS Contractor or RMS under other provisions of this document.

- (c) The ITS Contractor must ensure that in respect of each insurance required to be effected or taken out as required by clause 30.2 by the ITS Contractor or any Subcontractor, it:
 - (i) does not, and any Subcontractor does not, do anything which prejudices any insurance;
 - (ii) if necessary, rectifies anything which might prejudice any insurance;
 - (iii) reinstates an insurance policy if it lapses;
 - (iv) does not cancel or allow an insurance policy to lapse without the prior written consent of RMS;
 - (v) immediately notifies RMS of any event which may result in an insurance policy lapsing or being cancelled; and
 - (vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

30.4 **Notices from or to the insurer**

The ITS Contractor must, as soon as practicable after receiving any notice from the insurer that is:

- (a) a notice of cancellation relevant to this document; or
 - (b) any other notice relevant to this document under or in relation to the policy,
- inform RMS in writing that the notice has been given or served on the ITS Contractor.

30.5 **Insurance claim procedures**

- (a) The ITS Contractor and RMS must, as relevant to this document:
 - (i) provide full particulars of any occurrence likely to give rise to a claim under any insurance policy effected as required by this document or of any notice of any claim or subsequent proceeding as soon as practicable after becoming aware of any such event to:
 - (A) the relevant insurer or insurance broker; and
 - (B) each other (other than a potential claim by one party against another);
 - (ii) not, without the consent of the insurer and each other, make any admission, offer, promise or payment in connection with any occurrence or claim;
 - (iii) give all information and reasonable assistance as the insurer may require in the prosecution, defence or settlement of any claim; and
 - (iv) give notice to each other as soon as practicable after discovery that a term, condition or clause of any insurance policy has been unintentionally or inadvertently breached.
- (b) Notwithstanding the provisions of this clause 30.5, either party may take immediate action to avoid loss of life or damage to property where that is reasonably necessary in the circumstances and any such action will not prejudice

the position of either party under the policies of insurance contemplated by clause 30.1 in respect of any loss, destruction or damage.

- (c) The ITS Contractor must take such steps as are necessary or appropriate to ensure that a Subcontractor will, in respect of an event or claim of like nature arising out of or relating to the operations or responsibilities of the Subcontractor, take in relation to RMS similar action to that which the ITS Contractor is required to take under this clause 30.5.

31. LIABILITY

31.1 Limitation of liability

- (a) Subject to paragraph (b) and clause 31.2, the ITS Contractor's total aggregate liability to RMS arising out of or in connection with the Services and this document whether in contract, tort (including negligence), under an indemnity or otherwise at law or in equity is limited to an amount which is equal to [REDACTED]
- (b) Paragraph (a) and clause 31.2 do not limit the ITS Contractor's liability:
 - (i) to the extent that it:
 - (A) cannot be limited at Law;
 - (B) arises out of or in connection with the ITS Contractor's Wilful Misconduct, Wilful Default, Gross Negligence, fraud or criminal conduct; or
 - (C) arises out of or in connection with the ITS Contractor's abandonment of its obligations under this document;
 - (ii) to the extent that the ITS Contractor is entitled to be indemnified for that liability under a policy of insurance required to be effected under this document, or would have been entitled to be indemnified for that liability under the policy of insurance but for:
 - (A) any act or omission of the ITS Contractor; or
 - (B) a failure by the ITS Contractor to diligently lodge and pursue a claim under the policy of insurance;
 - (C) a reduction in the amount payable under a policy of insurance because the insurer makes a Derogation Assertion (where Derogation Assertion means any:
 - (aa) denial of liability; or
 - (bb) reduction of liability;by the insurer by reason of inclusion in this document of any provision); or
 - (iii) under clause 29.1 in respect of personal injury (including death) or illness of any person or for loss of, loss of use of or destruction of or damage to any third party property; or
 - (iv) for breach of confidence, privacy or misuse of Personal Information;
 - (v) which arises under clause 29.3; or

(vi) for any Performance Adjustment,

and amounts of any liability referred to in paragraphs (b)(i) to (b)(vii) will not be included in any calculation of the limit of the ITS Contractor's total aggregate liability under paragraph (a).

31.2 Exclusion of certain loss

- (a) Except as contemplated by clause 31.1(b), neither RMS nor the ITS Contractor are liable to each other under any circumstances whatsoever for any indirect loss (being loss which, at the date of this document, was not in the reasonable contemplation of the parties except by reason of knowledge of special circumstance), pure economic loss, loss of revenue, loss of profit or anticipated profit, loss of patronage, loss of opportunity, loss of goodwill, loss of contract, loss arising from business interruption, loss of production, loss of anticipated savings or the cost of capital or other financing costs arising out of, or in any way in connection with this document, whether arising in contract, in tort (including negligence), in equity, by operation of law or otherwise.
- (b) This clause 31.2 will survive the expiry or termination of this document.

31.3 Civil Liability Act

- (a) The operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any rights, obligations and liabilities arising under or in relation to this document regardless of how such rights, obligations or liabilities are sought to be enforced.
- (b) The ITS Contractor further agrees that:
- (i) in each Subcontract into which it enters for the carrying out of any Services, it will include provisions that, to the extent permitted by Law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities arising under or in relation to each Subcontract howsoever such rights, obligations or liabilities are sought to be enforced; and
- (ii) it will require and ensure that each Subcontractor will include in any further contract that it enters into with others for the carrying out of any Services, provisions that, to the extent permitted by Law, each such further contract will include provisions that effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities arising under or in relation to such further contract howsoever such rights, obligations or liabilities are sought to be enforced.

PART G – WARRANTIES

32. WARRANTIES

32.1 General warranties

The ITS Contractor represents and warrants that:

- (a) **(status)** the ITS Contractor is a company limited by shares under the *Corporations Act 2001* (Cth);
- (b) **(power)** it has full legal capacity and power:
- (i) to own its property and assets and to carry on its business; and

- (ii) to enter into this document and to carry out the transactions that it contemplates;
- (c) (**corporate authority**) it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions that it contemplates;
- (d) (**authorisations**) it holds each authorisation that is necessary or desirable:
 - (i) to execute this document and to carry out the transactions that it contemplates; and
 - (ii) to ensure that this document is legal, valid, binding and admissible in evidence,
 and it is complying with any conditions to which any of these authorisations is subject;
- (e) (**document effective**) this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and Laws affecting creditors' rights generally);
- (f) (**no contravention**) neither its execution of this document, nor the carrying out by it of the transactions that it contemplates, does or will:
 - (i) contravene any Law to which it or any of its property is subject or any order of any Authority that is binding on it or any of its property;
 - (ii) contravene any authorisation;
 - (iii) contravene any undertaking or instrument binding on it or any of its property; or
 - (iv) contravene its constitution; and
- (g) (**no trust**) it is not entering into this document as trustee of any trust or settlement.

32.2 ITS Contractor's warranties (performance)

The ITS Contractor represents and warrants that:

- (a) it has the skill, competence, experience and capability to perform the Services;
- (b) it will perform the Services using workmanship and materials which are fit for their intended purpose;
- (c) if, in the performance of the Services, it is required to replace any worn, failed or defective Asset or a part of an Asset, the replacement Asset or part of an Asset will be:
 - (i) of equal quality to those required under this document; and
 - (ii) fit for their intended purpose and consistent with the nature and character of the Asset; and
- (d) any Data collected by or on behalf of the ITS Contractor for the purposes of this document will be accurate and comply with the requirements of this document.

32.3 ITS Contractor's warranties (general)

- (a) The ITS Contractor warrants that prior to the date of this document:
 - (i) the ITS Contractor examined this document and any other information that was made available in writing by RMS, or any other person on RMS' behalf, to the ITS Contractor or the ITS Contractor's Shareholders;
 - (ii) the ITS Contractor examined, and relied solely upon its own assessment, skill, expertise and enquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on the tender submitted by the ITS Contractor's Shareholders and the ITS Contractor's obligations under this document;
 - (iii) the ITS Contractor satisfied itself as to the correctness and sufficiency of the tender submitted by the ITS Contractor's Shareholders and that the ITS Contractor has made adequate allowance for the costs of complying with all the obligations of this document and of all matters and things necessary for the due and proper performance and completion of the Services;
 - (iv) the ITS Contractor has satisfied itself that:
 - (A) this document adequately and appropriately describes the Services in sufficient detail to enable the ITS Contractor to fulfil its obligations under this document; and
 - (B) the Services can be carried out so that the ITS Contractor will achieve an Overall Performance Score of no less than 70;
 - (v) the ITS Contractor informed itself of all industrial matters relevant to the Zone and other relevant areas and the Services;
 - (vi) the ITS Contractor's Shareholders were given the opportunity to undertake, and to request others to undertake, tests, enquiries and investigations relating to the subject matter of Information Documents and otherwise for this purpose were given access to such parts of the Zone and other relevant areas and the Assets as they required; and
 - (vii) the ITS Contractor or the ITS Contractor's Shareholders have inspected the Zone and the Assets and the surrounding conditions and the ITS Contractor accepts the condition of the Zone and other relevant areas and the Assets.
- (b) Prior to the date of this document, the ITS Contractor's Shareholders signed the Deeds of Disclaimer and provided these documents to RMS. Without limiting paragraph (c) or the warranties or acknowledgements in the Deeds of Disclaimer:
 - (i) RMS does not warrant, guarantee, assume any duty of care or other responsibility for, or make any representation about, the accuracy, adequacy, suitability or completeness of the Information Documents;
 - (ii) the ITS Contractor acknowledges that the Information Documents do not form part of this document and that paragraph (d) applies to the Information Documents; and
 - (iii) insofar as is permitted by Law, RMS will not be liable upon any Claim by the ITS Contractor arising out of or in any way in connection with:
 - (A) the Information Documents; or

- (B) a failure by RMS to provide any information to the ITS Contractor or the ITS Contractor's Shareholders.
- (c) The ITS Contractor:
 - (i) warrants that it did not in any way rely upon:
 - (A) any information, data, representation, statement or document made, or provided to the ITS Contractor or the ITS Contractor's Shareholders, by RMS or anyone on behalf of RMS or any other information, data, representation, statement or document for which RMS is responsible or may be responsible whether or not obtained from RMS or anyone on behalf of RMS; or
 - (B) the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,
 - for the purposes of entering into this document;
 - (ii) warrants that it enters into this document based on its own investigations, interpretations, deductions, information and determinations; and
 - (iii) acknowledges that it is aware that RMS has entered into this document relying upon the warranties, acknowledgements and agreements in paragraphs (c)(i) and (c)(ii) and in the Deeds of Disclaimer.
- (d) The ITS Contractor releases and must indemnify RMS from and against:
 - (i) any Claim against RMS by, or liability of RMS to, any person; or
 - (ii) (without being limited by paragraph (d)(i)) any Loss suffered or incurred by RMS,
 - arising out of or in any way in connection with:
 - (iii) the provision of, or the purported reliance upon, or use of, the Information Documents by the ITS Contractor or any other person to whom the Information Documents are disclosed by the ITS Contractor or any person on the ITS Contractor's behalf;
 - (iv) any breach by the ITS Contractor of this clause 32.3; or
 - (v) the Information Documents being relied upon or otherwise used by the ITS Contractor or any other person to whom the Information Documents are disclosed by the ITS Contractor or any person on the ITS Contractor's behalf in the preparation of any information or document, including any Information Document which is misleading or deceptive or contains false or misleading information as referred to in sections 18 and 29 (respectively) of the *Competition and Consumer Act 2010* (Cth), or any equivalent provisions of State or Territory legislation).
- (e) The parties acknowledge and agree that paragraphs (a)(vi) and (a)(vii) do not in any way limit or affect the ITS Contractor's entitlements arising from a Change Event.

32.4 **No warranty by RMS**

RMS makes no representations and gives no warranty to the ITS Contractor in respect of:

- (a) the condition of:
 - (i) any Asset; or
 - (ii) any structure or other thing on, above or adjacent to, in the vicinity of, or under the surface of, the Zone; or
- (b) the existence, location, condition or availability of any Utility in respect of the Zone or any Asset,

but acknowledges that the circumstances described in paragraphs (a) and (b) may constitute a Change Event.

32.5 **Non-merger and survival of warranties**

- (a) The warranties made by the ITS Contractor in this clause 32 are repeated whenever this document is varied.
- (b) The warranties contained in this clause 32 survive and do not merge irrespective of any change or amendment to this document.
- (c) The warranties contained in this clause 32 survive the expiry or termination of this document.

32.6 **Collusive arrangements**

- (a) The ITS Contractor warrants and represents to RMS and agrees with RMS that it is a fundamental condition of this document that:
 - (i) the ITS Contractor has no knowledge of the tender price of any tenderer for this contract other than the tender submitted by the ITS Contractor's Shareholders; and
 - (ii) except as disclosed in the tender submitted by the ITS Contractor's Shareholders, and by agreement in writing with RMS, neither the ITS Contractor nor any of the ITS Contractor's Shareholders have entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to a trade or industry association or to or on behalf of any other tenderer in relation to the tender or this document, nor paid or allowed any money on that account, nor will it pay or allow any money on that account.
- (b) If the ITS Contractor or any of the ITS Contractor's Shareholders pays to a trade association, industry association or another tenderer or pays to anyone on behalf of a trade association, industry association or another tenderer any money in breach of paragraph (a)(ii), the ITS Contractor must immediately give RMS written notice of such an event and such money is deemed to be held on trust for and becomes immediately payable to RMS.
- (c) The ITS Contractor must use its best endeavours to recover the money referred to in paragraph (b) and pay it to RMS. If it fails to do so within the time specified in a notice by RMS to the ITS Contractor or otherwise (in the absence of a notice) within a reasonable time, RMS may withhold, deduct or set off from any payment due to the ITS Contractor on any account an equivalent sum or make a demand against the Security provided under clause 3.

32.7 **Conflict of interest**

The ITS Contractor must:

- (a) disclose the full particulars of any actual, alleged or potential conflict of interest which arises or may arise in connection with this document, whether that conflict concerns the ITS Contractor or any person employed or retained by the ITS Contractor for or in connection with the provision of the Services;
- (b) not allow itself to be placed in a position of conflict of interest or duty in regard to any of its rights or obligations under this document (without the prior written consent of RMS);
- (c) ensure that the ITS Contractor's Authorised Person and its Personnel also comply with the requirements of paragraphs (a) and (b) when acting in connection with this document; and
- (d) if a conflict of interest or risk of conflict of interest arises:
 - (i) immediately notify RMS in writing, setting out details of the conflict of interest; and
 - (ii) take all steps required by RMS to avoid or minimise the conflict of interest or risk of conflict of interest.

PART H – INTELLECTUAL PROPERTY, CONFIDENTIALITY AND PRIVACY

33. INTELLECTUAL PROPERTY

33.1 RMS Material

- (a) RMS owns all Intellectual Property Rights in RMS Material.
- (b) The ITS Contractor assigns to RMS, on creation, all Intellectual Property Rights in:
 - (i) any improvement, modification or development of RMS Material made by the ITS Contractor or its Subcontractors; and
 - (ii) anything created by the ITS Contractor or its Subcontractors using RMS Material.

33.2 Data

- (a) RMS owns all Intellectual Property Rights in all Data.
- (b) The ITS Contractor assigns to RMS, on creation, all Intellectual Property Rights in all Data.

33.3 Deliverables

- (a) Subject to the terms of this clause 33, the ITS Contractor owns all Intellectual Property Rights in all Deliverables.
- (b) The ITS Contractor grants to RMS an irrevocable, non-exclusive, royalty-free, non-transferable licence to:
 - (i) use, reproduce, add to, modify and communicate to the public any Deliverable provided by the ITS Contractor for the purpose of designing, constructing, operating, maintaining, repairing, upgrading and improving intelligent transport systems in New South Wales;
 - (ii) permit any person to assist RMS to do any of the things referred to in paragraph (i); and

- (iii) sublicense any of the rights described in paragraphs (i) or (ii).

33.4 Further requirements

- (a) The ITS Contractor must do, and procure the doing of, any further acts needed to perfect the assignment to RMS of the Intellectual Property Rights in the Developed Material and all Data.
- (b) The ITS Contractor will include on all Developed Material such notices in relation to RMS' ownership of the Intellectual Property Rights as RMS requires.
- (c) The ITS Contractor must ensure, and warrants, that it will obtain from all holders of Moral Rights in any Developed Materials, Deliverables, Data or other materials provided by the ITS Contractor under this document, consent to the following specific acts or omissions by RMS and its successors, assigns or sub-licensees:
 - (i) reproducing, publishing, adapting, changing or communicating the Developed Materials, Deliverables, Data and other materials to the public without attributing their authorship or otherwise identifying the author of the Developed Materials, Deliverables, Data and other materials; and
 - (ii) subjecting the Developed Materials, Deliverables, Data and other materials to derogatory treatment.

33.5 Pre-Existing Material

Clause 33.1 does not affect the ownership of Intellectual Property Rights in any Pre-Existing Material. The ITS Contractor grants to RMS an irrevocable, non-exclusive, royalty-free, non-transferable licence to:

- (a) use, reproduce, add to and modify any of the Pre-Existing Material which is incorporated into any Developed Material, Deliverable, material provided by the ITS Contractor or Data for the purpose of designing, constructing, operating, maintaining, repairing, upgrading and improving intelligent transport systems in New South Wales;
- (b) permit any person to assist RMS to do any of the things referred to in paragraph (a); and
- (c) sublicense any of the rights described in paragraphs (a) or (b).

33.6 Know-how and methodologies

- (a) Subject to the terms of this clause 33, the ITS Contractor owns all Intellectual Property Rights in any know-how, skills or methodologies the ITS Contractor develops in performing its obligations under this document.
- (b) The ITS Contractor grants to RMS an irrevocable, non-exclusive, royalty-free, non-transferable licence to:
 - (i) use, reproduce, add to and modify any know-how, skills or methodologies the ITS Contractor develops in performing its obligations under this document for the purpose of designing, constructing, operating, maintaining, repairing, upgrading and improving intelligent transport systems in New South Wales;
 - (ii) permit any person to assist RMS to do any of the things referred to in paragraph (i); and

- (iii) sublicense any of the rights described in paragraphs (i) or (ii).

33.7 **Licence by RMS for the purpose of the Services**

- (a) RMS grants to the ITS Contractor a non-exclusive, royalty free, non-transferable licence for the Contract Term:
 - (i) to use; and
 - (ii) subject to RMS' prior written consent, reproduce, add to and modify, RMS Material, the Data, the Developed Material and any know-how, skills or methodologies referred to in clause 33.6 for the sole purpose of performing the ITS Contractor's obligations under this document.
- (b) The ITS Contractor may sublicense its rights set out in this clause 33.7 to Subcontractors for the sole purpose of the Subcontractor performing its obligations under the relevant Subcontract. The ITS Contractor may not sublicense its right to sublicense except with RMS' prior written consent.

33.8 **Licence by RMS for other purposes**

- (a) If the ITS Contractor wishes to use, reproduce, add to or modify any Data or Developed Material for any purpose other than the purpose contemplated by clause 33.7, the ITS Contractor must, by written notice, request a licence from RMS.
- (b) Following receipt of a notice under paragraph (a), RMS:
 - (i) will consider the ITS Contractor's request; and
 - (ii) may, in its absolute discretion, either:
 - (A) reject the request; or
 - (B) grant the licence on terms acceptable to RMS.

33.9 **ITS Contractor warranty**

- (a) The ITS Contractor warrants to RMS that:
 - (i) it will not infringe the Intellectual Property Rights or Moral Rights of any person in performing the Services or its other obligations under this document;
 - (ii) it has sufficient rights to assign or license Intellectual Property Rights on the terms set out in this clause 33; and
 - (iii) use of the Developed Materials, Deliverables, Data and other materials provided or assigned by the ITS Contractor under this document to RMS (including the Pre-Existing Material) will not infringe any Intellectual Property Rights of third parties in or in respect of such material.
- (b) The warranty in paragraph (a) will be repeated by reference to the circumstances then subsisting at the date any licences or rights are granted under this clause 33.
- (c) If the ITS Contractor becomes aware of a breach or possible breach of the warranty given by it under paragraph (a), the ITS Contractor must, following consultation

with RMS, take all actions approved by RMS to facilitate RMS' continued use of the relevant material as contemplated by this document.

34. CONFIDENTIALITY

34.1 Use and disclosure of confidential information

- (a) The ITS Contractor will not, and will ensure that any persons employed by it and its Subcontractors do not:
 - (i) disclose to any person any information;
 - (ii) use any information; or
 - (iii) publish any photographs, texts, documents, articles, advertisements or any other information,

relating to this document, the Services, or any Asset for purposes not connected with the performance of the Services without obtaining RMS' prior written consent.
- (b) If requested by RMS, the ITS Contractor will execute a confidentiality agreement on terms reasonably required by RMS, in relation to any information obtained for the purposes of this document or the performance of the Services.
- (c) This clause 34.1 does not apply to any information that:
 - (i) is in or enters the public domain, except through disclosure contrary to this document; or
 - (ii) was made available to the ITS Contractor by a person who is or was not under any obligation of confidence in relation to that information.
- (d) The obligations of confidentiality set out in this clause 34.1 do not apply to the extent that the ITS Contractor is required by any applicable Law, the requirement of any relevant Authority or the rules of any stock exchange to disclose any information, provided the ITS Contractor:
 - (i) promptly gives notice to RMS of that requirement;
 - (ii) takes all lawful measures available, and allows RMS to take all lawful measures available to restrict disclosure of information; and
 - (iii) discloses only that portion of information which it is legally required to disclose.
- (e) The ITS Contractor:
 - (i) acknowledges and agrees that RMS will disclose information in relation to this document to the extent it is required to do so under the *Government Information (Public Access) Act 2009* (NSW); and
 - (ii) must provide RMS with details of any Related Body Corporate or any other private sector entity in which the ITS Contractor has an interest that will be involved in performing any of the ITS Contractor's obligations under this document or that will receive a benefit under this document; and
- (f) agrees that the obligation under paragraph (e)(ii) is a continuing obligation under this document.

34.2 **Provision of information to other NSW Government Authorities and ministries**

- (a) RMS may make any information concerning the ITS Contractor available to other NSW Government authorities and ministries and relevant Commonwealth Government bodies, authorities and ministries. This information may include, but is not limited to, any information provided by the ITS Contractor to RMS and any information relating to the ITS Contractor's performance under this document.
- (b) Information about the ITS Contractor from any source, including substantiated reports of unsatisfactory performance, may be taken into account by NSW Government authorities in considering whether to offer the ITS Contractor future opportunities for NSW Government work.
- (c) In making available information under paragraph (a), the ITS Contractor acknowledges that RMS will be entitled to rely on the defence of qualified privilege for the purposes of section 30 of the *Defamation Act 2005* (NSW).
- (d) The ITS Contractor releases and must indemnify RMS from and against any Claim in respect of any matter arising out of:
 - (i) information being made available under paragraph (a); and
 - (ii) the use of such information by a recipient of the information.

34.3 **Publicity**

Except for notices which the ITS Contractor is required to disclose to any recognised stock exchange, the ITS Contractor must:

- (a) not make any public announcements or statements in relation to this document or the Services (including by posting any information relating to this document or the Services on any website) without the prior consent of RMS;
- (b) use reasonable endeavours to agree with RMS the wording and timing of all public announcements and statements by it or its Personnel relating to this document or the Services before the relevant announcement or statement is made;
- (c) give RMS a draft of any proposed media release relating to this document or the Services and obtain RMS' approval of the media release before distributing it;
- (d) give RMS a copy of any announcement or media release as soon as practicable after it is made or distributed; and
- (e) ensure that all of its Personnel comply with the requirements referred to in this clause 34.3.

34.4 **Communication and Stakeholder Engagement**

- (a) Without limiting clause 34.3, all communications by the ITS Contractor with the public in connection with the Services must be carried out in accordance with section 4.8 of the ITS MC Service Requirements.
- (b) The ITS Contractor must ensure that all of its Personnel comply with the requirements of paragraph (a).

35. **PRIVACY**

35.1 **Privacy Acts**

If under this document the ITS Contractor is required to disclose Personal Information, the ITS Contractor must:

- (a) if the disclosure is not authorised under the Privacy Acts, prior to disclosure obtain the consent of the natural person to whom that Personal Information relates in relation to RMS' collection and use of that Personal Information for the purposes of this document or the purposes authorised by this document;
- (b) ensure that the Personal Information disclosed is accurate; and
- (c) inform that natural person:
 - (i) that the Personal information has been collected by or on behalf of RMS; and
 - (ii) of any other matters required by the Privacy Acts.

PART I – DISPUTE RESOLUTION

36. **DISPUTE RESOLUTION**

36.1 **Dispute**

Subject to clause 36.9, if a dispute or difference arises between the parties in respect of any fact, matter or thing arising out of, or in any way in connection with, the Services or this document, or either party's conduct before the date of this document (**Dispute**), and a party requires the Dispute to be resolved, the Dispute must be determined in accordance with the procedure in this clause 36.

36.2 **Notice of Dispute**

Where such a Dispute arises, the party requiring the Dispute to be resolved must promptly give a notice in writing to the other party (**Notice of Dispute**). The Notice of Dispute must:

- (a) specify the Dispute;
- (b) provide particulars of the party's reasons for being dissatisfied; and
- (c) set out the position which the party believes is correct.

36.3 **Referral to representatives**

- (a) Where a Notice of Dispute is given under clause 36.2, the Dispute must in the first instance be referred to RMS' Representative and the ITS Contractor's Authorised Person who must meet and seek to resolve the Dispute.
- (b) If the Dispute is not fully resolved within 10 Business Days (or such other period as may be agreed between the parties) after a Notice of Dispute is given under clause 36.2, either party may, by giving notice in writing to the other party, require the Dispute, or parts of the Dispute, be referred to the Management Review Group for resolution in accordance with clause 36.4.

36.4 Management Review Group

- (a) Where a notice is given under clause 36.3(b), a meeting of the Management Review Group must be convened in accordance with clause 15.3 and the Management Review Group must seek to resolve the Dispute.
- (b) If the Dispute is not fully resolved within 20 Business Days (or such other period as may be agreed between the parties) after a notice is given under clause 36.3(b), either party may, by giving notice in writing to the other party, require the Dispute, or parts of the Dispute, be referred to the chief executive officers of the parties for resolution in accordance with clause 36.5.

36.5 Executive negotiations

- (a) Where a notice is given under clause 36.4(b), the chief executive officers of the parties (or their respective delegates) must meet and seek to resolve the Dispute.
- (b) If the Dispute is not fully resolved within 20 Business Days (or such other period as may be agreed between the parties) after a notice is given under clause 36.4(b), either party may, by giving notice in writing to the other party, require the Dispute, or parts of the Dispute, be referred to expert determination in accordance with clause 36.6.

36.6 Expert determination

- (a) Where a notice is given under clause 36.5(b), the Dispute or parts of the Dispute must be referred to expert determination in accordance with the procedure set out in Schedule 14.
- (b) If, within 20 Business Days of the expiry of the period contemplated by clause 36.5(b), neither party has issued a notice under clause 36.5(b), then either party may commence court proceedings in relation to the Dispute.

36.7 Payments

RMS may withhold payment of that part of any amount which is the subject of a Dispute.

36.8 ITS Contractor to continue performing obligations

Despite the existence of a Dispute between the parties to this document, the ITS Contractor must:

- (a) continue to carry out the Services; and
- (b) otherwise comply with its obligations under this document.

36.9 Urgent relief

Nothing in this clause 36 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court in respect of a Dispute. In respect of any such proceedings, the parties agree that the Supreme Court of New South Wales shall have exclusive jurisdiction in respect of those proceedings.

36.10 Survive termination

This clause 36 will survive the termination or expiry of this document.

PART J – SUSPENSION AND FORCE MAJEURE

37. SUSPENSION

37.1 RMS' power to suspend Services

- (a) Where suspension of all or part of the Services becomes necessary:
 - (i) because of an act, omission or default of:
 - (A) RMS or any employee or contractor of RMS (other than the ITS Contractor or its Subcontractors);
 - (B) the ITS Contractor or an employee or agent of the ITS Contractor; or
 - (C) a Subcontractor or an employee or agent of that Subcontractor; or
 - (ii) for the safety or protection of any person or property,

RMS may direct the ITS Contractor to suspend part or all of the Services until such time as RMS considers appropriate.

- (b) If RMS exercises the right in paragraph (a), the ITS Contractor must:
 - (i) immediately cease performance of all or part of the Services as directed by RMS;
 - (ii) if RMS requires, remove the ITS Contractor's Plant and Materials within or in the vicinity of the Zone; and
 - (iii) comply with any other RMS direction.
- (c) Except as provided by paragraph (d), nothing in this clause 37 limits or affects the ITS Contractor's liability and obligations under any Environmental Law or for the protection and safety of any person or property which may be affected by the ITS Contractor's acts or omissions or acts or omissions for which the ITS Contractor is responsible.
- (d) The ITS Contractor is not liable for any failure to carry out any activity suspended under this clause 37 during the suspension period nominated by RMS.
- (e) The ITS Contractor must resume carrying out the Services when directed to do so by RMS.
- (f) If the need for suspension arises from RMS' own act or omission or the acts or omissions of the employees or contractors of RMS (other than the ITS Contractor or its Subcontractors), then provided that the ITS Contractor has taken all reasonable steps to minimise the costs, the ITS Contractor will be entitled to, as an addition to any payment under this document, any additional Reimbursable Costs that it unavoidably incurs as a result of the suspension.
- (g) The ITS Contractor has no other remedies in connection with the suspension.

38. FORCE MAJEURE

38.1 Notification

- (a) If the Affected Party alleges or wishes to claim that a Force Majeure Event has occurred, it must promptly give the other party notice of the Force Majeure Event

as soon as the Affected Party becomes aware of the occurrence of the Force Majeure Event.

- (b) As soon as reasonably practicable after giving notice under paragraph (a), if the Affected Party is the ITS Contractor, the ITS Contractor must give RMS (progressively if necessary) full particulars of relevant matters pertaining to the Force Majeure Event including:
 - (i) the nature of the Force Majeure Event;
 - (ii) the obligations affected;
 - (iii) the action that the ITS Contractor has taken and/or proposes to take to remedy, overcome or mitigate the situation;
 - (iv) an estimate of the time during which the ITS Contractor will be unable to carry out the affected obligations due to the Force Majeure Event;
 - (v) an estimate of the costs that the ITS Contractor will incur to remedy, overcome or mitigate the situation; and
 - (vi) all insurance moneys to which the ITS Contractor believes it will be entitled if required to make good damage caused by the Force Majeure Event.
- (c) After giving notice under paragraph (a) and, if the Affected Party is the ITS Contractor, paragraph (b), the ITS Contractor must continue to keep RMS informed of all relevant information pertaining to the Force Majeure Event.

38.2 Meeting

The parties must meet within 10 Business Days of delivery of a notice under clause 38.1(a) to determine:

- (a) whether a Force Majeure Event has occurred;
- (b) the extent to which the Force Majeure Event is covered by insurance effected under this document; and
- (c) the estimated duration of the Force Majeure Event.

38.3 Suspension of obligations

- (a) If a Force Majeure Event occurs and the Affected Party gives notice under clause 38.1(a), then:
 - (i) the Affected Party's obligations under this document (other than this clause 38.3) which are affected by the Force Majeure Event will be suspended, but only to the extent and for so long as the Force Majeure Event prevents or delays the Affected Party from performing those obligations; and
 - (ii) RMS may not issue a notice to remedy or show cause under clause 39 or terminate this document under clause 40 in respect of a breach of such obligations during the period of suspension.
- (b) Upon the Affected Party becoming able to recommence performing its obligations which were suspended under paragraph (a)(i), subject to a reasonable period in order to remobilise, the Affected Party must recommence the performance of those obligations.

38.4 Payments

RMS is not obliged to make any payments under this document with respect to those Services which are not performed due to a Force Majeure Event.

38.5 Best endeavours to mitigate effect

During the period of suspension under clause 38.3, the Affected Party must use its best endeavours to overcome or mitigate the effects of the Force Majeure Event. This may include incurring reasonable expenditure, rescheduling resources or implementing appropriate temporary measures.

38.6 Alternative arrangements

During the period of suspension under clause 38.3, RMS may make alternative arrangements for the performance of any suspended obligations of the ITS Contractor (without incurring any liability to the ITS Contractor).

38.7 Cessation of Force Majeure Event

The Affected Party must notify the other party immediately after it ceases to be prevented or delayed from performing its obligations as a result of a Force Majeure Event.

38.8 No financial relief to the ITS Contractor

RMS will not be obliged to provide any financial relief to the ITS Contractor during the period of suspension under clause 38.3, to the extent of the suspension.

38.9 No compensation to RMS

The ITS Contractor will not be liable to compensate RMS for any Losses which RMS incurs during the period of suspension under clause 38.3 in respect of the suspended obligations.

PART K – STEP-IN, TERMINATION, DEMOBILISATION AND HANDOVER

39. RMS STEP-IN

39.1 Notice to remedy breach

Without limiting RMS' rights under clause 40.1, if the ITS Contractor breaches an obligation under this document (including committing a ITS Contractor's Default), RMS may in writing direct the ITS Contractor to remedy the breach and specify the time and date by which the breach must be remedied, if the breach is capable of being remedied.

39.2 RMS step-in

If:

- (a) the ITS Contractor fails to comply with a notice served under clause 39.1; or
- (b) RMS reasonably believes that action must be taken to discharge its duty as an Authority,

RMS may remedy, or procure the remedy of, the default or perform (or procure performance of) such action.

39.3 **Suspension of ITS Contractor's obligations**

If RMS exercises its rights under clause 39.2, the ITS Contractor's obligations under this document are suspended to the extent and for such period as the ITS Contractor is prevented from performing such obligations by RMS exercising its step-in right.

39.4 **ITS Contractor must assist RMS**

If RMS exercises its step-in right under clause 39.2, the ITS Contractor must assist RMS (and ensure that its Subcontractors assist RMS) to ensure RMS is able to exercise its step-in right effectively and expeditiously, including giving RMS or its nominees access to the ITS Contractor's Plant, Materials and documents and materials produced by the ITS Contractor.

39.5 **Step-in right ceases**

- (a) If RMS exercises its step-in right, RMS may, after giving reasonable prior notice to the ITS Contractor, cease to exercise the right.
- (b) RMS' step-in right will cease once the relevant breach has been remedied.

39.6 **RMS not required to remedy breach**

The ITS Contractor acknowledges and agrees that RMS is not obliged to remedy any breach, or to overcome or mitigate any risk or risk consequences, in respect of which RMS exercises its step-in right.

39.7 **ITS Contractor to compensate RMS**

The ITS Contractor must indemnify RMS in respect of any Loss incurred by RMS arising out of or in connection with the exercise of its step-in right under this clause 39.

39.8 **No payments by RMS**

RMS will have no liability to the ITS Contractor:

- (a) arising out of or in connection with the exercise by RMS of its step-in right under this clause 39; or
- (b) for payment of all or part of any payment under this document referable to the ITS Contractor's obligations suspended under this clause 39.

39.9 **RMS may suspend ITS Contractor's authorisation**

If RMS issues a notice to the ITS Contractor under clause 39.1, RMS may immediately by written notice to the ITS Contractor cancel any authorisation granted by RMS to the ITS Contractor other than an authorisation required to enable the ITS Contractor to remedy the breach.

39.10 **No prejudice to other rights**

Nothing in this clause 39 prejudices RMS' other rights under this document or according to Law with respect to the ITS Contractor's default.

40. **TERMINATION FOR DEFAULT OR INSOLVENCY OF THE ITS CONTRACTOR**

40.1 **Termination for ITS Contractor's Default**

- (a) RMS may, by notice in writing to the ITS Contractor, immediately terminate this document if:
- (i) an ITS Contractor's Default occurs which, in RMS' opinion, is not capable of being remedied;
 - (ii) the ITS Contractor fails to comply with a notice served under clause 39.1 to the reasonable satisfaction of RMS within the period specified in the notice;
 - (iii) the ITS Contractor commits a Persistent Breach;
 - (iv) in RMS' opinion, there is a Change of Control of any entity that comprises the ITS Contractor; or
 - (v) the ITS Contractor's aggregate liability to RMS is equal to or exceeds [REDACTED].
- (b) Nothing in this clause 40 affects or negates RMS' common law rights to terminate or for damages.

40.2 **Termination for insolvency of the ITS Contractor or the Guarantor**

RMS may, by notice in writing to the ITS Contractor, immediately terminate this document if an Insolvency Event occurs in relation to the ITS Contractor or the Guarantor.

40.3 **Consequences of termination**

- (a) If RMS terminates this document under clause 40.1 or 40.2, RMS may at its sole discretion employ others to complete the Services.
- (b) If the cost of appointing others to complete the Services exceeds the amount that would have been paid to the ITS Contractor to complete the Services, then the difference will be a debt due by the ITS Contractor to RMS.
- (c) RMS may make a provisional assessment of the amounts payable to RMS under paragraph (b) and:
- (i) deduct such amount or any part of that amount from the Security; and/or
 - (ii) set off such amount or any part of that amount from amounts otherwise payable to the ITS Contractor.

41. **TERMINATION FOR CONVENIENCE**

41.1 **RMS may terminate Contract for convenience**

- (a) RMS may, by giving 1 month written notice, terminate this document for its convenience and without the need to give reasons.
- (b) In any notice issued under paragraph (a), RMS may specify Project Works which the ITS Contractor must carry out and complete following such termination.
- (c) If, in a notice issued under paragraph (a), RMS specifies any such Project Works, the Work Terms and any terms of this document applicable to such Project Works will survive the termination of this document.

41.2 ITS Contractor's obligations

If RMS issues a termination notice under clause 41.1, the ITS Contractor must comply with any directions of RMS to wind down and stop work.

41.3 Payments on termination for convenience

- (a) After termination under clause 41.1, subject to its rights under this document, including any right of set-off, RMS must pay the ITS Contractor:
- (i) the value completed for:
 - (A) all Services carried out to the date the termination notice takes effect; and
 - (B) the Demobilisation and Handover Services,
as determined under clause 25 and after taking into account previous payments and any deductions, retentions or set-offs;
 - (ii) the cost of unfixed Materials reasonably ordered by the ITS Contractor for the Services which it is legally liable to accept, but only if on payment these unfixed Materials become the property of RMS, free of any Encumbrances;
 - (iii) where a Payment Type includes payment of any Reimbursable Costs in accordance with the Amortised Cost Principle, such Reimbursable Costs for a period of 2 months following the date of termination;
 - (iv) any Subcontractor Breakage Costs payable to Subcontractors arising from the termination of Subcontracts; and
 - (v) where this document is terminated under clause 41.1 within 2 years from the Full Services Commencement Date, the Transferring Employees Payment, but only where the ITS Contractor can demonstrate to RMS that for each Transferring Employee for which it is claiming payment:
 - (A) the Transferring Employee remained employed with the ITS Contractor for the relevant period; and
 - (B) the Transferring Employee was not redeployed by the ITS Contractor.
- (b) The payments referred to in paragraph (a) are in full compensation for termination under this clause 41, and the ITS Contractor has no Claim for damages or other entitlement whether under this document or otherwise.

41.4 Return of Security following termination for convenience

- (a) RMS must, subject to paragraphs (b) and (c) and its other rights under this document, return all Security within 40 Business Days of termination under clause 41.1.
- (b) If in a notice issued under clause 41.1(a), RMS specifies any Project Works that the ITS Contractor must carry out and complete following termination, RMS may retain such amount of Security as RMS determines, in its absolute discretion, as being required as security for such Project Works.
- (c) RMS must return any Security held pursuant to paragraph (b) within 40 Business Days of the later of:

- (i) the expiry of all Defect Liability Periods for the relevant Project Works; or
- (ii) rectification of all Defects notified to the ITS Contractor in accordance with the Work Terms for the relevant Project Works.

42. TERMINATION FOR RMS DEFAULT

42.1 ITS Contractor may terminate

- (a) If RMS fails to pay the ITS Contractor any amount in accordance with this document which is not the subject of a Dispute, then the ITS Contractor may give notice requiring RMS to remedy the default within 20 Business Days after receiving the notice.
- (b) If RMS fails to remedy the default, or fails to propose steps reasonably acceptable to the ITS Contractor to do so, then the ITS Contractor may issue a notice terminating this document. Clause 41.3 will then apply and RMS must pay the ITS Contractor the applicable amounts referred to in clause 41.3(a) as its sole remedy and in full compensation for RMS' breach.

42.2 Sole remedy

The ITS Contractor has no other right to terminate this document, under the common law or otherwise.

43. TERMINATION FOR CONTINUED FORCE MAJEURE EVENTS

43.1 Either party may terminate

- (a) If the ITS Contractor is rendered wholly or partially unable to carry out its major obligations under this document by a Force Majeure Event for a continuous period of more than 60 Business Days, the Management Review Group will meet to identify any alternate viable means to provide the suspended Services and failing an alternate means being agreed within 20 Business Days of the end of the period referred to above, either party may terminate this document immediately by written notice.
- (b) If this document is terminated under paragraph (a), RMS must pay the ITS Contractor the applicable amounts referred to in clause 41.3(a) and such amounts will be the ITS Contractor's sole remedy and full compensation for such termination.

44. DEMOBILISATION AND HANDOVER

44.1 Demobilisation and Handover Services

The ITS Contractor must carry out the Demobilisation and Handover Services within the Demobilisation and Handover Period.

44.2 ITS Contractor's obligations

- (a) Without limiting the other provisions of this document, prior to the end of the Demobilisation and Handover Period, the ITS Contractor acknowledges and agrees that it must:
 - (i) deliver to RMS an electronic (MS Word format) and hard copy of the then current version of:
 - (A) each Service Plan;

- (B) each of the RMS Specifications; and
 - (C) all Data on the AMS;
- (ii) pay to RMS any insurance proceeds received by the ITS Contractor from any insurances for reinstatement or replacement of any Asset to the extent not already reinstated or replaced;
 - (iii) provide induction and training to any personnel nominated by RMS in relation to any aspect of the Services required by RMS;
 - (iv) if directed by RMS, transfer to RMS or its nominee all Subcontractor warranties and guarantees relating to any Asset;
 - (v) if directed by RMS, assign to RMS the ITS Contractor's rights and benefits in all its contracts concerning the Services and security bonds, bank guarantees, insurance bonds, other security of a similar nature or purpose and retention held by the ITS Contractor under those contracts, with effect from the expiry of the Demobilisation and Handover Period;
 - (vi) if directed by RMS, novate to RMS or its nominee any Subcontract or agreement with a supplier (eg, licences) or consultant relating to the Services;
 - (vii) if directed by RMS, provide RMS with the benefit of any interface arrangements that the ITS Contractor has implemented with any Authority or Utility provider;
 - (viii) remove all temporary works, ITS Contractor's Plant and Materials it has brought into the Zone (other than temporary work, ITS Contractor's Plant and Materials that RMS requires to be retained in the Zone);
 - (ix) return to RMS anything entrusted to the ITS Contractor by RMS for the purpose of carrying out the Services;
 - (x) if this document terminates or expires within 2 years of the Full Services Commencement Date, do all things reasonably required by RMS to procure the transfer of employment of all Transferring Employees that are not required by the ITS Contractor to any service provider nominated by RMS; and
 - (xi) do all other reasonable acts and things to enable RMS to properly maintain all Assets.
- (b) The ITS Contractor irrevocably appoints RMS as its attorney to do the things contemplated by paragraphs (a)(iv) to (a)(vii) in the ITS Contractor's name if the ITS Contractor fails to do so by the expiry of the Demobilisation and Handover Period.

44.3 **End of Contract Term obligations**

The ITS Contractor must ensure that:

- (a) as at the Expiry Date there is no immediate repair work required to any Asset (other than repair work identified in the Forward Works Program); and
- (b) anything made available to the ITS Contractor by RMS for the purpose of carrying out the Services is in an operational condition and there is no immediate repair

work required to any such item, part or thing to return it to the condition required by this document.

44.4 **Pricing of the Demobilisation and Handover Services**

The Pricing Schedule applicable to each Works Period must include a pre-agreed price for the performance of the Demobilisation and Handover Services.

44.5 **Spares holdings at the end of the Contract Term**

- (a) Within 10 Business Days of the commencement of the Demobilisation and Handover Period, RMS and the ITS Contractor must meet and agree:
 - (i) the Spares for each Asset Type that will be purchased by RMS (or its nominee) at the end of the Contract Term; and
 - (ii) the purchase price for such Spares having regard to the acquisition cost and market value of the Spares as advised under clause 20.3(b)(iii).
- (b) Prior to the end of the Demobilisation and Handover Period RMS will purchase (or procure that its nominee purchases) the agreed Spares for each Asset Type for the agreed purchase price.
- (c) To facilitate the purchase contemplated by paragraph (b), the ITS Contractor must:
 - (i) make such Spares available for purchase by RMS (or its nominee);
 - (ii) transfer and surrender to RMS (or its nominee) all of the ITS Contractor's right, title and interest in and to such Spares free of any Security Interests; and
 - (iii) cooperate with RMS (or its nominee) in connection with the transfer of ownership of the Spares to RMS (or its nominee).
- (d) The ITS Contractor must provide RMS (or its nominee) with the benefit of any warranties which the ITS Contractor holds in respect of any Spares purchased under paragraph (b).

PART L – GENERAL

45. **NOTICES**

45.1 **How to give a notice**

A notice, consent or other communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the party giving it;
- (b) addressed to the party to whom it is to be given; and
- (c) it is:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that party's address;
 - (ii) sent by fax to that party's fax number and the machine from which it is sent produces a report that states that it was sent in full; or

- (iii) sent by email in the form of a .pdf file of a letter to that party's email address.

45.2 **When a notice is given**

A notice, consent or other communication that complies with this clause 45 is regarded as given and received:

- (a) if it is delivered or sent by fax:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
- (b) if it is sent by mail:
 - (i) within Australia – 3 Business Days after posting; or
 - (ii) to or from a place outside Australia – 7 Business Days after posting.
- (c) if it is delivered or sent by email:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day.

45.3 **Address for notices**

Each party's address, fax number and email address are as set out below or as the party notifies the other party.

RMS

Address: Level 9, 101 Miller Street
North Sydney NSW 2060

Fax: (02) 8588 4134

Email: stephen.cowdery@rms.nsw.gov.au

Attention: Stephen Cowdery, General Manager, Contract Management Office
(With a copy to Christine Lithgow, General Counsel)

ITS Contractor

Address: Level 1, Building 0 Binary Centre
3 Richardson Place
North Ryde NSW 2113

Fax: (02) 8667 6025

Email: Paul.Ferguson@lendlease.com

Attention: Paul Ferguson

46. **ASSISTANCE BY ITS CONTRACTOR**

46.1 **RMS' legal and public obligations**

The ITS Contractor must provide all reasonable assistance to RMS and its agents in seeking to meet its legal and public obligations.

46.2 **Public and Ministerial inquiries**

- (a) The ITS Contractor must provide all reasonable advice, assistance and documentation required by RMS to enable it to:
 - (i) respond to any:
 - (A) governmental inquiry; or
 - (B) governmental request pursuant to any legitimate government purpose or process; and
 - (ii) satisfy any disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability, including tabling information concerning this document or the Services in Parliament.
- (b) The ITS Contractor must provide any advice, assistance or documentation that is required by RMS under paragraph (a) within such time as is reasonably required by RMS.

47. **AMENDMENT AND ASSIGNMENT**

47.1 **Amendment**

This document may only be amended, supplemented, replaced or novated by another document signed by each of the parties.

47.2 **Assignment**

The ITS Contractor must not assign, transfer or otherwise deal with any of its rights or obligations under this document except with the prior written consent of RMS.

48. **GENERAL**

48.1 **Governing law**

This document is governed by the laws of New South Wales and both parties submit irrevocably to the non-exclusive jurisdiction of the courts of New South Wales.

48.2 **Survival of terms**

- (a) The invalidity or unenforceability of any part or provision of this document does not affect the enforceability of any other part or provision of this document and the invalid or unenforceable part is severable.
- (b) Clauses 1.9, 3, 7.4(b), 9, 11.3, 11.7(d), 12.1(c), 11.12, 11.13, 21, 22, 25.2, 25.6, 25.7, 25.8, 29, 31, 32, 33, 34, 36, 39, 40, 41, 42, 43, 44, 45 and 48 (and any provisions of this document necessary for or incidental to the operation of these clauses) survive the expiry or termination of this document.

48.3 **Relationship of parties**

- (a) Except as expressly provided in this clause 48.3, this document is not intended to create and should not be construed as creating any partnership, joint venture or fiduciary relationship between the parties, or confer a right in favour of either party to enter into any commitment on behalf of the other or otherwise to act as its agent.
- (b) Each party is an independent entity, and for the purposes of this document, the officers, employees, agents or subcontractors of each party will not be deemed to be officers, agents or subcontractors of the other, unless deemed otherwise by Law and without limiting the generality of this clause 48.3 each party will pay all costs associated with its own officers and employees including any fringe benefits tax liability attaching to the grant of any fringe benefit to such officers and employees in respect of their appointment.

48.4 **Liability for expenses, duty, taxes and other imposts**

The ITS Contractor must pay any duty, taxes or other imposts payable in respect of this document or payable in connection with the performance of the Services or any of its other obligations under this document.

48.5 **Attorneys**

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

48.6 Giving effect to this document

RMS and the ITS Contractor must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document) that the other party may reasonably require to give full effect to this document.

48.7 Waiver of rights

Waiver or relaxation partly or wholly of any of the terms of this document will:

- (a) be effective only if in writing and signed by each party;
- (b) apply only to a particular occasion unless otherwise expressed to be continuing; and
- (c) not constitute a waiver or relaxation of any other term of this document.

48.8 Operation of this document

This document applies to the Services, whether the Services are undertaken before, on or after the Commencement Date.

48.9 Consents

Subject to any express provision in this document to the contrary, a party may conditionally or unconditionally give or withhold any consent to be given under this document.

48.10 Entire Agreement

- (a) This document contains the entire agreement between the parties about its subject matter.
- (b) Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

48.11 Counterparts

This document may consist of a number of counterparts and if so the counterparts taken together constitute one and the same document.

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

The following definitions apply in this document.

Aboriginal Participation Plan means the plan contemplated by section 5.12.3 of the ITS MC Service Requirements, as may be updated in accordance with this document.

Affected Party means a party affected, or which alleges it is affected, by a Force Majeure Event.

Amortised Cost Principle has the meaning set out in Appendix 1 of the Commercial Framework.

Annual Report means the report contemplated by clause 19.2.

Approval means any certificate, licence, consent, permit, approval, direction or determination of any Authority or under any Legislation.

Asset Definition Specification means the document set out in Exhibit 1, as may be updated or varied in accordance with this document.

Asset Inspection Works means the works and services contemplated by section S.3 of Table 1 set out in section 2.2 of the ITS MC Service Requirements.

Asset Maintenance Plans or **AMPs** means the plans contemplated by section 4.3.5 of the ITS MC Service Requirements, as may be updated in accordance with this document.

Asset Management means the works and services contemplated by section S.2 of Table 1 set out in section 2.2 of the ITS MC Service Requirements.

Asset Management System or **AMS** means a system complying with the requirements of section 5.8 of the ITS MC Service Requirements.

Asset Type has the meaning given in section 1.2 of the Asset Definition Specification.

Assets means the physical assets within the Zone described in the Asset Definition Specification.

Authority means any government or government department, local government, council, government or statutory authority, administrative or judicial body or tribunal, agency, minister, statutory corporation or instrumentality or any person (whether autonomous or not) who is charged with the administration of legislation or which has a right to give any consent or impose any requirements in relation to the Services.

Brief for Transition Services means the document set out in Schedule 7.

Business Continuity Plan means the plan contemplated by section 5.2.7 of the ITS MC Service Requirements, as may be updated in accordance with this document.

Business Day means a day which is not a Saturday, Sunday or public holiday in New South Wales or 27, 28, 29, 30 or 31 December.

CCU means the "Construction Compliance Unit" established within NSW Industrial Relations to monitor compliance with, and receive reports of alleged breaches of the NSW Guidelines.

Change means a change or variation to the Services including additions, increases, decreases omissions and deductions to and from the Services, including a variation to:

- (a) the Performance Framework;
- (b) the ITS MC Service Requirements;
- (c) the Asset Definition Specification;
- (d) the Zone; or
- (e) the Assets,

but does not include directions contemplated by clause 5(c) of this Schedule.

Change Benchmarking Guide means the document set out in Appendix 5 of the Commercial Framework, as may be updated or varied in accordance with this document.

Change Event means:

- (a) a Qualifying Change in Law; or
- (b) an event contemplated by the Change Benchmarking Guide which entitles the ITS Contractor to additional time and/or cost.

Change in Law means:

- (a) the amendment, repeal or change of any Law;
- (b) the enactment of any new Law;
- (c) a judgment of a relevant court of law which changes a binding precedent on the interpretation or application of any Law; or
- (d) a change in Codes and Standards,

which occurs after the Commencement Date but excluding:

- (e) any amendment, repeal or change of the *Income Tax Assessment Act 1936* (Cth), the GST Law or the *Income Tax Assessment Act 1997* (Cth);
- (f) any amendment, repeal or change of the WHS Act or WHS Regulation;
- (g) any amendment, repeal, change or enactment of any Law, or any Code or Standard, which, as at the Commencement Date:
 - (i) was published or of which public notice had been given; or
 - (ii) a party experienced and competent in the delivery of services similar to the Services would have reasonably foreseen or anticipated; and
- (h) any amendment, repeal, change or enactment of any Law, or any Code or Standard, effected in response to an illegal act or omission by the ITS Contractor (not including an act or omission which became illegal as the result of the amendment, repeal, change or enactment).

Change of Control means that:

- (a) a holding company of a body corporate ceases to be its holding company; or
- (b) a body corporate which was not a holding company of the body corporate becomes its holding company,

except where the old and new holding companies of the body corporate both have the same holding company (and **holding company** means the same as in the Corporations Act).

Claim means any claim, action, demand or proceeding:

- (a) under, arising out of, or in any way in connection with, this document;
- (b) arising out of, or in any way in connection with, the Services or any party's conduct prior to the date of this document; or
- (c) otherwise at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including restitution based on unjust enrichment.

Clean Energy Regulator means the person that administers the NGER Legislation.

Codes and Standards means:

- (a) the codes, standards, specifications and guidelines specified in the ITS MC Service Requirements and any relevant Standards Australia codes, standards, specifications and guidelines, current as at the Commencement Date; and
- (b) if and to the extent there is no relevant:
 - (i) code, standard, specification or guideline specified in the ITS MC Service Requirements; or
 - (ii) Standards Australia code, standard, specification or guideline,
relevant international codes, standards, specifications and guidelines current as at the Commencement Date,

and in each case being a code, standard, specification or guideline:

- (c) with which the ITS Contractor is required to comply pursuant to the terms of the this document; and
- (d) which is not Legislation.

Commencement Date means the date of execution of this document.

Commercial Framework means the document set out in Schedule 3, as may be updated or varied in accordance with this document.

Communications and Stakeholder Engagement Plan means the plan contemplated by section 5.2.14 of the ITS MC Service Requirements, as may be updated in accordance with this document.

Completion has the meaning given in the Work Terms.

Condition Precedent Deadline Date means the date which is 5 Business Days after the Commencement Date or such later date as RMS may specify by notice in writing to the ITS Contractor.

Contract Term means the period specified in clause 2.1.

Contract Year means:

- (a) the period commencing on (and including) the Full Services Commencement Date and expiring on 30 June 2015; and
- (b) each subsequent 12 month period.

Controller has the same meaning as in the Corporations Act.

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

Cost Plus or **CP** means the basis for payment contemplated by section 2.4 of the Commercial Framework.

Critical means, in relation to an Asset, a classification given in accordance with section 4 of the Asset Definition Specification.

Data means:

- (a) data (in any format or medium including in electronic form or written) generated by or stored within the Asset Management System, other than financially sensitive information (as agreed between the parties) relating to the ITS Contractor or its Subcontractors; and
- (b) Performance Data (including all source data from which it is derived).

Date for Completion has the meaning set out in the Work Terms.

Date of Completion has the meaning set out in the Work Terms.

Deeds of Disclaimer means the deed polls executed by the ITS Contractor's Shareholders dated 9 April 2014.

Deed of Guarantee and Indemnity means a guarantee and indemnity in the form of Schedule 16.

Default Rate means 2% above:

- (a) the rate, expressed as a yield per cent per annum (rounded up (if necessary) to four decimal places) that is quoted as the average bid rate on the Reuters monitor system page "BBSY" (or any page that replaces that page) at about 10.30 am on the day the relevant payment becomes due, for bank-accepted bills of exchange that have a tenor equal to 90 days; or
- (b) if no average bid rate is published in accordance with paragraph (a), the bid rate available to the payee at about 11.00 am on the day the relevant payment becomes due, as conclusively determined in good faith by the payee, for bank-accepted bills of exchange that have the tenor equal to 90 days.

Defect has the meaning given in the Work Terms.

Defects Liability Period has the meaning given in the Work Terms.

Deliverable means each item, document, report, submission or Data that the ITS Contractor must provide to RMS under this document, including the Service Plans, all Performance Reports, all Performance Data and any amendments to the RMS Specifications.

Demobilisation and Handover Period means:

- (a) the last 3 months of the Contract Term;
- (b) where the parties have failed to agree the Forward Works Program within the time required by clause 7.3(b) and RMS has not issued a notice under clause 7.4(c), the last 3 months of the current Works Period;
- (c) where RMS has issued a notice under clause 7.4(c) but the parties fail to agree the Forward Works Program within the period specified in the notice, a 3 month period commencing on a date notified by RMS; or
- (d) if this document is terminated under clause 40, 41, 42 or 43, 3 months from the date of the notice of termination.

Demobilisation and Handover Services means the works and services contemplated by:

- (a) section S.10 of Table 1 set out in section 2.2 of the ITS MC Service Requirements; and
- (b) clause 44.2.

Depot Management Plan means the plan contemplated by section 5.2.5 of the ITS MC Service Requirements and section 8.2 of the Brief for Transition Services, as may be updated in accordance with this document.

Developed Material means the materials contemplated by clause 33.1(b).

Dispute has the meaning given in clause 36.1.

Efficiency Commitment means the efficiency commitment described in section 2.8 of the Commercial Framework.

Emergency Services means the NSW Police Force, Fire and Rescue NSW and the Ambulance Service of NSW (and each is an **Emergency Service**).

Emissions and Energy Data means:

- (a) any data, information, records and reports of the type that a registered corporation or any other person may be required by the NGER Legislation to keep or to provide to the Clean Energy Regulator concerning greenhouse gas emissions, energy production or energy consumption;
- (b) any data, information, records and reports of the type that a registered corporation or any other person may be entitled to provide to the Clean Energy Regulator under the NGER Legislation concerning reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project; and

- (c) any other data, information, records and reports concerning environmental emissions or energy production, use, consumption or efficiency of the type that any person may be required by any other Law to keep or to provide to any Authority.

Encumbrance means:

- (a) a PPS Security Interest;
- (b) any other mortgage, pledge, lien or charge;
- (c) an easement, restrictive covenant, caveat or similar restriction over property; or
- (d) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Environmental Event means:

- (a) non-compliance with or the violation of any Environmental Law; or
- (b) an offence under any Environmental Law.

Environmental Law means any Law relating to the Environment (as defined in the *Contaminated Land Management Act 1997* (NSW)), building, planning, health, safety or occupational health and safety and obligations under the common law.

Environmental Management Plan means the plan contemplated by sections 5.3.1 to 5.3.3 of the ITS MC Service Requirements, as may be updated in accordance with this document.

Environmental Management System means the management system contemplated by section 5.3 of the ITS MC Service Requirements.

Estimating Plan means the plan contemplated by section 5.10.1 of the ITS MC Service Requirements, as may be updated in accordance with this document.

Excepted Risk means any of the following:

- (a) any breach of the terms of this document by, or negligent or unlawful act or omission of RMS or the employees, consultants or agents of RMS; or
- (b) a Force Majeure Event.

Excluded Assets means the assets contemplated by section 3 of the ITS MC Service Requirements.

Excluded Costs means the costs contemplated by Appendix 2 of the Commercial Framework which may be incurred by the ITS Contractor in performing the Services but which the ITS Contractor is not entitled to payment under this document.

Expiry Date means:

- (a) the Original Expiry Date;
- (b) if RMS issues a notice under clause 2.2(a) in respect of the First Option Period, the First Extended Expiry Date; or
- (c) if RMS issues a notice under clause 2.2(a) in respect of the Second Option Period, the Second Extended Expiry Date.

Facilities Support Services means the works and services contemplated by section 5.8 of Table 1 set out in section 2.2 of the ITS MC Service Requirements.

Final Certificate means a certificate issued under:

- (a) clause 27.1(b) in respect of the Services that are the subject of a Forward Works Program; or
- (b) clause 27.2(b) in respect of a Special Project.

Final Forward Works Program Payment Claim means a payment claim submitted under clause 27.1(a).

Final Special Project Payment Claim means a payment claim submitted under clause 27.2 (a).

Financial Auditor means a financial auditor appointed by RMS under clause 22.6.

Financial Management Plan means the plan contemplated by section 5.9.2 of the ITS MC Service Requirements, as may be updated in accordance with this document.

First Extended Expiry Date means the date which is 12 months after the Original Expiry Date.

First Option Period means a period of 12 months commencing on the Original Expiry Date.

Force Majeure Event means each of the following events:

- (a) earthquake, cyclone, hurricane, storm, flood, natural disaster, lightning, landslide, mudslide, epidemic, fire damage caused by aircraft, explosion, fire, high sea or inundation;
- (b) sabotage, riot or civil commotion;
- (c) blockades or embargo;
- (d) a "terrorist act" (as defined in section 5 of the *Terrorism Insurance Act 2003* (Cth) as at the date of this document);
- (e) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law or confiscation by order of any Authority;
- (f) statewide or nationwide strikes or other industrial actions that:
 - (i) affect the road construction and maintenance sectors; and
 - (ii) which do not only affect the ITS Contractor and/or any of its Subcontractors; or
- (g) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;

which:

- (h) is beyond the reasonable control of the Affected Party; and

- (i) prevents or delays the Affected Party from performing any of its obligations under this document where that cause or the consequences of the cause:
 - (i) has not resulted from the Affected Party breaching a term of this document; and
 - (ii) if the Affected Party is the ITS Contractor, could not have been prevented, avoided, remedied or overcome by the ITS Contractor or its Subcontractors taking those steps which a prudent, experienced and competent contractor would have taken.

Forward Works Program or **FWP** means the document outlining the Services to be performed in each Works Period developed in accordance with clause 7.3 and section 1 of Schedule 8.

Forward Works Program Amendment Proposal or **FWP Amendment Proposal** means a proposal contemplated by section 2 of Schedule 8.

Forward Works Program Brief or **FWP Brief** means:

- (a) the Initial Forward Works Program Brief; and
- (b) each subsequent "Forward Works Program Brief" provided to the ITS Contractor by RMS which sets out the outcomes and requirements contemplated by section 4 of Schedule 8.

Forward Works Program Proposal or **FWP Proposal** means a proposal contemplated by section 1 of Schedule 8.

Full Services Commencement Date means 1 October 2014.

Gainshare has the meaning given in section 2.3.2 of the Commercial Framework.

General Conditions means clauses 1A to 48 of this document.

Gross Negligence means a negligent act or negligent omission resulting from a serious disregard of an obvious risk.

GST has the meaning given in the GST Law.

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

Guarantor means the guarantor under the Deed of Guarantee and Indemnity.

Hazardous Discharge means any emission, spill, leak, release, escape or discharge into or upon:

- (a) the air;
- (b) any soil;
- (c) any improvements;
- (d) any surface water or ground water; or
- (e) any Asset,

of any Waste, other than Hazardous Discharge permitted by an Environmental Law.

IAMA Expert Determination Rules means the current version of the "Expert Determination Rules" of the Institute of Arbitrators and Mediators Australia.

Incident Support means the works and services contemplated by section 5.6 of Table 1 set out in section 2.2 of the ITS MC Service Requirements.

Incident Management Plan means the plan contemplated by section 5.2.9 of the ITS MC Service Requirements, as may be updated in accordance with this document.

Industrial Relations Plan means the plan contemplated by section 5.12.2 of the ITS MC Service Requirements, as may be updated in accordance with this document.

Industry Participation Plan means the plan contemplated by section 5.11.2 of the ITS MC Service Requirements, as may be updated in accordance with this document.

Information Document means any information, data or document (in any format or medium including in electronic form and whether oral or written):

- (a) listed in Exhibit 3; or
- (b) referred to, or incorporated by reference, in any information, data or document listed in Exhibit 3, unless such information, data or document is otherwise expressly stated to form part of this document,

whether issued or made available:

- (c) on, before or after the date of submission of the tender submitted by the ITS Contractor's Shareholders; or
- (d) on, before or after the date of this document,

other than any information, data or document which RMS is obliged by the terms of this document to provide to the ITS Contractor and the ITS Contractor is expressly obliged by the terms of this document to rely on.

Initial Forward Works Program means the Forward Works Program for the Initial Works Period.

Initial Forward Works Program Brief means the document set out in Schedule 9.

Initial MRG Appointees means:

- (a) in the case of RMS;
 - (i) Greg Evans; and
 - (ii) Stephen Cowdery; and
- (b) in the case of the ITS Contractor:
 - (i) Victor Hensley; and
 - (ii) Ferdie Mostert.

Initial Service Plans means the service plans set out in Exhibit 2.

Initial Transition Management Plan means the initial Transition Management Plan set out in Exhibit 2.

Initial Works Period means period commencing on the Full Services Commencement Date and expiring on 30 June 2015.

Insolvency Event means in respect of a person:

- (a) an administrator being appointed to a person;
- (b) a person resolving to appoint a Controller or analogous person to a person or any of a person's property;
- (c) an application being made to a court for an order to appoint a Controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to a person or any of a person's property;
- (d) an appointment of the kind referred to in paragraph (c) being made (whether or not following a resolution or application);
- (e) the holder of a Security Interest or any agent on its behalf, appointing a Controller or taking possession of any of a person's property (including seizing the person's property within the meaning of section 123 of the PPSA) or otherwise enforcing or exercising any rights under the Security Interest or Chapter 4 of the PPSA;
- (f) a person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (g) an application being made to a court for an order for a person's winding up;
- (h) an order being made, or a person passing a resolution, for a person's winding up;
- (i) a person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (j) a person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (k) a court or other authority enforcing any judgment or order against a person for the payment of money or the recovery of any property; or
- (l) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved in writing by RMS.

Integrated Contract Management System or **ICMS** means the systems, processes, procedures and Service Plans contemplated by section 5 of the ITS MC Service Requirements.

Intellectual Property Right means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, patents, designs, circuit layouts, plant varieties, business and domain names, inventions and confidential information and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights, such as moral rights.

ITS Contractor's Authorised Person means the person appointed as such by the ITS Contractor under clause 16.1.

ITS Contractor's Default means:

- (a) a substantial breach of this document by the ITS Contractor, including any of the following:
 - (i) abandoning the carrying out of the Services;
 - (ii) suspending the performance of the Services, in whole or in part without the written agreement of RMS, except for suspension under clause 37.1(a)(i)(A);
 - (iii) failing to comply with a direction in writing or confirmed in writing by RMS;
 - (iv) failing to carry out the Services with professional skill, care and competence;
 - (v) failing to maintain any registration or licence required by Law to carry on activities required under this document;
 - (vi) failing to provide Security as required under clause 3;
 - (vii) failing to provide the Deed of Guarantee and Indemnity as required under clause 3.7; or
 - (viii) failing to effect and maintain insurance policies as required under this document; or
- (b) a breach of the ITS Maintenance Transitional Agreement by the ITS Contractor.

ITS Contractor's Plant means all plant, equipment and facilities used or required for the performance of the Services (irrespective of ownership).

ITS Contractor's Shareholders means:

- (a) Lend Lease Services Pty Limited ABN 87 081 540 847; and
- (b) Tyco Projects (Australia) Pty Limited ABN 70 092 471 737.

ITS Maintenance Contract or **ITS MC** means this document.

ITS Maintenance Transitional Agreement means the agreement between RMS, the Transport Service of NSW and the ITS Contractor entitled "ITS Maintenance Transitional Agreement" dated on or after the date of this document.

ITS MC Resources means any ITS Contractor's Plant, Materials, Personnel and/or other resources or facilities that are utilised by the ITS Contractor for the provision of the Services including any RMS Depots that are the subject of a RMS Depot Licence.

ITS MC Service Requirements means the ITS MC Services Requirements set out in Schedule 2.

Key Performance Indicator or **KPI** means a key performance indicator specified in Appendix 1 of the Performance Framework or otherwise agreed between the parties in accordance with this document.

Key Personnel means the personnel specified in Schedule 13.

Key Result Area or **KRA** means a key result area specified in Appendix 1 of the Performance Framework or otherwise agreed between the parties in accordance with this document.

KPI Score means the score achieved for each Key Performance Indicator in the relevant measurement period, as determined in accordance with section 3 and Appendix 1 of the Performance Framework.

KRA Score means the score achieved for each Key Result Area in the relevant measurement period, as determined in accordance with section 3 and Appendix 1 of the Performance Framework.

Lane means any traffic lane, ramp or hard shoulder which forms part of any Road within the Zone.

Law means:

- (a) Legislation;
- (b) common law and principles of equity; and
- (c) Approvals (including any condition or requirement under them).

Leave has the meaning given in the ITS Maintenance Transitional Agreement.

Legislation means, in relation to NSW or the Commonwealth of Australia:

- (a) any act of parliament or statute;
- (b) any subordinate legislation, rules, regulations or by-laws; and
- (c) any document or policy issued under such legislation or delegated legislation with which the ITS Contractor is legally required to comply.

Long Service Corporation means Long Service Corporation established under the *Long Service Corporation Act 2010* (NSW).

Loss includes:

- (a) any cost, expense, loss, damage or liability, whether direct, indirect or consequential (including pure economic loss), present or future, fixed or unascertained, actual or contingent; and
- (b) without being limited by paragraph (a) and only to the extent not prohibited by Law, any fine or penalty.

Maintenance Management System means the management system contemplated by section 5.8.9 of the ITS MC Service Requirements.

Management Review Group means the group established under clause 15.1.

Management Review Group Chairperson means the person nominated under clause 15.2(d).

Management Services means:

- (a) Program Management; and
- (b) Asset Management.

Management Team has the meaning given in clause 17.1.

Mandatory Credit Rating means a credit rating or financial security rating (as applicable to the issuer) of at least A minus by Standard & Poor's or A2 by Moody's.

Margin means the amount payable to the ITS Contractor in respect of:

- (a) off-site or corporate overheads, profit and other costs and expenses that are not payable as Reimbursable Costs; or
 - (b) cost and expenses contemplated by Appendix 3 of the Commercial Framework,
- calculated in accordance with the Commercial Framework for each Payment Type.

Margin at Risk has the meaning set out in section 3.3.3 of the Commercial Framework.

Margin Rates means the margin rates specified in Pricing Table 3A of the Pricing Schedule which are applicable to each Payment Type.

Materials means any raw or manufactured material, goods or things (other than Spares and the ITS Contractor's Plant) required for use in providing the Services.

Milestone means:

- (a) the Date for Completion of any Project Works; or
- (b) any other date agreed between the parties as being the date by which a particular element of the Services must be completed.

Minor Improvement Works means the works and services contemplated by section S.7 of Table 1 set out in section 2.2 of the ITS MC Service Requirements.

Mobilisation Stage means the period from the Commencement Date until the Full Services Commencement Date.

Modifier means a positive or negative modifier contemplated by Appendix 1 of the Performance Framework.

Monthly Report means the report contemplated by clause 19.1.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth).

Negotiated Terms or **NT** means the basis for payment contemplated by section 2.5 of the Commercial Framework.

NGER Legislation means the *National Greenhouse and Energy Reporting Act 2007* (Cth) and the regulations and any other legislative instruments under that Act.

NSW Code means the NSW Government's Code of Practice for Procurement (January 2005), or any substitute for, or update to, such code.

NSW Government Policy Documents means any document issued by the NSW Government or any NSW Government Authority and any documents adding to or replacing those documents from time to time.

NSW Guidelines means the NSW Government's Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction (as published by the NSW Treasury in July 2013), or any substitute for, or update to, such guidelines.

Operations Plan means the plan contemplated by section 5.2.10 of the ITS MC Service Requirements, as may be updated in accordance with this document.

Overall Performance Score or **OPS** means the "Overall Performance Score" calculated in accordance with section 4 of the Performance Framework.

Overarching Asset Maintenance Plan or **Overarching AMP** means the plan contemplated by section 4.3.4 of the ITS MC Service Requirements and set out in Schedule 11, as updated from time to time by RMS.

Original Expiry Date means 30 June 2019.

Owner's Estimator means any person appointed by RMS for the purposes contemplated by clause 22.5.

Pain Gain Adjustment means the adjustment contemplated by section 2.3.2 of the Commercial Framework for all elements of the Service that are carried out on a Target Cost basis.

Painshare has the meaning given in section 2.3.2 of the Commercial Framework.

Payment Claim means a claim for payment as referred to in clause 25.3.

Payment Schedule means Schedule 5.

Payment Type means each payment type contemplated by section 2 of the Commercial Framework, being:

- (a) Priced Component;
- (b) Target Cost;
- (c) Cost Plus; and
- (d) Negotiated Terms.

Performance Adjustment means the performance adjustment determined in accordance with section 3.3.3 of the Commercial Framework.

Performance Data means all data and information that is contained in a Performance Report.

Performance Framework means the document set out in Schedule 4, as may be updated or varied in accordance with this document.

Performance Incentive means performance incentive determined in accordance with section 3.3.3 of the Commercial Framework.

Performance Report means the Monthly Report and the Annual Report.

Persistent Breach means:

- (a) for 2 consecutive Contract Years the ITS Contractor achieves an Overall Performance Score of less than 30; or

- (b) the reduction to the Overall Performance Score in a Contract Year attributable to negative Modifiers is greater than or equal to 4.

Personal Information has the meaning given to that term in:

- (a) the Privacy and Personal Information Protection Act 1998 (NSW); and
- (b) the Health Records and Information Privacy Act 2002 (NSW).

Personnel means:

- (a) officers, employees, agents or Subcontractors of the ITS Contractor; and
- (b) officers, employees or agents of any Subcontractor of the ITS Contractor.

Planned Maintenance Works means the works and services contemplated by section S.4 of Table 1 set out in section 2.2 of the ITS MC Service Requirements.

PPS Security Interest means a security interest that is subject to the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Pre-Existing Material means any material provided by or on behalf of the ITS Contractor that is existing at the Commencement Date, is not developed specifically for RMS or in contemplation of this document and is:

- (a) incorporated with any Deliverable; or
- (b) otherwise provided to RMS under this document.

Prequalified Areas of Work means those works and services identified on the RMS website as requiring pre-qualification, as updated from time to time.

Priced Component or **PC** means the basis for payment contemplated by section 2.2 of the Commercial Framework.

Pricing Schedule means the pricing schedule agreed by the parties as being applicable for the relevant Works Period under the terms of this document and which is generally in the form of the Reference Pricing Schedule.

Pricing Table means a pricing table set out in:

- (a) the Reference Pricing Schedule; or
- (b) the Pricing Schedule,

as applicable.

Procurement Plan means the plan contemplated by section 5.11.1 of the ITS MC Service Requirements, as may be updated in accordance with this document.

Program Management means the works and services contemplated by section S.1 of Table 1 set out in section 2.2 of the ITS MC Service Requirements.

Program Management System means the management system contemplated by section 5.7.1 of the ITS MC Service Requirements.

Project Works means:

- (a) Special Projects;

- (b) Minor Improvement Works;
- (c) Strategic ITS Asset Renewal and Replacement Works; and
- (d) any other element of the Services that RMS directs to be Project Works.

Privacy Acts means:

- (a) the Privacy and Personal Information Protection Act 1998 (NSW); and
- (b) the Health Records and Information Privacy Act 2002 (NSW).

Qualifying Change in Law means a Change in Law occurring after the Commencement Date which increases or decreases the cost to the ITS Contractor of providing the Services other than a Change in Law in relation to Tax.

Quality Management Plan means the plan contemplated by section 5.6 of the ITS MC Service Requirements, as may be updated in accordance with this document.

Quality Management System means the management system contemplated by section 5.6 of the ITS MC Service Requirements.

Reactive Maintenance Works means the works and services contemplated by section 5.5 of Table 1 set out in section 2.2 of the ITS MC Service Requirements.

Records Management Plan means the management system contemplated by section 5.2.8 of the ITS MC Service Requirements.

Reference Pricing Schedule means the pricing schedule set out in Schedule 6.

Reimbursable Costs means the costs contemplated by Appendix 1 of the Commercial Framework which the ITS Contractor is entitled to payment under this document and which do not form part of the Margin.

Related Body Corporate has the meaning set out in section 50 of the Corporations Act.

Relevant Body means TMC, RMS, an Authority with jurisdiction over any part of the Zone or an Emergency Service.

Risk Management Plan means the plan contemplated by section 5.2.6 of the ITS MC Service Requirements, as may be updated in accordance with this document.

RMS Customer Charter means the document entitled "Roads and Maritime Services Customer Charter" which is published by RMS on its website, as updated from time to time.

RMS Depot Licence means the licence agreement to be entered into by RMS and the ITS Contractor in respect of the RMS Depots in the form of Schedule 21.

RMS Depots means the depots and other facilities specified in Appendix 1 of the Brief for Transition Services.

RMS Interface Agreements means:

- (a) the agreements listed in Schedule 19; and
- (b) any other agreement between RMS and any Relevant Authority, Utility owner or other stakeholder affected by the Services which is provided to the ITS Contractor by RMS.

RMS Leased Plant and Equipment means plant and equipment which is leased by RMS.

RMS Material means all material (in any format or medium) owned by or licensed to RMS and provided to the ITS Contractor under this document, including materials published on the RMS website.

RMS Objectives means the objectives set out in clause 1.1.

RMS Plant and Equipment means the plant and equipment specified in Appendix 2 of the Brief for Transition Services.

RMS Plant and Equipment Lessor means the lessor of any RMS Leased Plant and Equipment.

RMS Representative means the person appointed as such by RMS under clause 16.2.

RMS Retained Entitlements means those entitlements designated as the responsibility of RMS in Schedule 1 of the ITS Maintenance Transitional Agreement.

RMS Specifications means the specifications listed in Appendix 5 of the ITS MC Service Requirements, as may be updated in accordance with this document.

RMS Statement of Business Ethics means the document entitled "Statement of business ethics required in dealings between Roads and Maritime Services and the private sector" which is published by RMS on its website, as updated from time to time.

Road has the same meaning as given to it by the *Roads Act 1993* (NSW).

Road Occupancy Licence means a licence issued by TMC as contemplated by section 2.4 of RMS QA Specification G10.

Sale Agreement means an agreement in the form of Schedule 20.

Scheduled Amount means the amount of payment (if any) stated in a Payment Schedule, that RMS proposes to make in relation to a Payment Claim as referred to in clause 25.3.

Scheduling Plan means the plan contemplated by section 5.10.2 of the ITS MC Service Requirements, as may be updated in accordance with this document.

Second Extended Expiry Date means the date which is 12 months after the First Extended Expiry Date.

Second Option Period means a period of 12 months commencing on the First Extended Expiry Date.

Security means the Security Bond or Security Bonds and all monies held by RMS pursuant to clause 3.

Security Bond means an unconditional undertaking which satisfies the requirements of clause 3.2.

Security Interest means:

- (a) a PPS Security Interest;
- (b) any other mortgage, pledge, lien or charge; or

- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Service Category means:

- (a) each category of works and services contemplated by Table 1 set out in section 2.2 of the ITS MC Service Requirements, being:
 - (i) Program Management;
 - (ii) Asset Management;
 - (iii) Asset Inspection Works;
 - (iv) Planned Maintenance Works;
 - (v) Reactive Maintenance Works;
 - (vi) Incident Support;
 - (vii) Minor Improvement Works and Strategic ITS Asset Renewal and Replacement Works;
 - (viii) Facilities Support Services;
 - (ix) Transition Services; and
 - (x) Demobilisation and Handover Services; and
- (b) any other category of Services that the ITS Contractor is required to perform under this document.

Service Plans means all plans that the ITS Contractor is required to prepare under this document which outline the manner in which the ITS Contractor will manage and perform the Services and its other obligations under this document, including:

- (a) the Aboriginal Participation Plan;
- (b) the Asset Maintenance Plans;
- (c) the Business Continuity Plan;
- (d) the Communications and Stakeholder Engagement Plan;
- (e) the Services Demobilisation and Handover Plan;
- (f) the Depot Management Plan;
- (g) the Environmental Management Plan;
- (h) the Estimating Plan;
- (i) the Financial Management Plan;
- (j) the Incident Management Plan;
- (k) the Industrial Relations Plan;
- (l) the Industry Participation Plan;

- (m) the Operations Plan;
- (n) the Procurement Plan;
- (o) the Quality Management Plan;
- (p) the Records Management Plan;
- (q) the Risk Management Plan;
- (r) the Scheduling Plan;
- (s) the Services Management Plan;
- (t) the Sustainability Plan;
- (u) the Traffic Management Plan;
- (v) the Training Management Plan;
- (w) the Transition Management Plan;
- (x) the WHS Management Plan; and
- (y) any other such plans required to be prepared by the ITS Contractor under this document.

Services means:

- (a) all works and services that the ITS Contractor must perform under a Forward Works Program;
- (b) any Special Projects that are the subject of a Special Project Order; and
- (c) any other works or services which the parties agree will form part of the Services.

Services Demobilisation and Handover Plan means the plan contemplated by sections 5.2.11 to 5.2.13 of the ITS MC Service Requirements, as may be updated in accordance with this document.

Services Management Plan means the plan contemplated by section 5.2.2 of the ITS MC Service Requirements, as may be updated in accordance with this document.

Spares means all types of spare parts and consumables required for the maintenance of the Assets.

Special Project means those works or services which the ITS Contractor must carry out in accordance with clause 8.

Special Project Order means a direction from RMS to the ITS Contractor to carry out a Special Project under clause 8.3.

Special Project Proposal means a proposal submitted by the ITS Contractor in respect of a Special Project under clause 8.2(b).

Special Project Proposal Request means a notice issued by RMS under clause 8.2(a) requesting the ITS Contractor to submit a Special Project Proposal.

Start-up Stage means the period from the Full Services Commencement Date until the date specified in the Initial Transition Management Plan.

Stewardship Principles means the principles set out in clause 1.2.

Strategic ITS Asset Renewal and Replacement Works means the works and services contemplated by section S.7 of Table 1 set out in section 2.2 of the ITS MC Service Requirements.

Subcontract means any subcontract between the ITS Contractor and a Subcontractor.

Subcontractor means an entity engaged by the ITS Contractor to carry out part of the Services, including a consultant or supplier.

Subcontractor Breakage Costs means any costs incurred by the ITS Contractor directly as a result of the termination of Subcontracts which:

- (a) would not have been incurred had this document continued until its natural expiry;
- (b) relate directly to the termination of the Subcontract; and
- (c) are incurred under terms that have been entered into in the ordinary course of business and on reasonable commercial terms.

Sustainability Plan means the plan contemplated by section 5.3.5 of the ITS MC Service Requirements, as may be updated in accordance with this document.

Target Cost or **TC** means the basis for payment contemplated by section 2.3 of the Commercial Framework.

Tax means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a government agency, together with any related interest, penalty, fine or other charge.

TfNSW means Transport for NSW, a New South Wales Government agency constituted under section 3C of the *Transport Administration Act 1988* (NSW).

Traffic Management Plan means the plan contemplated by section 5.5 of the ITS MC Service Requirements, as may be updated in accordance with this document.

Training Management Plan means the plan contemplated by section 5.12.1 of the ITS MC Service Requirements, as may be updated in accordance with this document.

Transferring Employee has the meaning given in the ITS Maintenance Transitional Agreement.

Transferring Employees Payment means an amount equal to the salary costs or wages payable by the ITS Contractor to Transferring Employees from the date of termination under clause 41.1(a) until the expiry of the 2 year period referred to in clause 41.3(a)(v).

Transition Management Plan means the plan contemplated by section 5.2.4 of the ITS MC Service Requirements and section 4.2 of the Brief for Transition Services, as may be updated in accordance with this document.

Transition Management Team means the ITS Contractor's team for managing the transition of services from RMS as described in section 4.3 of the Brief for Transition Services.

Transition Services means the works and services contemplated by section S.9 of Table 1 set out in section 2.2 of the ITS MC Service Requirements.

Transition Stage means the Mobilisation Stage and the Start-up Stage.

Transport Management Centre or **TMC** means (as the context requires) the transport management facility and the transport management organisation under the control of Transport for NSW.

Transport Service of NSW means the Transport Service of NSW established under the *Transport Administration Act 1988* (NSW) and establishing the RMS Group of the Transport Service under the *Transport Administration (Staff) Regulation 2012* (NSW).

Utility means any utility, including water, gas, electricity, fuel, telephone, drainage, sewerage and electronic communications services.

Waste includes any Asset to be removed and/or disposed of in the course of performing the Services together with any extraneous by-products of the Services including but not limited to:

- (a) trade waste, being any matter or thing, whether solid, liquid or gaseous or a combination of solids, liquids and gases (or any of them), which is of a kind that comprises refuse from any industrial, chemical, trade, commercial or business process or operation, including any building or demolition work;
- (b) garbage, being all refuse other than trade waste and effluent;
- (c) any flammable materials, explosives, radioactive materials, hazardous or toxic substances, asbestos or any material containing asbestos or similar or related materials;
- (d) any emission into the air of any impurity as defined in the *Protection of the Environment Operations Act 1997* (NSW);
- (e) any chemical waste, whether declared or not, as defined in the *Environmentally Hazardous Chemicals Act 1985* (NSW);
- (f) any waste as defined in the *Protection of the Environment Operations Act 1997* (NSW);
- (g) any other substance or material as so characterised or listed or defined and regulated by any Environmental Law; and
- (h) effluent, being any matter or thing, whether solid or liquid or a combination of solids and liquids, which is of a kind that may be removed from a septic tank, septic closet, chemical closet, sullage pit or grease trap, or from any holding tank or other container forming part of or used in connection with a septic tank, septic closet, chemical closet, sullage pit or grease trap.

WHS Act means the *Work Health and Safety Act 2011* (NSW).

WHS Management Plan means the plan contemplated by section 5.4.1 of the ITS MC Service Requirements, as may be updated in accordance with this document.

WHS Regulation means the *Work Health and Safety Regulation 2011* (NSW).

WHS Management System means the management system contemplated by section 5.4 of the ITS MC Service Requirements.

Wilful Default means an intentional and conscious breach of this document which the party knew or ought reasonably to have known was a fundamental breach of this document which would likely have harmful consequences but does not include any innocent or negligent act, omission, mistake or error of judgement.

Wilful Misconduct means an intentional act or omission with knowledge that the act or omission was likely to have harmful consequences but does not include any innocent or negligent act, omission, mistake or error of judgement.

Work Terms means the terms governing the carrying out of any Project Works, the form of which is set out in Schedule 12.

Works Period means:

- (a) the Initial Works Period; and
 - (b) each subsequent 24 month period of the Contract Term,
- or such other period as may be agreed between the parties.

Zone means the geographic region labelled "Metro East Zone" shown as within the Zone Boundary in section 2.2 of the Asset Definition Specification.

Zone Boundary means the boundary of the Zone as shown in section 2.2 of the Asset Definition Specification.

2. **RULES FOR INTERPRETING THIS DOCUMENT**

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a NSW Government policy document or guideline is to that policy document or guideline as amended, re-enacted or replaced;
 - (iii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iv) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (v) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (vi) anything (including a right, obligation or concept) includes each part of it.
- (c) A singular word includes the plural, and vice versa.
- (d) A word which suggests one gender includes the other genders.
- (e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

- (g) A reference to **"information"** is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (h) The word **"agreement"** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (i) The expression **"this document"** includes the agreement, arrangement, understanding or transaction recorded in this document.
- (j) The expressions **"subsidiary"**, **"holding company"** and **"related body corporate"** have the same meanings as in the Corporations Act.
- (k) A reference to **"dollars"** or **"\$"** is to an amount in Australian currency.

3. **NON BUSINESS DAYS**

If the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by this document falls on a non-Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be deemed to be on the next Business Day.

4. **JOINT AND SEVERAL LIABILITY**

- (a) The obligations of the ITS Contractor, if more than one person, under this document, are joint and several and each person constituting the ITS Contractor acknowledges and agrees that it will be responsible for the acts and omissions (including breaches of this document) of the other as if those acts or omissions were its own.
- (b) The rights of the ITS Contractor, if more than one person, under this document (including the right to payment) jointly benefit each person constituting the ITS Contractor (and not severally or jointly and severally).
- (c) A payment by RMS under this document to an account nominated in writing by the ITS Contractor, or failing such nomination, to any one or more persons constituting the ITS Contractor, will be deemed to be payment to all persons constituting the ITS Contractor.
- (d) The ITS Contractor may not exercise any right under this document unless that right is exercised concurrently by all persons constituting the ITS Contractor.

5. **AMBIGUITY, DISCREPANCY OR INCONSISTENCY**

- (a) The following applies in the event of any ambiguity, discrepancy or inconsistency in, or between, the documents comprising this document:
 - (i) if the ambiguity, discrepancy or inconsistency relates to the quality or standard of the Services, then the requirement which delivers the greatest level of service or is of the highest standard is to apply;
 - (ii) where the inconsistency, ambiguity, omission or discrepancy is not resolved by the application of the principle in paragraph (a)(i), the following order of precedence applies:
 - (A) the General Conditions;
 - (B) the Work Terms;

- (C) the current Forward Works Program;
 - (D) the ITS MC Service Requirements; and
 - (E) the RMS Specifications; and
- (iii) where the inconsistency, ambiguity, omission or discrepancy is not resolved by the application of the principles in paragraphs (a)(i) and (a)(ii), RMS must direct the interpretation of this document which the ITS Contractor must follow.
- (b) If a party considers there to be an ambiguity, discrepancy or inconsistency in, or between, the documents comprising this document, that party must notify the other party within 5 Business Days of becoming aware of the ambiguity, discrepancy or inconsistency.
- (c) RMS must, within 20 Business Days of receipt of a notice under paragraph (a)(iii) of this clause 5, direct the ITS Contractor as to the interpretation to be followed so as to resolve the ambiguity, discrepancy or inconsistency in accordance with paragraph (a).
- (d) In giving a direction in accordance with paragraph (c), RMS is not required to determine whether or not there is an ambiguity or discrepancy or inconsistency in, or between, the documents comprising this document.
- (e) Any direction RMS gives in accordance with paragraph (c) does not in any way lessen or otherwise affect:
- (i) the ITS Contractor's obligations under this document or according to Law; and
 - (ii) RMS' rights against the ITS Contractor, whether under this document or according to Law.

6. **THE RULE ABOUT "CONTRA PROFERENTEM"**

This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

SCHEDULE 2
ITS MC SERVICE REQUIREMENTS

ITS Maintenance Contracts (ITS MCs)

Schedule 2 – ITS MC Services Requirements

29 May 2014

Contents

1	Introduction	7
1.1	Purpose of this document	7
1.2	Key principles	7
1.3	Compliance with the ITSMCSR	8
1.4	Structure of this ITSMCSR	8
2	Description of Services	9
2.1	Overview	9
2.2	Service Categories	9
3	Service Exclusions	17
3.1	Overview	17
3.2	Strategic Asset Management and Ownership	17
3.3	Strategic Assets	18
3.4	RMS Regional Maintenance Services	18
3.5	TMC Maintenance Services	18
3.6	SMC/PSMC Road Maintenance Contracts	18
3.7	Legacy Maintenance Contracts	19
4	Overarching Services Requirements	20
4.1	Overview	20
4.2	Provision of and Access to Contract Information	20
4.3	Asset Management	20
4.4	Interfaces and Stakeholder Engagement	22
4.5	Incident Support Requirements	23
4.6	Safety	24
4.7	Environment	24
4.8	Communication and Stakeholder Engagement Requirements	24
4.9	Other Compliance Obligations	25
4.10	Equipment and Material Supply	25
4.11	Facilities Support Services	26
4.12	Meetings and Reporting	26
4.13	Traffic Management	28
4.14	Road Occupancy	28
4.15	Quality Management and Records	29
4.16	Procurement	29
4.17	Asset Replacement or Renewal	29
4.18	Use of RMS Specifications	29
4.19	Use of Traffic and Safety Management Standards and Technical References	31
5	Integrated Contract Management System	33
5.1	Overview	33
5.2	Service Plans - general	33
5.3	Environmental Management System	36
5.4	WH&S Management System	37
5.5	Traffic Management Plans	37
5.6	Quality Management Plan	37
5.7	Program and Project Management	38
5.8	Asset Management System	38
5.9	Cost Control and Financial Accounting	39
5.10	Estimating and Scheduling	40
5.11	Procurement	40

5.12 Human Resources 40

Appendices

Appendix 1 RMS Program Position Descriptions (ITS).....42

Appendix 2 SHB Support Services44

Appendix 3 ITS Asset and Fault Management Systems45

Appendix 4 Asset Data Requirements.....47

Appendix 5 Schedule of RMS Specifications.....49

Appendix 6 Schedule of RMS Traffic Management Technical References51

Definitions

Defined terms used in this document have the same meaning as those used in the ITS Maintenance Contract document.

List of Abbreviations:

AMP	Asset Maintenance Plan
CBD	Central Business District (Sydney)
CCTV	Closed Circuit Television
CMCS	Central Management Computer System
CMO	Contract Management Office
CTOC	Chief Traffic Operations Controller (TMC)
DAB	Dispute Avoidance Board
DAS	Driver Aid Services
EWS	Emergency Warning System
FWP	Forward Works Program
HVCS	Heavy Vehicle Checking Station
ICAC	Independent Commission Against Corruption
ICMS	Integrated Contract Management System
ITS	Intelligent Transport System
ITS MC	ITS Maintenance Contract
ITSMCSR	ITS MC Scope and Services Requirements (this document)
KPI	Key Performance Indicator
LUS	Lane Use Sign
MIW	Minor Improvement Works
MoU	Memorandum of Understanding

MRG	Management Review Group
OEM	Original Equipment Manufacturer
OHS&R	Occupational Health, Safety and Rehabilitation
PSMC	Performance-Specified Maintenance Contract for North East Sydney let to Downer
RFP	Request for Proposal
RMS	Roads and Maritime Services
RWIS	Road Weather Information System
SCATS	Sydney Coordinated Adaptive Traffic System
SHB	Sydney Harbour Bridge
SMC	Stewardship Maintenance Contract
SPP	Special Projects Proposal
SZAS	School Zone Alert Sign
TCS	Traffic Control Signals
TEPS	Traffic Emergency Patrol Services
TFS	Tidal Flow System
TIRTL	The Infra Red Traffic Logger
TfNSW	Transport for New South Wales
TMC	New South Wales Transport Management Centre
TMU	Traffic Monitoring Units
TTIS	Travel Time Information System
UPS	Uninterruptable Power Supply
VMS	Variable Message Signs

VSLs	Variable Speed Limit Signs
WAE	Work as Executed (drawings)
WH&S	Work Health and Safety
WIM	Weigh-In-Motion

I Introduction

I.1 Purpose of this document

I.1.1 This document describes the key requirements for the Services which will be delivered by the ITS Contractor under the ITS MC, along with the specific elements that will be provided by RMS. This document should be read in conjunction with other contract documents including:

- a) The Initial Forward Works Program and any applicable subsequent Forward Works Programs (FWPs) and Special Project Proposals (SPPs) which describe the agreed scope of Services to be delivered by the ITS Contractor in a specific timeframe;
- b) The Asset Definition Specification which defines the Assets which are under the ITS Contractor's Stewardship;
- c) The Commercial Framework which sets out the processes for development of commercial proposals for Services under the ITS MC; and
- d) The Performance Framework which sets out the processes for development of performance measurement for Services under the ITS MC.

I.2 Key principles

I.2.1 The ITS Contractor must undertake the Services within the Zone in accordance with the requirements of the ITS MC, including this ITS MC Services Requirements (ITSMCSR) document.

I.2.2 In order to meet the contract objectives for flexibility and adaptability in scope development, the ITS MC will use two mechanisms by which RMS and the ITS Contractor will develop and agree the scope of Services. These mechanisms are:

- a) **Forward Works Programs (FWPs)**, which will set out a broad range of Services to be performed by the ITS Contractor and the outcomes to be achieved from those Services within an agreed timeframe. RMS intends that this timeframe is nominally two (2) years (except that the initial FWP will be for a shorter period corresponding to the initial works period) but an alternative timeframe may otherwise be agreed by RMS and the ITS Contractor. The approach and methodology for delivery of the maintenance Services included in the FWP will be documented in ITS type specific AMPs prepared by the ITS Contractor (refer section 4.3) and
- b) **Special Project Proposals (SPPs)** will set out specific Services requested by RMS that are not otherwise included in the FWP. This may include but not be limited to atypical upgrade works such as new Traffic Signals installations or strategic upgrades of Assets nearing the end of their life.

I.2.3 The key underlying principles of the scope of Services under the ITS MC are listed below.

- a) The scope of Services is broadly defined to engender stewardship by a ITS Contractor. Except for limited specified exclusions, the ITS Contractor will be responsible for carrying out all necessary Services required and agreed for the effective management of the Assets in accordance with the ITS MC;
- b) Wherever practicable, the ITS MC will provide mechanisms by which large packages of Services can be committed to the ITS Contractor for efficient delivery;
- c) The ITS Contractor will develop and implement an Integrated Contract Management System (ICMS) which will describe and coordinate the various systems, processes and plans required for the delivery of the Services under the ITS MC;
- d) RMS will retain flexibility to manage the scope of Services being provided including but not limited to:

- (i) setting appropriate strategic direction and funding levels for a FWP and SPP, such as determining desired outcomes for different Assets and setting targets for the value of Services to achieve those outcomes;
 - (ii) determining specific Services to be carried out within a FWP or SPP; and
 - (iii) directing Changes to an agreed FWP or SPP at its discretion.
- e) RMS may have works within the Zone priced and/or carried out by other parties, including works which may otherwise typically be carried out by the ITS Contractor. This may be for a number of reasons including but not limited to:
 - (i) the performance of the ITS Contractor providing Services below minimum acceptable standards;
 - (ii) the value of a project or program of works in question being above a designated threshold value defined by RMS;
 - (iii) the work in question not being suited to the ITS Contractor's capabilities;
 - (iv) the works are more suitably managed through a Sydney-wide or state-wide arrangement; and/or
 - (v) other reasons.

1.2.4 RMS may also from time to time adjust the boundaries of the Zones so as to add or remove Assets from the scope of the ITS MC. Again, there may be a number of reasons for these adjustments such as improving efficiency in the delivery of Services, aligning with other boundaries such as Local Government Areas, or to facilitate better management of particular Asset Types.

1.2.5 In consideration of the challenges associated with transition from current arrangements, RMS has prepared an Initial FWP Brief and Overarching AMP (for the initial works period) which set out the initial scope of Services to be delivered by the ITS Contractor after Transition and the initial approach to be adopted in delivering the maintenance Services.

1.3 Compliance with the ITSMCSR

1.3.1 The ITS Contractor must not depart from this ITSMCSR without agreement of RMS e.g. through an agreed departure documented in an agreed FWP.

1.3.2 If the ITS Contractor does not identify any departure from this ITSMCSR, then any Services performed under an agreed FWP or SPP are to be compliant with the ITSMCSR.

1.4 Structure of this ITSMCSR

1.4.1 This ITSMCSR is structured as follows:

- a) Section 2 provides an overview of the type and scope of Services to be delivered by the ITS Contractor;
- b) Section 3 provides the exclusions to the Services which will be performed by RMS and/or other Service Providers;
- c) Section 4 provides further details about the specific requirements for delivery of the Services;
- d) Section 5 provides details of the requirements for the Integrated Contract Management System (ICMS).

2 Description of Services

2.1 Overview

- 2.1.1 The main focus of the ITS MCs, is maintenance of Assets within the Sydney Metropolitan Area, as well as selected Assets outside Sydney (in some cases NSW wide) which are currently being maintained and supported by RMS from Sydney or which are already contracted to the private sector.
- 2.1.2 The Assets to be included in the ITS MCs are generally located within the road corridor of the state road network. However, assets such as traffic control signals and flashing school zone alert signs are also distributed across the local road network.
- 2.1.3 In developing the scope of the ITS MCs, the key principle adopted by RMS is to promote stewardship by the new ITS Contractors of the Assets through broad service provision. RMS intends to engage an ITS Contractor that operates as a Steward of the Assets and demonstrates control and responsibility for delivering the intended outcomes. As far as practicable the scope is broadly defined to encompass this intention, with limited exclusions.
- 2.1.4 Under the ITS MCs, Reactive Maintenance services comprising fault response/rectification and Incident Support will be provided by the ITS Contractor on an 'as required' basis in accordance with the performance requirements specified by RMS. Asset Inspections and Planned Maintenance (routine and preventative maintenance) are also included in the scope of services, as are Minor Improvement Works (MIW), and the provision of store, workshop and other facilities to support spares management, testing, repair and replacement of Assets.
- 2.1.5 RMS recognises that there are Services listed as exclusions which may be suitable for inclusion in the ITS MC at a later date. Excluded services may be included in the ITS MC, subject to agreement of suitable arrangements including a commercial proposal that demonstrates value-for-money and meets RMS business outcomes and targets.
- 2.1.6 The Services to be undertaken by the ITS Contractor under the ITS MC are categorised as follows (refer to section 2.2 for detailed descriptions):
- S.1 Program Management;**
 - S.2 Asset Management**
 - S.3 Asset Inspection Works;**
 - S.4 Planned Maintenance Works (Routine/Preventative Maintenance);**
 - S.5 Reactive Maintenance Works (Fault Maintenance);**
 - S.6 Incident Support;**
 - S.7 Minor Improvement Works and Strategic Asset Renewal/Replacement Works (Special Projects);**
 - S.8 Facilities (workshop, depot, store) Support Services;**
 - S.9 Transition Services; and**
 - S.10 Demobilisation and Handover Services.**
- 2.1.7 Further description of these headings can be found in Table 1: Service Category Descriptions below.
- 2.1.8 In performing the Services, the ITS Contractor will be required to comply with the requirements as detailed in Section 4.

2.2 Service Categories

- 2.2.1 RMS funds asset maintenance and improvements through a series of programs (referred to as program positions). Each program will typically represent a key strategy and/or type of work. In some cases

expenditure against program positions will be tied to the funding purpose e.g. funding for blackspot safety programs must be spent on these types of projects.

- 2.2.2 Descriptions of current RMS program positions relevant to ITS are included in Appendix I, *RMS Program Position Descriptions*. The ITS Contractor is required to allocate and report all expenditure under the ITS MC against the RMS program positions, as well as by asset type for the purposes of RMS accounting and financial management. RMS may update the relevant program positions from time to time.
- 2.2.3 Whilst Table I sets out the type of Services to be performed, the detailed scope of Services will be documented in FWP's and SPP'S.

Table I: Service Category Descriptions

Service Category	Description
S.1 Program Management	<p>Program management includes all things necessary to support and manage the delivery of maintenance and improvement Services under the ITS Maintenance Contracts.</p> <p>This may include, but is not limited to:</p> <ul style="list-style-type: none"> a) Project management, supervision and administration; b) Stakeholder engagement and consultation; c) Review of Environmental Factors (REF) and heritage assessment for Minor Improvement Works; d) Obtaining planning approvals; e) Obtaining other necessary approvals before starting work; f) Customer liaison; g) Management of claims for damage to assets or property by any party; h) Financial and commercial management including maintenance of auditable records; i) Procurement management; j) Reporting; k) Quality management and assurance; and l) Verification of third party works (including developer works).

Service Category	Description
<p>S.2 Asset Management</p>	<p>Asset Management is an important subset of Program Management which includes a broad range of Services which typically have a low cost but provide high value in managing the Assets.</p> <p>The ITS Contractor will be responsible for the development and implementation, in consultation with RMS, of Asset Management strategies for the Assets which support RMS' performance objectives.</p> <p>The ITS Contractor's Asset Management responsibilities include:</p> <ul style="list-style-type: none"> a) Development of systems and processes to support the Services; b) Planning of the Services (Asset Maintenance Plans (AMPs) and FWP's); c) Initial verification and maintenance of asset data (including inventory, condition, performance, maintenance and fault history, etc); d) Development of interfaces with RMS Asset Management and Fault Management systems; e) Provision of asset data to RMS including update of RMS systems; f) Monthly accomplishment and performance reporting; g) Analysis and forecasting of asset performance and life cycle costs; h) Preparation of Business Cases and SPP's for Strategic Asset Renewal/Replacement Works and Minor Improvement Works for RMS consideration; and i) Continual improvement through innovation.
<p>S.3 Asset Inspection Works</p>	<p>Asset Inspections provide the opportunity to periodically assess the condition of Assets and to identify defects not apparent through electronic fault monitoring systems and which, if not attended to, can impact adversely on asset performance.</p> <p>Asset Inspections may be combined with Planned Maintenance activities or carried out separately in order to increase the surveillance frequency of certain assets. In particular, the ITS Contractor is expected to carry out regular inspections of critical assets such as traffic control signals at strategic locations in the road network and tidal flow systems as part of a proactive maintenance regime to ensure high availability of these assets. Asset Inspections may also be carried out on an ad-hoc basis, e.g. as part of Incident Support services.</p> <p>The results of Asset Inspections shall be recorded and any defects identified shall be actioned through Reactive Maintenance or Planned Maintenance, as appropriate, depending on criticality.</p>

Service Category	Description
<p>S.4 Planned Maintenance Works (Routine/Preventative Maintenance)</p>	<p>Routine and preventative maintenance works include regular inspection and servicing of the Assets to avoid the occurrence of defects and faults in the Assets.</p> <p>The initial scope includes Routine/Preventative Maintenance services for the following Assets:</p> <ul style="list-style-type: none"> a) Traffic Control Signals (TCS); b) Variable Message Signs (VMS); c) Variable Speed Limit Signs (VSLS); d) Lane Use-Signs; e) Changeable Message Signs; f) Fibre Optic/LED Signs; g) Traffic Monitoring Units (TMUs) h) Traffic Counters; i) Tidal Flow Systems; j) Stand Alone Flashing & Advanced Warning Signs; k) Special Purpose ITS Systems (e.g. over height detection, over length notifications, speed and travel time information); l) Travel Time Information System Tag Readers; m) Road Weather Information Systems; n) Sydney CBD EWS field assets; o) Enforcement systems; and p) Backup Power Supply assets.

Service Category	Description
<p>S.5 Reactive Maintenance Works (Fault Maintenance)</p>	<p>Reactive Maintenance includes attendance and rectification of Asset faults notified to the ITS Contractors through the relevant Fault Management processes and high priority defects identified through Asset Inspections. Reactive Maintenance will initially be undertaken for the following Assets:</p> <ul style="list-style-type: none"> a) Traffic Control Signals (TCS); b) Variable Message Signs (VMS); c) Variable Speed Limit Signs (VSLS); d) Lane Use-Signs; e) Changeable Message Signs; f) Fibre Optic/LED Signs; g) Traffic Monitoring Units (TMUs) h) Traffic Counters; i) Tidal Flow Systems; j) Stand Alone Flashing & Advanced Warning Signs; k) Special Purpose ITS Systems (e.g. over height detection, over length notifications, speed and travel time information); l) Travel Time Information System Tag Readers; m) Road Weather Information Systems; n) Heavy Vehicle Checking Station Assets; o) Weigh in Motion (non HVCS Sites); p) Sydney CBD EWS field assets; q) Enforcement systems; and r) Backup Power Supply assets.
<p>S.6 Incident Support</p>	<p>Incident Support includes responding to vandalism, traffic accidents or natural disasters which result in Assets defects or faults.</p> <p>Incident Support may initially involve Asset Inspection and those Reactive Maintenance activities necessary to make the site safe, followed by repair or replacement of damaged assets. It also includes connection of portable generators to critical Assets (Traffic Signals) during prolonged power outages.</p>

Service Category	Description
<p>S.7 Minor Improvement Works and Strategic Asset Renewal/Replacement Works (Special Projects)</p>	<p>As requested by RMS from time to time, the ITS Contractor will be required to prepare priced proposals (SPPs) for Special Projects such as Minor Improvement Works and Strategic Asset Renewal/Replacement Works.</p> <p>Examples of Minor Improvement Works include:</p> <ul style="list-style-type: none"> a) Traffic signals reconstruction; b) Construction of new traffic signals; c) Installation of new Assets (VMS, VSLS, TMU, etc.) to support RMS' objectives. <p>Examples of Strategic Asset Renewal/Replacement Works include:</p> <ul style="list-style-type: none"> a) End-of-life asset replacement; b) Technology change/upgrade; c) Other asset renewal/replacement programs driven by energy efficiency, safety, etc.
<p>S.8 Facilities (workshops, depots, stores) Support Services</p>	<p>Facilities Support Services includes the provision of workshop, depots and store facilities to support the testing, repair and replacement of Assets.</p> <p>The ITS Contractor will be required to procure and store equipment and material to support delivery of the Services. The ITS Contractor must maintain adequate stocks of spare parts consistent with the specified or agreed service levels (repair times).</p> <p>It is a requirement that the ITS Contractor diligently manages the efficient (time and cost) repair of component parts to extend the useful life of Assets as agreed with RMS through the relevant AMPs.</p> <p>RMS may request the ITS Contractor to provide Facility Support Services (specifically workshop services such as component testing and repair) to support RMS' regional maintenance activities (e.g. Hunter Valley and Southern regions).</p>

Service Category	Description
S.9 Transition Services	<p>Transition Services are those activities required in the mobilisation and start-up of the ITS Contractors, including employment and management of the transition of RMS staff, potential transition of plant and equipment, and transition of certain depots. The Brief for Transition Services document provides further information.</p> <p>The ITS Contractors are responsible for the provision of Transition Services in coordination with RMS and TfNSW, including but not limited to:</p> <ul style="list-style-type: none"> a) Establishment of a mobilisation team; b) Recruitment of personnel; c) Transition of certain RMS employees to the ITS Contractor's operation; d) Management of industrial relations for the ITS Contractor; e) Establishment of facilities; f) Establishment of plant and equipment; g) Establishment of subcontractor arrangements; h) Development of interface protocols; i) Development of systems, processes and training; j) Confirmation of the Initial Forward Works Program; k) Management of the start-up; l) Consolidation of the asset inventory; m) Any other ITS MCs requirements needed for the performance of the Services; and n) Collaboration as required with RMS.

Service Category	Description
<p>S.10 Demobilisation and Handover Services</p>	<p>A range of Demobilisation and Handover Services will be required prior to completion of the ITS MCs. Activities required will include:</p> <ul style="list-style-type: none"> a) Completion of the delivery of Services under any FWP and SPP; b) Induction and training of all personnel nominated by RMS; c) Provision of access to all records relating to the management and maintenance of the Assets to RMS and its nominees; d) Transfer of all warranties and guarantees to RMS or its nominees; e) Collation and handover of all maintenance data and records for the Assets; f) Provision of access to all supply and subcontract arrangements (including utilities) to RMS and its nominees, and provision of assistance to RMS and its nominees in negotiating transfer of arrangements to RMS as requested by RMS; g) Provision of access to interface arrangements for RMS; h) Detailed assessment of the existing condition of the Assets, including a detailed reconciliation against the agreed performance in the respective FWP and any SPPs; i) Removal from site and making good any materials, plant or temporary facilities used in the performance of the Services, including any RMS site which has been made available to the ITS Contractor e.g. depots; and j) Provision of suitable, experienced, and dedicated person(s) to act as the primary interface between the ITS Contractor and RMS and its nominees throughout the handover period.

3 Service Exclusions

3.1 Overview

3.1.1 The following outlines the services which are excluded from the scope of Services. The exclusions are:

- a) Strategic Asset Management and ownership.
- b) Strategic assets;
- c) RMS regional maintenance services;
- d) TMC maintenance services;
- e) Services performed under road maintenance SMC and PSMC contracts;
- f) Services performed under existing 'legacy' maintenance contracts.

3.1.2 The ITS Contractor is not required to perform the excluded services but will be required to coordinate its Services with these of other Service Providers operating in and in the vicinity of the ITS Contractor's Zone.

3.2 Strategic Asset Management and Ownership

3.2.1 RMS, as the owner of the Assets, will retain the responsibility for setting the strategic direction for the management of its Assets, with greater involvement in high risk and/or critical assets. A key requirement for the ITS MC is for RMS to remain an informed client such that it can manage the new arrangements.

3.2.2 In performing this role, RMS will be responsible for:

- a) Preparation of Initial FWP Brief and Overarching AMP;
- b) Approval of AMP's prepared by the ITS Contractor;
- c) Approval of FWP's prepared by the ITS Contractor;
- d) Selection of return on investment (ROI) criteria for Business Cases;
- e) Allocation of funding to various programs and initiatives;
- f) Decisions regarding Strategic Asset Renewal/Replacement;
- g) Acceptance or rejection of SPP's prepared by the ITS Contractor;
- h) Ownership of the asset data;
- i) Sponsorship and facilitation of innovation;
- j) Maintenance of a "Register of Type-Approved, Accepted and Conditionally-Accepted ITS Equipment";
- k) Being a Standards and Specification Authority for the Assets; and
- l) Providing leadership and direction for the overall Life Cycle Management of the Assets.

3.2.3 A core systems integration function will be retained by RMS to:

- a) ensure that all interfaces are working and data is being transmitted to the TMC;
- b) resolve systemic faults that have been escalated by the ITS Contractor;
- c) program and test traffic signals intersection personalities;
- d) support the TMC in providing feedback on traffic and SCATS operations; and
- e) test ITS devices for compliance with relevant specifications, the RMS communication protocol and compatibility with the RMS ITS infrastructure.

- 3.2.4 The ITS Contractor must support the RMS in these tasks through the performance of the Services including the provision of timely and accurate information.

3.3 Strategic Assets

- 3.3.1 RMS has a dedicated workforce which performs a variety of maintenance services on the Sydney Harbour Bridge (SHB) Precinct under an internal alliance arrangement – the Sydney Harbour Bridge Alliance (SHB Alliance). These services are excluded from the ITS MC.
- 3.3.2 The limits of the SHB Precinct have been set as follows: (refer Appendix 2)
- a) High Street overpass in northern approach;
 - b) Northern abutment of the Western Distributor viaduct (near Grosvenor St) as the southern limit; and
 - c) Art Gallery Rd overpass (abutting to the Eastern Distributor - Airport Motorway lease area) as the eastern limit (See Appendix 2 for map).
- 3.3.3 It is noted that several assets required for operation of the Electronic Lane Changing System (ELCS) such as signage, moveable medians, power supply and control panels fall outside this area, but will be included in the responsibilities for SHB Precinct.
- 3.3.4 The services that will continue to be performed by RMS within the SHB Precinct include asset management, asset inspections, planned maintenance, reactive maintenance and operation of the SHB Precinct and associated ITS infrastructure.
- 3.3.5 RMS will retain responsibility for the operation of movable medians in Tidal Flow Systems and all maintenance responsibility for manually operated Tidal Flow Systems (i.e. those that do not include any electro-mechanical or ITS devices). The ITS Contractor may be required to provide assistance with the rectification of faults in TFS movable medians which include electro-mechanical controls.
- 3.3.6 RMS will retain responsibility for maintenance of the SCATS CBD copper network.
- 3.3.7 RMS currently engages specialist contractors for the periodic calibration and verification of enforcement systems including fixed speed cameras, safety (red light/speed) cameras, bus lane cameras, Safe-T-Cam systems, Point-to-Point Average Speed systems and weighing assets at Heavy Vehicle Checking Stations. These arrangements will continue, therefore periodic calibration and verification of enforcement assets is excluded from the ITS MC.

3.4 RMS Regional Maintenance Services

- 3.4.1 Maintenance responsibility for Assets which are currently being maintained by RMS/RFS regional teams (using regional RFS or contract resources) will be retained by RMS within the respective regions. Specifically, maintenance responsibility for all traffic signals and for certain other ITS devices in the Hunter Valley and Southern regions will be retained by RMS/RFS.

3.5 TMC Maintenance Services

- 3.5.1 Maintenance responsibility for Assets which are currently being maintained by the TMC will be retained by the TMC. These include:
- a) SCATS and CMCS central computers;
 - b) Regional Signal Control Computers and associated communications devices (located in SCATS Cabins);
 - c) Traffic network video control system and CCTV cameras; and
 - d) Sydney CBD EWS server, audio console (at Sydney Police Centre) and VMS console (at RailCorp HQ).

3.6 SMC/PSMC Road Maintenance Contracts

- 3.6.1 Road maintenance services in the Sydney metropolitan area are currently contracted to the private sector under three separate Zone contracts: a Performance Specified Maintenance Contract (PSMC) in the Sydney North Zone and Stewardship Maintenance Contracts (SMC) in the Sydney West and Sydney South Zones.
- 3.6.2 The geographical boundaries for the SMC and PSMC road maintenance contracts are shown in Figure 1 below.

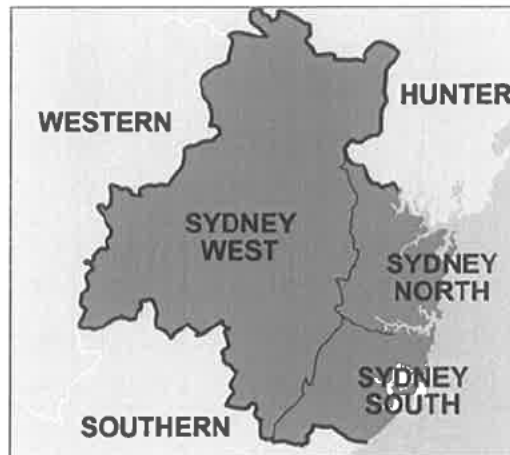


Figure 1: Sydney Metropolitan Road Maintenance Zones

- 3.6.3 Services associated with Assets that have been included in the SMC/PSMC contracts are excluded from the ITS MC. Specific service exclusions are:
- a) Maintenance of street lights on state roads;
 - b) Maintenance of emergency telephones;
 - c) Maintenance of tunnel services (electrical supply, tunnel lighting, ventilation, fire services); and
 - d) Reinstatement of detector loops affected by pavement works.

3.7 Legacy Maintenance Contracts

- 3.7.1 RMS has in place a number of “legacy” maintenance contracts which provide maintenance services to some ITS assets within the ITS MC Zone. RMS will continue to administer the legacy contracts.
- 3.7.2 It is RMS’ intention that some of the services performed under the legacy contracts to Assets may be performed by the ITS Contractor at completion of the contracts, subject to RMS and the ITS Contractor agreeing on an appropriate commercial arrangement that demonstrates value for money.
- 3.7.3 Maintenance of ITS assets which are part of the following managed motorways and tunnels in the Sydney region is the responsibility of the respective motorway owners and operators and is excluded from the ITS MC scope:
- a) Cross City Tunnel;
 - b) Eastern Distributor;
 - c) Lane Cove Tunnel;
 - d) M2 Motorway;
 - e) M5 East Motorway; and
 - f) M7 Motorway.

4 Overarching Services Requirements

4.1 Overview

- 4.1.1 The ITS Contractor must undertake the overarching Service requirements as described in the following sections.

4.2 Provision of and Access to Contract Information

- 4.2.1 Transparency in the ITS MC is a fundamental principle to embed trust in the arrangements and to ensure that RMS remains an informed owner. All key contractual information including commercial and performance data will be fully transparent and conducted on an open book basis between RMS and the ITS Contractor.
- 4.2.2 The Services include the provision of assurance on outcomes including for the ITS Contractor to provide detailed reports on actual performance and incentives for continual improvement. Wherever possible, benchmarking provided by the ITS Contractor will align with benchmarking conducted by RMS across its NSW network. This includes providing cost information that is aligned to the RMS program positions.
- 4.2.3 Transparency will apply to all financial transactions conducted under the ITS MC. Cost estimates and actual costs will be fully transparent and available for RMS to inspect and audit (regardless of the payment arrangement). Cost information is to be made available to RMS on a real time basis through access to the primary estimating, accounting and cost control system. This will embed trust in the ITS MC, avoid concerns about cross-subsidisation of different payment arrangements, and avoid information asymmetry in negotiating commercial arrangements.
- 4.2.4 To assist in the administration of the ITS MC, RMS may appoint an Owner's Estimator and/or Financial Auditor as described in the Commercial Framework. The transparency provisions outlined above will also apply to information reasonably needed for the Owner's Estimator and Financial Auditor to fulfil their roles. To the extent that these roles are fulfilled by third party organisations, then those organisations will be required to be bound by reasonable provisions to protect the confidentiality of any commercial information provided by the ITS Contractor.

4.3 Asset Management

- 4.3.1 Asset management will be conducted by the ITS Contractor so as to develop programs of maintenance that provide an optimal balance between capital and whole-of-life cost expenditure, available funding, value-for-money, RMS Objectives and agreed outcomes.
- 4.3.2 The ITS Contractor's Asset Management responsibilities include:
- a) Development of systems and processes to support the Services;
 - b) Planning of the Services (AMP's and FWP's);
 - c) Initial verification and maintenance of asset data (including inventory, condition, performance, maintenance and fault history, etc);
 - d) Development of interfaces with RMS Asset Management and Fault Management systems;
 - e) Analysis and forecasting of asset performance and life cycle costs;
 - f) Monthly accomplishment and performance reporting;
 - g) Preparation of Business Cases and SPP's for Strategic Asset Renewal/Replacement Works and Minor Improvement Works for RMS consideration; and
 - h) Continual improvement through innovation.
- 4.3.3 Asset management for the ITS MC will be carried out on three levels:

- a) Strategic planning, documented in an Overarching Asset Maintenance Plan (by RMS) and ITS type specific Asset Maintenance Plans (by ITS Contractor);
- b) Tactical planning, documented in the Forward Works Program (FWP); and
- c) Operational planning, documented in project plans, specific asset plans (e.g. critical assets) and other maintenance records.

Asset Maintenance Plans (AMPs)

- 4.3.4 RMS has developed an Overarching Asset Maintenance Plan (Overarching AMP) for the initial FWP period which sets out at high level the initial approach to be followed by the ITS Contractor in providing the maintenance Services.
- 4.3.5 The ITS Contractor is to develop ITS type specific **Asset Maintenance Plans (AMPs)** during Transition, for the Assets in the Zone based on the information provided in the Overarching AMP and RMS' maintenance specifications. These AMPs must be agreed with RMS. The ITS type specific AMPs must address the following issues:
 - a) Asset Inspection needs and frequency;
 - b) Planned Maintenance needs and frequency;
 - c) Strategic Asset Renewal/Replacement needs;
 - d) RMS priorities and available budget;
 - e) Required skills, resources and training needs;
 - f) Resourcing to meet the Reactive Maintenance response times;
 - g) Facilities Support Services requirements;
 - h) Supply chain availability, including support from OEM's;
 - i) Availability of spares and stock holding levels of parts and equipment; and
 - j) Strategy for damaged, defective, obsolete or redundant parts and equipment (i.e. repair or disposal).
- 4.3.6 The AMPs must be reviewed quarterly by the ITS Contractor and updated and submitted for RMS approval annually in conjunction with the annual FWP review cycle.
- 4.3.7 The ITS Contractor may propose departures from the RMS specified maintenance approach after the initial FWP period based on its assessment of asset condition, historical performance and life cycle cost considerations. Such departures shall be documented in the AMP's and submitted for RMS approval.
- 4.3.8 The ITS Contractor shall deliver the maintenance Services in accordance with the approved AMPs.

Forward Work Program (FWP)

- 4.3.9 Over the course of the ITS MC, RMS will also provide **Forward Work Program Briefs (FWP Briefs)** which will outline the overall objectives, outcomes and indicative funding available to support Asset strategy.
- 4.3.10 The ITS Contractor is required to prepare a **Forward Work Program (FWP)** in response to the FWP Brief which also meets the Overarching AMP objectives. The FWP is required to broadly set out the projects, program and outputs and outcomes to be achieved by the Services within the timeframe of the FWP.
- 4.3.11 The FWP is intended to provide the ITS Contractor with a scope of forward works that has been developed through collaboration with RMS that can then be managed and delivered by the ITS Contractor in a way that will drive efficient delivery and resourcing.
- 4.3.12 The ITS Contractor is required to develop project briefs in support of the FWP for any projects which it puts forward.

- 4.3.13 The ITS Contractor must update the FWP annually to provide a rolling 2-year look-ahead. The FWP planning cycle will be aligned with the RMS planning cycle.
- 4.3.14 The update is also required to provide a retrospective review of the previous year including a comparison against time and cost of delivering the Services against the FWP proposal.

Operational Planning

- 4.3.15 The ITS Contractor must develop and implement any other asset planning needed for the ITS MC including but not limited to specific project plans maintenance plans for unique assets, and processes and procedures for management of routine maintenance activities.

4.4 Interfaces and Stakeholder Engagement

- 4.4.1 The management of stakeholder relationships and interfaces throughout the delivery of the Services is an integral component of the ITS MCs.
- 4.4.2 The ITS Contractors will have a direct interface with the RMS Road Network Operations Branch and the New South Wales Transport Management Centre (TMC) with regard to scheduling of planned maintenance that impacts on traffic operations, responding to reported incidents and rectifying faults.
- 4.4.3 The other main interfaces the ITS Contractors will have are with the RMS Contract Management Office (CMO) and the SMC Service Providers.
- 4.4.4 The CMO will administer the contract in partnership with the ITS Contractors and the SMC Service Providers to ensure that efficiencies in maintenance programs are realised and emerging issues are identified and addressed.
- 4.4.5 The interface between the ITS Contractors and the SMC Service Providers will be via the RMS CMO from a contractual perspective with direct contact between the ITS Contractors and SMC Service Providers for day to day coordination matters at an operational level. The ITS Contractors will need to coordinate some works with the SMC Service Providers, relating to the following probable cases:
 - a) Repair or replacement following an incident (Incident Support);
 - b) New installation work; and
 - c) Following major road maintenance (e.g. potentially replacement of loops following resurfacing).
- 4.4.6 The ITS Contractors may also require interface protocols with local councils and other state or commonwealth authorities or private entities to facilitate the efficient delivery of the Services. RMS will provide access to existing protocols or agreements where appropriate to facilitate the interface. These entities may include, and are not limited to:
 - a) Motorway owners and operators;
 - b) Developers;
 - c) Local councils;
 - d) Sydney Water;
 - e) Electricity distributors;
 - f) Gas networks;
 - g) Telecommunications service providers;
 - h) Rail Corporation NSW (RailCorp);
 - i) National Parks and Wildlife Services;
 - j) Dial Before You Dig Services;

- k) Workcover;
- l) Other contractors; and
- m) Other Government agencies and private entities.

4.4.7 In delivering the Services, the ITS Contractors will be required to engage with various stakeholders, including but not limited to;

- a) Users of the Road Network;
- b) Local communities and adjacent residents;
- c) RMS; and
- d) Other entities listed in section 4.4.6.

4.4.8 Activities required when engaging with stakeholders may include:

- a) Identification and protection of third party services that may be affected by maintenance activities;
- b) Identification of stakeholders, and development and implementation of management plans for those identified;
- c) Development and implementation of systems to receive, record and resolve stakeholder complaints, claims, incident response queries, and requests for information; and
- d) Gaining authorisation from or providing notice to stakeholders that may be affected by the ITS Contractors' activities.

4.4.9 RMS has in place a number of Memoranda of Understanding (MoU) with some utility asset owners outlining intended principles for working collaboratively and coordinating works conducted in the road reserve. RMS intends that the ITS Contractors will be able to gain the benefit of these MoU and that there is also further opportunity to improve interfaces with a number of entities, including through development of formal interface agreements. RMS is also a member of the Street Opening Conference Association and the ITS Contractors will be required to co-operate with RMS in relation to RMS' obligations brought about by that membership.

4.5 Incident Support Requirements

4.5.1 Incident Support includes responding to vandalism, traffic accidents or natural disasters which result in Asset defects or faults.

4.5.2 Incident Support may initially involve Asset Inspection and those Reactive Maintenance activities necessary to make the site safe, followed by repair or replacement of damaged assets. It also includes connection of portable generators to critical Assets (Traffic Signals) during prolonged power outages.

4.5.3 The ITS Contractor is expected to make resources available to provide Incident Support Services. Requirements of the ITS Contractor includes:

- a) Putting in place arrangement for Incident Support at all times including nights, weekends and public holidays;
- b) Responding to directives from the TMC Duty CTOC, Traffic Commander and/or the relevant emergency services representatives in attendance;
- c) Dispatching crews promptly to incident sites that are well equipped and able to deal with a range of potential issues;
- d) Responding regardless of type or location of incident;
- e) Providing response crews that are trained and competent in providing effective services, with limited direct supervision; and
- f) Notifying the CMO of incident response works within 24 hours.

- 4.5.4 The ITS Contractor will be responsible for rectification of Assets damaged by third parties with a suitable payment arrangement as agreed between RMS and the ITS Contractors.
- 4.5.5 The ITS Contractor shall obtain and provide to RMS all necessary information to effectively manage and pursue any third party for damages and liaise with RMS insurers as part of the ITS Contractors' claims management responsibilities.

4.6 Safety

- 4.6.1 The ITS Contractors will be required to comply with all Work Health and Safety (WH&S) legislation.
- 4.6.2 The ITS Contractors will be the designated principal contractor under the New South Wales Government Work Health and Safety Regulation 2011 for any construction work that forms part of the Services.
- 4.6.3 The ITS Contractors will be required to be accredited under the New South Wales Government Work Health and Safety Management Systems and Auditing Guidelines. Accreditation with the Federal Safety Commissioner is deemed to meet the Guidelines.
- 4.6.4 The ITS Contractors will be required to develop, implement and maintain a Program specific Occupational Health, Safety and Rehabilitation ("OHS&R") Management System in accordance with New South Wales Government Work Health and Safety Management Systems and Auditing Guidelines.

4.7 Environment

- 4.7.1 The ITS Contractors will be required to comply with all environmental legislation.
- 4.7.2 The ITS Contractors will be required to comply with the New South Wales *Government Environmental Management Systems Guidelines*, and to apply best practice as per ISO 14001 *Environmental Management System - Requirements* to avoid or mitigate any detrimental effects on the environment in fulfilling their obligations under the ITS MCs.
- 4.7.3 The ITS Contractors will be required to develop, implement and maintain an environmental management system that complies with New South Wales *Government Environmental System Guidelines*, (3rd Ed. Aug 2013), and RMS standards and specifications.

4.8 Communication and Stakeholder Engagement Requirements

- 4.8.1 This section outlines the requirements for communication and stakeholder engagement carried out by the ITS Contractor under the ITS MCs.
- 4.8.2 The responsibilities required of the ITS Contractor include but are not limited to:
 - a) Appointing a suitably experienced Stakeholder Consultation Lead (may be combined with other roles) to manage communication and stakeholder engagement for the Services;
 - b) Ensuring regular and consistent communication between the ITS Contractor and RMS for the duration of the ITS MC;
 - c) Providing RMS with visibility of ITS Contractor's entire forward program of works including key milestones relating to works which may impact road user and journey times;
 - d) Consulting RMS prior to taking any action that may impact on the community or other stakeholders;
 - e) Coordinating in advance and minimising the impacts of the Services with other service providers / ITS contractors performing work on the road network, with RMS assistance where needed;

- f) Ensuring the Stakeholder Consultation Lead is kept informed of planning and delivery of Services so that stakeholder issues are properly considered;
- g) Responding to RMS requests for information to support urgent briefings expediently (e.g. Four hour turnaround) on request;
- h) Escalating any stakeholder concerns or issues to RMS in a proactive and timely manner;
- i) Advising RMS media immediately if contacted by the media in relation to the Services;
- j) Providing appropriate communication tools such as:
 - (i) An email contact address which allows stakeholders to email enquiries or complaints; and
 - (ii) Notification letters to advise the community and stakeholders where Services may impact access or amenity.

4.8.3 Any communication material must be in accordance with RMS guidelines and templates and must be approved by RMS.

4.9 Other Compliance Obligations

4.9.1 The ITS Contractors will be required to manage other compliance obligations relevant to the scope of Services, including but not limited to:

- a) Accounting legislation and standards; and
- b) NSW Government requirements including:
 - (i) NSW Treasury requirements;
 - (ii) NSW Government's Commercial Policy Framework;
 - (iii) NSW Government Sustainability Policy;
 - (iv) NSW Government Goods and Services procurement policies including Code of Practice for Procurement - 18 January 2005 and the Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction - 1 July 2013;
 - (v) NSW Independent Commission Against Corruption (ICAC) Act 1988;
 - (vi) Statutory annual reporting requirements; and
 - (vii) the RMS Statement of Business Ethics.

4.9.2 RMS places high priority on ethical behaviour in its own organisation and those of its suppliers and contractors and expects that the ITS Contractors will similarly place a high emphasis on ethical behaviour and supporting RMS' values.

4.10 Equipment and Material Supply

4.10.1 Equipment and materials supplied by the ITS Contractor must be new unless otherwise approved by RMS.

4.10.2 The ITS Contractor must maintain adequate stock of parts and equipment to support all maintenance activities and forecast improvement works and new installations.

4.10.3 The strategy for repair and reuse or disposal of damaged/defective equipment and minimum stock levels for spare parts shall be documented in the agreed Asset Maintenance Plans for each ITS Type.

4.10.4 RMS may elect to free issue some equipment and material to the ITS Contractor. The ITS Contractor is responsible for loading, unloading transport and storage of free issued equipment and material. The ITS Contractor must insure such items against damage and/or loss while in transit or storage in the

joint names of the ITS Contractor and RMS. The insured sum must be adequate to cover the replacement cost.

- 4.10.5 Equipment and material shall be stored in secure and enclosed storage facilities.
- 4.10.6 All equipment and materials used must be listed in the “Register of Type-Approved, Accepted and Conditionally-Accepted ITS Equipment”, and if not listed, the ITS Contractor shall apply for RMS concession.

4.1.1 Facilities Support Services

- 4.1.1.1 The ITS Contractor will be required to establish and manage facilities to support the delivery of the Services, including **Depots, Stores** and **Workshops**.
- 4.1.1.2 **Depots:** The ITS Contractor may establish its own depots or use existing available RMS depot facilities subject to agreement of commercial terms with RMS (refer to Schedule 7 – Brief for Transition Services for details of available RMS depot facilities).
- 4.1.1.3 **Stores:** The ITS Contractor must establish and maintain secure enclosed storage facilities to store equipment and material (including free issued material), spare parts and equipment returned from the field (pending testing, repair or disposal). The ITS Contractor shall implement a stores inventory system to manage material and equipment received in store and issued from store.
- 4.1.1.4 **Workshops:** The ITS Contractor is expected to provide workshop facilities to support Services delivery including but not be limited to the following capabilities:
 - a) testing and repair of traffic signals equipment;
 - b) testing and repair of other ITS equipment; and
 - c) assembly and testing of controller cabinets.
- 4.1.1.5 Some workshop facilities (e.g. component level testing and repair) may be provided by the ITS Contractor through partnerships with OEM's, suppliers or specialist subcontractors.
- 4.1.1.6 RMS may request the ITS Contractor to provide Facility Support Services (specifically workshop services such as component level testing and repair) to support RMS' regional maintenance activities (e.g. Hunter Valley and Southern regions).

4.1.2 Meetings and Reporting

- 4.1.2.1 The following sets out the minimum meeting and reporting requirements of the ITS MC.
- 4.1.2.2 A **Management Team** consisting of the RMS' Representative and the ITS Contractor's Authorised Person will meet in accordance with clause 17.2 of the General Conditions to discuss and review the matters contemplated by clause 17.1 of the General Conditions.
- 4.1.2.3 The Monthly Report must contain:
 - a) Services progress report which as a minimum will report the quantity of planned and actual Services against the FWP and SPPs with details of any variances;
 - b) Asset report which includes;
 - (i) Summary of Asset inventory updates for additions, deletions and modifications of Asset inventory including condition updating;
 - (ii) Inspection report confirming inspections carried out, actions to be addressed identified and exceptions requiring RMS input;
 - (iii) Defect report including schedule of defects identified and status.
 - c) Accomplishment report summarising total quantities of work completed for each of the Planned Maintenance activities;
 - d) Quality report with summary statistics, details of audits carried out, and any other key issues;

- e) Safety information including details of any incidents, summary safety statistics and any particular issues relating to compliance with the WH&S Management Plan;
- f) Environmental information including details of any incidents, and any particular issues relating to compliance with the Environmental Management System in accordance with G36M;
- g) Performance against the Communications and Stakeholder Engagement requirements with a summary of engagement activities carried out, and any other key issues including:
 - (i) Stakeholder and community enquiries including:
 - Number and types of enquiries received
 - Number of compliments received
 - Location of enquirer
 - Issues raised
 - Response times
 - Status
 - How lessons learnt are being applied to avoid reoccurrence of issues
 - (ii) Media or government enquiries
 - (iii) Complaints report for the month including current status
 - (iv) Incident and crisis communications
 - (v) Notifications to stakeholders
 - (vi) Look ahead including upcoming site visits, upcoming milestones, updated stakeholder and community engagement program, changes to scope of work, night works, potential impacts and proposed communications strategy and opportunities for media or government promotion
- h) Reporting performance against key cost rates and benchmarks
- i) Cost report and cashflow forecast
- j) Summary and status of any change requests
- k) Status of emerging SPPs and FWP
- l) KPI status and trend information
- m) Any requirements as set out in Clause 3.4.1 of the Performance Framework.

4.12.4 A **Management Review Group (MRG)** is to be formed in accordance with clause 15 of the General Conditions.

4.12.5 The MRG will meet in accordance with clause 15.3 of the General Conditions to discuss and review the matters contemplated by clause 15.1 of the General Conditions.

4.12.6 The ITS Contractor must provide all members of the MRG with a copy of the Monthly Report.

4.12.7 An **Annual Performance Review** meeting will be held in accordance with clause 20.1 of the General Conditions.

4.12.8 Before any Annual Performance Review meeting, the ITS Contractor is to provide an Annual Report to relevant parties and meeting attendees in accordance with clause 19.2 of the General Conditions .

4.12.9 The Annual Report must contain summary and supporting details of:

- a) Review of performance against the RMS Objectives and Stewardship Principles;
- b) Planned vs actual Services performed during the year;

- c) Asset Management performance including details of all key activities and a summary schedule of all changes made to Assets with dates of the changes and dates that updated Asset data has been provided to RMS;
- d) WH&S, environmental and quality performance;
- e) Communication and Stakeholder Engagement activities and performance;
- f) Cost performance including agreed prices, actual cost incurred and revenue generated (including for Priced Component Services);
- g) Actual time performance compared with Milestones;
- h) Agreed KPI scores, along with any outstanding measurements or calculations to be performed;
- i) Innovations developed and implemented by the ITS Contractor and RMS;
- j) Audits conducted during the year, results and resolution of any issues;
- k) Planned improvements to the Services for the upcoming year including plans to improve performance against any KPIs and resolve any variances between planned and actual performance of Services including cost variances;
- l) Any particular areas of performance which the ITS Contractor wishes to be considered for a positive OPS modifier, including supporting details;
- m) Key issues for consideration by MRG; and
- n) Any other items agreed by the RMS and the ITS Contractor.

4.13 Traffic Management

- 4.13.1 The ITS Contractor is required to provide efficient and effective traffic management for the Services to keep disruption to traffic on the road network to a minimum.
- 4.13.2 The ITS Contractor will be responsible for its traffic management on the road network. At a minimum, the ITS Contractor will be responsible for:
 - a) the coordination and liaison with TMC;
 - b) development of Traffic Management Plans;
 - c) development of project specific traffic management proposals;
 - d) coordinating its traffic management activities on the road network; and
 - e) traffic management planning and reporting.
- 4.13.3 The ITS Contractor must ensure that it has all personnel, plant and equipment available to manage users of the road network in response to any traffic incident and all other events or circumstances likely to occur during the ITS MC.
- 4.13.4 The ITS Contractor must keep the TMC informed at all times of any matter within its knowledge which is likely to affect or is affecting the free flow of traffic on the road network.
- 4.13.5 All Services (except for unavailability urgent work required in response to an incident) must be planned to avoid delay or detours that will inconvenience users of the road network or will interfere with traffic during periods of heavy traffic flow.
- 4.13.6 The ITS Contractor must comply with any traffic direction or instruction given by a relevant Authority (including but not limited to the New South Wales Police Force, RMS and TMC).
- 4.13.7 The ITS Contractor must comply with the requirements described in RMS Specification G10.

4.14 Road Occupancy

- 4.14.1 The ITS Contractor must obtain approval before carrying out any Services which require the ITS Contractor to restrict, close, interfere with or obstruct the free flow of traffic on any lane or shoulder of a road. TMC on behalf of RMS issues the consent which is referred to as a Road Occupancy Licence (ROL).
- 4.14.2 For some routine services, the ITS Contractor may be able to procure from TMC a Road Occupancy Licence for Bulk Approval of Minor Impact and Mobile Work Activities.
- 4.14.3 The ITS Contractor must comply with any ROL requirement.

4.15 Quality Management and Records

- 4.15.1 The ITS Contractor must develop, implement and maintain a Quality Management System in accordance with the ITS MC and the requirements described in RMS Specification Q6.
- 4.15.2 The Quality Plan will be required to be developed for all Services under the ITS MC, however a need may arise where the ITS Contractor will be required to develop a project specific plan or procedures where the overarching plan does not cover the specific circumstances.
- 4.15.3 The requirements of the Quality Management System are discussed further in Section 5.6.
- 4.15.4 The ITS Contractor must implement a Records Management System in accordance with RMS QA Specification Q6, and satisfy the State Records Act 1998, the State Records Regulation 2010 and other relevant legislation.
- 4.15.5 The ITS Contractor must prepare a Records Management System for the Services, the requirements of which are discussed further in Section 5.2.8.

4.16 Procurement

- 4.16.1 For procurement of any materials or services, the ITS Contractor must adhere to NSW Government Goods and Services procurement policies including (but not limited to) the *Code of Practice for Procurement*, 18 January 2005.
- 4.16.2 Purchasing is also to comply with the requirements as set out in the RMS Specification Q6.

4.17 Asset Replacement or Renewal

- 4.17.1 Unless otherwise agreed with RMS, where the ITS Contractor replaces or renews existing Assets, the ITS Contractor must replace these Assets:
 - a) on a "like-for-like" basis such that the new Asset meets or exceeds the standard, original quality and performance of the existing Asset; or
 - b) replace the Assets in accordance with the relevant specification;whichever is of higher quality or standard.
- 4.17.2 Any replacement of Assets needs to be accurately recorded in the Asset Management System (see Section 5.8).

4.18 Use of RMS Specifications

- 4.18.1 RMS has a suite of standard specifications which set out general and technical requirements for the performance of maintenance services. The specifications include comprehensive requirements including but not limited to:
 - a) general requirements such as health, safety, environmental and traffic management requirements;
 - b) material specifications;
 - c) maintenance intervention standards and methods;

- d) testing methods; and
 - e) other requirements.
- 4.18.2 Details of the relevant specifications are included in Appendix 5. Where the ITS Contractor considers that their Services are not covered by a specification listed, they are to refer to RMS for guidance.
- 4.18.3 Unless otherwise agreed by RMS, the ITS Contractor must meet the requirements of these specifications in performing the Services.
- 4.18.4 These specifications are reviewed and updated by RMS from time to time. If and when this occurs the ITS Contractor will be required to comply with the updated standards for the Services performed under any future FWP or SPP.
- 4.18.5 Some of these specifications have been derived from the RMS Model Contract Documents and therefore may use defined terms that differ from that of the ITS MC. Table 2 aligns the defined terms in the standard specifications with those of the ITS MC:

Table 2: Alignment of terms used in specifications

Defined term in standard specification	Term used in ITS MC
Construction Work (s)	Services
Contract	ITS MC
Contractor or contractor	ITS Contractor
Principal	RMS
Project	Services
Works	Services
Work Under the Contract	the Services
You	the ITS Contractor
Your	the ITS Contractor's

- 4.18.6 To the extent that the specifications include clauses relating to payment then these clauses do not apply to the ITS MC. However the methods of measurement and inclusions for pay items are to be applied in the development of output rates for each Works Period.
- 4.18.7 Various Specifications and Annexures to Specifications require “Project Specific Details” or “Project Requirements” to be provided. Where this occurs, the ITS Contractor is to consider the obligations required by the specification and develop the specific requirements.
- 4.18.8 Where applicable, the ITS Contractor will use the same Specification at a program level as well as individual projects within the Services. By way of example, the Work Health and Safety Specification G22 provides for the production and implementation of the WHS Management System. It is the ITS

Contractor's responsibility to ensure at a program level that an appropriate system is put in place, but also to establish additional plans and processes for individual projects or where needed.

- 4.18.9 In some cases the standard specifications may specify "Hold Points" beyond which work must not proceed without RMS inspection and authorisation, and "Witness Points" for which RMS must receive prior notice with an opportunity to attend the work. In consideration of the objectives and scope of the ITS MC, RMS does not require the ITS Contractor to notify or obtain authorisation from RMS with respect to Hold Points and Witness Points, except where otherwise required by the ITS MC. However, it is the ITS Contractor's obligation to ensure that its Quality Management System has in place equivalent controls to ensure that the Services are performed in accordance with the ITS MC. RMS will from time to time audit the Quality Management System to verify that this is being achieved and they require additional controls including Hold Points and Witness Points, in its absolute discretion.
- 4.18.10 Within the standard RMS specifications reference may be made to "the Principal" carrying out the setting out or marking out on site for the Services. Where this occurs, the ITS Contractor is to note that this requirement will not apply and that the ITS Contractor will be responsible for their own setting out for the Services.
- 4.18.11 M208 and M209 Specifications provide the requirements developed for use by third parties undertaking road opening work within an existing trafficked pavement on a Contract Road for the purpose of buried public utilities, services or drainage. Beyond the specifications for carrying out the physical works, it also contains requirements for warranties, performance bonds, public liability insurance, etc. that would be required from third parties. Where the ITS Contractor is required to assist RMS in the management and coordination of restoration works performed by third parties, it will generally be to these specifications and requirements.
- 4.18.12 Where the ITS Contractor carries out the type of works that are covered by the M208 and M209 specifications, such as installation of ducts, etc. the ITS Contractor will be bound by the requirements for carrying out the physical works, however requirements for warranties, performance bonds and public liability insurance will not be applicable as these requirements will be stipulated by the ITS MC.
- 4.18.13 Certain reference documents and specifications are currently marked as "Draft" or "Under Review", however these are the best currently available information which the ITS Contractor is to adopt and consider for the Contract unless advised otherwise.
- 4.18.14 In recognition of the RMS Objectives, it is acknowledged that there will be benefit in reviewing some standard specification requirements where there is an opportunity to improve value and/or save costs for example through:
- a) innovation;
 - b) moving from prescriptive requirements towards a performance-based approach; and/or
 - c) other compelling reasons for change.
- 4.18.15 RMS will review any proposed departures from standard specifications, including any agreement on service levels for maintenance intervention, when identified and brought to the attention of RMS. Any agreed departures will be documented in the ITS Contractor's AMP's and incorporated into the Services as applicable.
- 4.18.16 The nature of the Services and Assets may mean that there are occasions when its standard suite of specifications does not apply and/or where there are gaps within RMS' suite of specifications. This may particularly be the case for maintenance and upgrade works required to high risk Assets such as bridges and tunnels, but may also apply to other Assets. The ITS Contractor is responsible for identifying and advising RMS of any such omissions. By agreement the ITS Contractor may adopt or develop an alternative suitable specification.

4.19 Use of Traffic and Safety Management Standards and Technical References

- 4.19.1 RMS uses the Austroads 'Guide to Traffic Management', "Guide to Road Safety" and Australian Standards AS1742, AS1743 and AS2890 as its primary technical references for traffic and safety management. An RMS Supplement has been developed for each Part of the 'Guide to Traffic Management', for the 'Guide to Road Safety' and relevant Australian Standard. The Supplement documents are mandatory RMS practice.
- 4.19.2 Unless otherwise agreed by RMS, the ITS Contractor must meet the requirements of the RMS Supplements. If any conflict arises, RMS Supplements, the Austroads Guides and the Australian Standards are to prevail.
- 4.19.3 The RMS Supplements can be accessed as detailed below.
- a) Austroads Traffic and Safety Supplements
www.rta.nsw.gov.au/doingbusinesswithus/ausroadsguides/index.html
 - b) Australian Standards Supplements
www.rta.nsw.gov.au/doingbusinesswithus/guidelines/trafficstandardssups.html
- 4.19.4 RMS uses two types of complementary traffic management guidelines, technical manuals which are reference documents dealing with specific topics for and technical notes, known as Technical Directions, which detail new practice, or update existing practice, not shown in current RMS manuals.
- 4.19.5 Unless otherwise agreed by RMS, the ITS Contractor is required to comply with the RMS technical manuals and technical directions.
- 4.19.6 RMS Traffic Manuals and Technical Directions can be accessed as detailed below.
- a) RMS Traffic Manuals – Register and Document Location
www.rta.nsw.gov.au/doingbusinesswithus/guidelines/documentregister/techmanualscurrent.html
www.rta.nsw.gov.au/doingbusinesswithus/downloads/technicalmanuals/technicalmanuals_dll.html
 - b) RMS Traffic Technical Directions – Register and Document Location
www.rta.nsw.gov.au/doingbusinesswithus/guidelines/documentregister/techdirectionscurrent.html
www.rta.nsw.gov.au/trafficinformation/downloads/tmdirections_dll.html
 - c) RMS Safety Technical Directions and Guidelines – Document Location
www.rta.nsw.gov.au/roadsafety/downloads/roadsafetytechnicaldirections_dll.html
www.rta.nsw.gov.au/roadsafety/downloads/road_safety_audit_practices.html
- 4.19.7 RMS uses an established signs database as a key reference for the selection of regulatory, temporary and warning signs in NSW. The signs database is available to the industry and business partners in the production of signs in NSW.
- 4.19.8 The ITS Contractor is required to reference the signs database to ensure:
- a) the currency of sign (non-standard signs should not be used in NSW)
 - b) available sign sizes
 - c) sign materials, and
 - d) the sign drawing (for specific RMS signs)
- 4.19.9 The RMS traffic signs database can be accessed as detailed below.
www.rta.nsw.gov.au/cgi-bin/index.cgi?action=searchtrafficsigns.form
- 4.19.10 A schedule of the relevant documents is provided at Appendix 6.

5 Integrated Contract Management System

5.1 Overview

- 5.1.1 An Integrated Contract Management System (ICMS) must be developed and maintained by the ITS Contractor.
- 5.1.2 The ICMS must provide the framework, systems, operation plans, processes and procures to demonstrate to RMS that the ITS Contractor has the understanding, capacity and capability at all times to carry out the Services safely and in accordance with the requirements of the ITS MC. It will also allow RMS to understand how the ITS Contractor will achieve the performance of the Services or otherwise fulfil its obligations under the ITS MC and ensure continual improvement over the duration of the ITS MC.
- 5.1.3 The ICMS will be based on, but is not limited to, a suite of management system documents and defined responsibilities.
- 5.1.4 The ITS Contractor shall nominate an ICMS Manager with the appropriate skill, experience and qualifications who will be responsible for the coordination of all issues relating to the ICMS. As a minimum, the ICMS Manager shall be responsible for:
- a) Development, implementation and maintenance of the ICMS;
 - b) Scheduling and coordination of internal ICMS audits;
 - c) Coordinating compliance monitoring;
 - d) Initiating and recording reviews of the ICMS;
 - e) Implementation and coordination of continual improvements of the ICMS;
 - f) Implementation and coordination of non-compliance management including the management of corrections and corrective and/or preventative actions;
 - g) Scheduling follow up audits to ensure the timely completion of identified corrections, corrective and/or preventative actions;
 - h) Coordination of all ICMS certification related issues;
 - i) ICMS reporting; and
 - j) Attendance at meetings as required.
- 5.1.5 The ICMS shall be developed, implemented and maintained to conform to the requirements of RMS Specification Q6.
- 5.1.6 The ITS Contractor must prepare a range of Service Plans to support the ICMS in accordance with the requirements listed in Sections 5.2 through 5.12.

5.2 Service Plans - general

- 5.2.1 All Service Plans required under the ICMS must be substantively based on and consistent with any Initial Service Plan.
- 5.2.2 The ITS Contractor is to provide a **Services Management Plan** that identifies the procedures, processes and management systems that the ITS Contractor intends to apply to ensure delivery of the Services in accordance with the ITS MC. As a minimum (unless dealt with elsewhere), the Services Management Plan must address:
- a) The management team structures; nominated management and supervisory personnel and other key personnel; the authority and minimum skill levels of each position; the lines of responsibility and communication; interfaces with the overall organisation structure; and the performance milestones for the management team for each phase of the Services;

- b) Details for key management personnel;
 - c) Management strategies for the provision of an integrated approach to performing the Services;
 - d) Management strategies for information and documentation management, including those relating to the use of the ICMS;
 - e) Methods of dealing with relevant stakeholders including the development and maintenance of a working relationship with and between RMS and key stakeholders that will support the achievement of the RMS Objectives;
 - f) Strategies and processes for a cooperative and non adversarial approach for issue resolution;
 - g) Time and quality control;
 - h) Resources management;
 - i) Management reporting;
 - j) The strategy for managing risk including risk reduction strategies that apply to the Services;
 - k) Record management;
 - l) Reporting;
 - m) Document management;
 - n) Industrial relations strategy;
 - o) Local industry participation plan;
 - p) Strategy for obtaining necessary approvals;
 - q) Condition monitoring; and
 - r) Financial management issues.
- 5.2.3 The ITS Contractor must keep accurate records of the performance of Services. The records to be kept include documents, drawings, and reports of performance.
- 5.2.4 The ITS Contractor is to provide a **Transition Management Plan** in accordance with the Brief for Transition Services.
- 5.2.5 The ITS Contractor is to provide a **Depot Management Plan** in accordance with the Brief for Transition Services.
- 5.2.6 The ITS Contractor is to provide a **Risk Management Plan** which shall describe in detail the ITS Contractor's approach and strategies to manage risks. The plan should include;
- a) Identification of risks;
 - b) Evaluation of the likelihood and severity of risks;
 - c) Control and mitigation of risks including insurances; and
 - d) Management responsibilities.
- 5.2.7 The ITS Contractor must develop, implement and maintain a **Business Continuity Plan** which details how the ITS Contractor will address the continuity of the Services and contractual obligations during natural or man made disasters, incidents and events, including those events that disrupt the ITS Contractor's performance. The Business Continuity Plan must address, as minimum:
- a) How, and over what time frames, the Services will be restored to normal operations after any disaster, incident or event, including any intermediate stages and timings;
 - b) Damage assessment, management and control measures;
 - c) Organisational arrangements including crisis teams' identification, roles, authorities, training, management and succession, and information dissemination.

- d) Establishment and operation of crisis centres;
- e) Management of critical information and communication systems, including restoration and protection of data; and
- f) Management of critical business processes including but not limited to financial and accounting, HR and payroll, legal, information and communications technology and procurement, including identification of critical suppliers, sub-contractors, and other support businesses.

5.2.8 The ITS Contractor is to provide a **Records Management Plan** which shall describe in detail the ITS Contractor's approach and strategies to perform among other things, the following key functions:

- a) The organisation's policies, objectives and responsibilities for the records;
- b) The resources needed for implementation and verification of records management policies and practices;
- c) Processes and practices for managing records;
- d) Design of the records management system;
- e) Details of the Asset inventory;
- f) Quality control processes for managing the records; and
- g) The minimisation of manual and paper based processes and procedures.

5.2.9 The ITS Contractor is to provide an **Incident Management Plan** which shall describe in details the ITS Contractor's approach and strategies to perform the following key functions:

- a) Definition of events that constitute an incident;
- b) Incident communication procedures;
- c) Incident management, including traffic incident and accident support and incidents involving the ITS Contractor's personnel and assets;
- d) Liaison with the TMC and emergency services;
- e) Incident records and reporting; and
- f) Quality control processes for incident management.

5.2.10 The ITS Contractor is to provide an **Operations Plan** that must identify the methods, systems and procedures whereby the ITS Contractor will comply with the operations Services of the ITS MC. The operations plan must include as a minimum:

- a) Organisation and operations methodologies;
- b) Operating procedures;
- c) Interface with the Incident Management Plan;
- d) Interface with the Asset Management System; and
- e) Methodology, processes and procedures for compliance with operation standards including the monitoring and reporting of performance to the standards.

5.2.11 The ITS Contractor is to provide a **Services Demobilisation and Handover Plan**.

5.2.12 The Services Demobilisation and Handover Plan will incorporate processes for completion and handover of Assets including:

- a) Handover of Assets provided or modified under the ITS MC;
- b) Handover of Assets provided or modified by third parties; and
- c) Update of RMS asset management systems.

5.2.13 The description of processes will include, but not limited to:

- a) Induction and training of all nominated RMS personnel;
- b) Access to all records relating to the Services and Assets;
- c) Access to inspect and assess all Assets (including systems and software);
- d) All supplier warranties and guarantees;
- e) The collation and handover of all data recorded on the Asset Management System (in a format acceptable to RMS);
- f) Provision of all Asset Management Plans i.e. tunnel and bridge maintenance plans.
- g) Access to all supply and subcontract arrangements;
- h) Access to interface arrangements; and
- i) Provision of suitable, experienced, dedicated person(s) to act as the primary interface between the ITS Contractor and RMS through out the Demobilisation and Handover period.

5.2.14 The ITS Contractor is to provide a Communication and Stakeholder Engagement Plan which shall describe in detail how the ITS Contractor will meet the requirements of section 4.8.

5.3 Environmental Management System

5.3.1 The ITS Contractor must implement an **Environmental Management System (EMS)** that complies with the NSW Government Environmental Management Systems Guideline, apply best practices as per ISO 14001 Environmental Management Systems Requirements and conforms to the requirements of RMS Specification G36M, including the preparation of an **Environmental Management Plan (EMP)**.

5.3.2 The EMP shall describe in detail the ITS Contractor's approach and strategies to avoid or mitigate any detrimental effects on the environment in fulfilling obligations under the ITS MC. The plan should define the environmental responsibilities of the ITS Contractor and each position within the ITS Contractor's management team including key personnel, authority and roles of key personnel, lines of responsibility and communication, minimum skill levels of each role and interfaces with the overall organisational structure.

5.3.3 The EMP shall describe in detail the ITS Contractor's approach and strategies to perform the following key functions:

- a) Identification of environmentally sensitive areas;
- b) Cooperation and coordination with environmental response and regulatory agencies;
- c) Identification and assessment of environmental impacts;
- d) Development and implementation of mitigation measures;
- e) Development and implementation of monitoring programs;
- f) Review of effectiveness of mitigation measures;
- g) Development and implementation of environmental incident response measures; and
- h) Quality control processes for environmental management.

5.3.4 Engagement with the community affected by the works carries the utmost importance. The ITS Contractor will be required to work closely with RMS and strictly comply with the requirements of G36M and the Communication and Stakeholder Engagement Requirements for the Communication and Stakeholder Engagement Plan to be incorporated into the EMS & EMP.

5.3.5 The ITS Contractor must develop, implement, maintain and update a **Sustainability Plan** which complies with G36M.

5.3.6 The ITS Contractor is to periodically (at least quarterly and include RMS) review the effectiveness and proper implementation of the Environmental Management System and look to identify opportunities for continuous improvement.

5.4 WH&S Management System

- 5.4.1 The ITS Contractor must prepare a **WH&S Management Plan** that meets the requirements of the NSW Government *Occupational Health and Safety Management System Guidelines*, and the RMS Specification G22.
- 5.4.2 The WH&S management plan will describe:
- a) The ITS Contractor's policies, objectives, responsibilities and commitment to WH&S;
 - b) The resources needed for implementation and verification of the policies, objectives, responsibilities and commitment;
 - c) Communication and consultation processes for sharing WH&S information;
 - d) Selection and management of ITS Contractors;
 - e) Purchasing processes to ensure conformance to WH&S standards;
 - f) WH&S risk identification and management in design;
 - g) WH&S risk identification and management in work processes;
 - h) Training;
 - i) Inspection, testing and monitoring;
 - j) Incident management and corrective actions;
 - k) Handling, storage, packaging and delivery;
 - l) Internal reviews;
 - m) Documentation and records; and
 - n) Quality control processes for WH&S.

5.5 Traffic Management Plans

- 5.5.1 The ITS Contractor must develop and implement **Traffic Management Plans** that meet the requirements of RMS Specification G10.
- 5.5.2 The **Traffic Management Plan** shall incorporate the planning for the traffic management functions under the Services and shall describe and detail the following:
- a) Responsibilities for traffic management, planning and control at worksites;
 - b) Liaison arrangements with the TMC;
 - c) Standard Traffic Staging Plans to be used for routine works on the network;
 - d) Procedures for the development of Project Specific Traffic Management Plans; and
 - e) Quality control processes for traffic management.

5.6 Quality Management Plan

- 5.6.1 The ITS Contractor is to provide a **Quality Management Plan** in accordance with RMS Specification Q6. The Quality Management System shall inform and direct personnel about the specific quality practices, resources, sequence of activities, controls and checks they have to implement during the ITS MC.
- 5.6.2 The Quality Management Plan shall cover all Services under the ITS MC whether permanent or temporary, both on-site and off-site.
- 5.6.3 The Quality Management Plan must address as a minimum the requirements of Q6, including:
- a) Nominated resources for its management;

- b) Change control processes;
- c) Document control and retention;
- d) Inspection and auditing requirement, program and processes;
- e) Compliance monitoring;
- f) Non conformance management;
- g) Subcontractor management; and
- h) Continuous improvement.

5.6.4 The Quality Management Plan must be further developed and updated:

- a) To address changes in the operation and maintenance process including the use of and development of new equipment, assets, practices and materials; and
- b) For processes requiring documentation which the existing quality system does not address.

5.7 Program and Project Management

5.7.1 The ITS Contractor must develop an overarching **Program Management System**, including specific project management plans in accordance with RMS Infrastructure Lifecycle management as needed which will set out the framework, processes, roles and responsibilities for the delivery of programs and projects.

5.7.2 The system will also set out the framework and processes for project management including:

- a) Project Management Plans
- b) Risk Management
- c) Concept Design
- d) Urban Design
- e) Cost Estimation
- f) Review of environmental factors
- g) OHS
- h) Property Acquisition
- i) Utility Adjustment requirements
- j) Scope Management
- k) Detailed Design
- l) Project
- m) Project Handover

5.8 Asset Management System

5.8.1 RMS maintains a number of asset management systems which will provide a platform for its strategic management of Assets (See Appendix 3 for details of the current asset management and fault management systems).

5.8.2 The ITS Contractor must develop and maintain its own **Asset Management System** which contains the processes and procedures needed to demonstrate and record how the ITS Contractor addresses its obligations under the ITS MC and ensures the objectives are achieved in an effective and cost efficient manner. It is required to be accurate and complete at all times and be available for independent interrogation by RMS.

- 5.8.3 It is not required for the ITS Contractor's Asset Management System to align with RMS' own Asset Management Systems, however Asset information supplied from the ITS Contractor's Asset Management System must be provided in a format compatible with RMS' Asset Management Systems and must meet RMS' minimum data requirements, as detailed in Appendix 4.
- 5.8.4 The data the ITS Contractor is to provide for all Assets in accordance with the RMS Handover procedures, includes:
- a) Identification of Asset;
 - b) Description of Asset;
 - c) Location of Asset;
 - d) Condition of Asset;
 - e) Date of installation of Asset;
 - f) Maintenance or replacement works performed on the Asset; and
 - g) Any other data reasonably requested by RMS.
- 5.8.5 Changes to the Asset are to be captured in the Asset Management System and provided to RMS no later than 3 months after the work is complete.
- 5.8.6 RMS will, wherever practicable, work collaboratively with the ITS Contractor to provide access to Asset data and information maintained within its own Asset Management Systems. RMS and the ITS Contractor are to jointly review and align Asset data such that the Asset records remain consistent.
- 5.8.7 The ITS Contractor's Asset Management System must provide real time access to RMS to any computerised database management system(s) which comprises part of the Asset Management System.
- 5.8.8 It is expected that asset information exchange and integration or open access across RMS and ITS Contractor asset databases will be a joint area for continuous improvement through the contract.
- 5.8.9 The Asset Management System will also incorporate a **Maintenance Management System (MMS)**. The MMS must also be able to determine and prioritise the ITS Contractor's maintenance activities. Key components required of the system are:
- a) Support the analysis of the fault and asset inspection data to enable preparation and implementation of reactive or planned work programs.
 - b) Enable the prioritisation of work activities to meet ITS MC outcomes and deliverables.
 - c) Assist in the development of annual, quarterly, monthly, weekly, daily program and Forward Work Program.
 - d) Provide accurate records of accomplishment of work and work outstanding.
 - e) Allow for fluctuations in work load and that specific, catch up or new work can be allocated if necessary.
 - f) Assign and record costs against each activity (or group of activities).
- 5.8.10 TfNSW is in the process of developing an Enterprise Asset Management (EAM) framework with the objective of moving towards a common asset management system for all of the transport agencies. The timeframe for implementation of the new EAM system is expected to be within the currency of the ITS MC.
- 5.8.11 Once the EAM system is in place, the ITS Contractor will be required to provide and align Asset data with this system. Opportunities to adopt a more integrated approach to use of asset management systems can also be explored at this time.

5.9 Cost Control and Financial Accounting

- 5.9.1 Transparency will apply to all financial transactions conducted under the ITS MC. Cost estimates and actual costs will be fully transparent and available for RMS to inspect and audit (regardless of the payment arrangement). Cost information is to be made available to RMS on a real time basis through access to the primary estimating, accounting and cost control system
- 5.9.2 The ITS Contractor must provide a **Financial Management Plan** that outlines in detail how the ITS Contractor will develop and implement a suite of systems for cost control and financial accounting. The ITS Contractor must provide details of the types of systems they will use. The ITS Contractor must ensure that the systems align with RMS' systems and that reporting functions are acceptable to RMS.

5.10 Estimating and Scheduling

- 5.10.1 The ITS Contractor must prepare an **Estimating Plan** that details the process of preparation and benchmarking of cost estimates for the Services. The Estimating Plan will set out:
- a) The structure of the cost estimates;
 - b) Processes and source data to prepare first principles estimates;
 - c) Framework and process for capturing and benchmarking actual costs against estimates;
 - d) How contingency, escalation and efficiency commitments will be developed and incorporated into the estimates;
 - e) Framework and process for benchmarking against RMS program positions;
 - f) Tools to be used to prepare estimating, including software systems; and
 - g) How access to cost estimates will be provided to RMS.
- 5.10.2 The ITS Contractor must also prepare a **Scheduling Plan** setting the framework, processes and tools to be used to develop and maintain project schedules.

5.11 Procurement

- 5.11.1 The ITS Contractor is to provide a **Procurement Plan** that outlines how the ITS Contractor will conduct procurement processes. Details of the systems, processes and procedures the ITS Contractor will use are required, including how the ITS Contractor will comply with relevant government guidelines in respect of procurement practice.
- 5.11.2 As part of the Procurement Plan the ITS Contractor must develop an **Industry Participation Plan** which shall describe in detail the following:
- a) Engagement, evaluation and award of suppliers / ITS Contractors;
 - b) Use of existing subcontract resources and suppliers; and
 - c) How transparency for RMS and competitive industry markets will be achieved.

5.12 Human Resources

- 5.12.1 The ITS Contractor is to provide a **Training Management Plan** which shall describe in detail the ITS Contractor's approach and strategies applied to meeting any training obligations and employment of apprentices by the ITS Contractor. The Training Management Plan shall comply with the requirements of the NSW Government *Training Management Guidelines*.
- 5.12.2 The ITS Contractor is to provide an **Industrial Relations Plan** which shall comply with the requirements of the NSW Government *Industrial Relations Management Guidelines*. The Industrial Relations Plan shall describe in detail the ITS Contractor's approach and strategies for the management of industrial relations and the processes for keeping RMS informed of industrial relation issues.

- 5.12.3 The ITS Contractor is to provide an **Aboriginal Participation Plan** which shall describe in detail the ITS Contractor's approach, strategies and processes to implement Aboriginal participation in the delivery of the Services, in accordance with the NSW Government *Aboriginal Participation in Construction Implementation Guidelines*.

Appendix I RMS Program Position Descriptions (ITS)

PROGRAM CODE	PROGRAM POSITION	DESCRIPTION	SERVICE CATEGORY
22501	Sign Maintenance	Includes maintenance of static signs on ITS structures	S.3, S.4, S.5, S.6
22502	Delineation Maintenance	Maintenance of delineation assets on state roads.	Largely excluded
22503	Traffic Control Devices	Includes asset inspections, planned maintenance, reactive maintenance and MIW for TCS, other ITS devices and graffiti removal.	S.3, S.4, S.5, S.6, S.7
22505	Traffic Facilities Asset Upgrades	Includes upgrade of TCS and other ITS devices	S.7
26211	School Flashing Lights Maintenance	Maintenance of School Zone Alert Systems	Initially excluded
26301	State Blackspot Treatments	State funded projects to improve safety of identified blackspots. Includes new TCS and TCS upgrade projects.	S.7
26308	Roadside Safety Facilities	Includes specific TCS upgrade projects	S.7
26309	Federal Blackspot Treatments	Federally funded projects to improve safety of identified blackspots. Includes new TCS and TCS upgrade projects.	S.7
26322	Highway Safety Route Review	Includes specific new TCS and TCS upgrade projects	S.7
22802	Information Management	WIM, Traffic Counters & Classifiers - maintenance	S.3, S.4, S.5, S.6
27108	Sydney Congestion Treatments	State funded program to improve network efficiency	S.7
14205	On Road Enforcement	Compliance Operations Heavy Vehicle Checking Stations (HVCS) and Heavy Vehicle Inspection Stations (HVIS) - maintenance	S.3, S.4, S.5, S.6
17801	Fixed Digital Speed Cameras	Compliance Operations Fixed Digital Speed Camera Site - Maintenance non school zone Fixed Digital Speed Camera Site - Maintenance school zone	S.3, S.4, S.5, S.6
17804	Red Light Speed Cameras	Compliance Operations Redlight - Safety Cameras - Maintenance (recurrent)	S.3, S.4, S.5, S.6

PROGRAM CODE	PROGRAM POSITION	DESCRIPTION	SERVICE CATEGORY
17805	Point to Point Speed Cameras	Compliance Operations Camera Systems for Point to Point - Maintenance (recurrent)	S.3, S.4, S.5, S.6
27207	Strategic Bus Operations	Compliance Operations Bus Priority Enforcement Systems BPES - Maintenance (recurrent)	S.3, S.4, S.5, S.6
17802	New Enforcement System	Compliance Operations Fixed Digital Speed Camera upgrade (capital)	S.7

Appendix 2 SHB Support Services

RMS has a dedicated workforce (including the Sydney Harbour Bridge Alliance) which performs a range of maintenance services on the Sydney Harbour Bridge including routine maintenance, security surveillance, repainting, structural repairs and maintenance of ITS devices across the bridge and approach roadways as defined by the SHB Special Precinct.

The SHB Special Precinct incorporates the SHB, Cahill Expressway and approach roadways bounded by the Eastern Distributor (lease area), Western Distributor (northern abutment) and Warringah Freeway (High St overpass).



Within the SHB Special Precinct, RMS will retain asset management responsibility and operational control of this critical corridor. The focus of the Special Precinct team will be to provide specialist operational support where an immediate response is required to maintain traffic operations.

Appendix 3 ITS Asset and Fault Management Systems

The following table outlines the current ITS Asset Management Systems that RMS maintains:

System Name	Assets Managed	Function
MITS (MS Access DB)	VMS, VSLS, TMU, WS, TFS, +	Asset management & maintenance planning
PC Inventory	Traffic signals, loops, CCTV, Advanced Warning Signs, LUS	Asset inventory
TDAS	Traffic counters, classifiers	Asset inventory & reporting, some fault management functionality
Compliance Technology Data Base	Enforcement cameras, HVCS, Over-height & Over-length systems	Asset inventory
Street lighting & Emergency Phones Inventory (MS Excel)	Street lighting, emergency phones	Asset inventory
CMC (School Zone Alert System)	School zone alert signs	Asset management and fault management
TCS PDF Website	Traffic signals, +	Electronic plan room for WaE drawings

The following table outlines the current ITS Operational and Fault Management Systems in use by RMS and TMC:

System Name	Assets Managed	Function
CMCS	VMS, VSLS, TMU, WS, +	Operation and real time monitoring of devices
CMCS FMS	VMS, VSLS, TMU, WS	Fault management (reporting)
FMS Web Page	VMS, VSLS, TMU, WS	Fault reporting from CMCS FMS to web page
PEGA	VMS, VSLS, TMU, WS	Fault / workflow management
FMS Batch	VMS, VSLS, TMU, WS	Fault management (similar to CMCS FMS)
SCATS	Traffic signals, loops	Operation and real time monitoring of devices
FMAN	Traffic signals, loops	Fault / workflow management
DetFaults	Detector loops	Fault management – filtering of “genuine” faults
ELCS	SHB ELCS	Operation and real time monitoring of devices (manual fault logging)
VCS	CCTV (Traffic monitoring)	Operation and real time monitoring of devices (manual fault logging)

CMC (School Zone Alert System)	School zone alert signs	Asset management and fault management (manual fault dispatch to maintenance contractors)
--------------------------------	-------------------------	------------------------------------------------------------------------------------------

Appendix 4 Asset Data Requirements

- All data definitions, forms, formats, terms, nomenclature, abbreviations, names and types must be clearly defined prior to any data being supplied to RMS as these definitions will form the basis for understanding of all data passing between the ITS Contractor and RMS. Any changes to these definitions must not be done unilaterally.
- Any data or metadata relating to an Asset such as description, identification, location, condition, installation, maintenance or replacement must be recorded in a form acceptable to RMS.
- All information (metadata) about the data such as format must be recorded in a global data dictionary that is accessible to both ITS Contractor and RMS staff.
- The ITS Contractor must clearly identify and record each Asset with the use of a unique ID or RFID and provide links or connections to any existing asset IDs. This must be done in a manner that clearly and absolutely identifies each and every Asset and each and every piece of data about that Asset from all others.
- The ITS Contractor must allocate and record a unique ID for any Asset that does not already have a unique Asset ID so that any Asset is clearly and absolutely identifiable and locatable amongst all other Assets.
- The ITS Contractor must, when a connection is found between old IDs and new Asset IDs, make and record the connection. This connection must also be retrospectively applied to any existing Asset data if the required data is available.
- The ITS Contractor must clearly identify the details of each change to an Asset or change of an Asset item. Example – an Asset is added, subtracted, repaired, relocated or replaced from the Zone. All minimum data requirements must be met in recording all these changes.
- The ITS Contractor must provide a clear description of the Asset, including type, to help in the identification of the Asset. The ITS Contractor must comply with the acceptance of assets policy and procedures related to completion and handover of works. For guidance the ITS Contractor should refer to Acceptance of Infrastructure Assets Draft Policy 0.1, ILC-GEN-TP0-900 Asset Acceptance Procedure, ILC-GEN-TP0-901-G01 Asset Information, ILC-GEN-TP0-901-Fo2 Asset Acceptance Report and ILC-GEN-TP0-901-F01 Asset Information Template.
- The ITS Contractor must provide a definite location for the Asset with the use of GPS (latitude and longitude) (with better than or equal to 5 metres accuracy), RoadLoc, Road Number and Name. The minimum must be Latitude and Longitude.
- The ITS Contractor must record a description of the type, quantity, units, method used, materials used, of the actual maintenance work carried out on the Assets.
- The ITS Contractor must record the date and nature of all maintenance activities carried out on a particular Asset so that a complete lifestyle picture of the Asset can be obtained. Intervention descriptions need to be standardised and agreed with RMS.

- The ITS Contractor must provide a description of the actual maintenance responsibility of the Asset.

Appendix 5 Schedule of RMS Specifications

Except where noted in the table below, RMS specifications are available for download from the following website:

<http://www.rta.nsw.gov.au/doingbusinesswithus/specifications/index.html>

RMS specifications which are not available for download from the above website are set out in Exhibit 4 of the ITS MC.

Number	Name	Available on RMS website
General Specifications		
G10	Control of Traffic	Yes
G22	Occupational Health and Safety	Yes
G36M	Environmental Protection (Management system)	No
M208	Road Openings and Restoration (Low Risk)	Yes
M209	Road Openings and Restoration	Yes
Quality System Specifications		
Q6	Quality Management System (Type 6)	Yes
ITS Maintenance Specifications		
R300	ITS Maintenance Services – General Requirements	No
R301	Maintenance of Traffic Control Signals (TCS)	No
R302	Maintenance of Variable Message Signs (VMS)	No
R303	Maintenance of Variable Speed Limit Signs (VSLS)	No
R304	Maintenance of Traffic Monitoring Units (TMU)	No
R305	Maintenance of Tidal Flow Systems (TFS)	No
R306	Maintenance of Travel Time Information Systems (TTIS)	No
R308	Maintenance of Road Weather Information Systems (RWIS)	No
R311	Maintenance of Over-Speed Detection Systems	No
R312	Maintenance of Over-Height Detection Systems	No
R313	Maintenance of Vehicle Detection and Classification Systems	No
R314	Maintenance of Emergency Warning Systems	No
R315	Maintenance of Advanced Warning Systems	No
R316	Maintenance of Lane Use Management Systems (LUMS)	No
R317	Maintenance of Communication Systems	No
R319	Maintenance of Enforcement Systems	No
R320	Maintenance of Changeable Message Signs (CMS)	No

Number	Name	Available on RMS website
R321	Maintenance of Weigh-In-Motion (WIM) Systems	No
R322	Maintenance of CCTV Cameras	No

Appendix 6 Schedule of RMS Traffic Management Technical References

6.1.1 RMS Supplements can be accessed as detailed below.

- a) Austroads Traffic and Safety Supplements
www.rta.nsw.gov.au/doingbusinesswithus/ausroadsguides/index.html
- b) Australian Standards Supplements
www.rta.nsw.gov.au/doingbusinesswithus/guidelines/trafficstandardssups.html

6.1.2 RMS Traffic Manuals and Technical Directions can be accessed as detailed below.

- a) RMS Traffic Manuals – Register and Document Location
www.rta.nsw.gov.au/doingbusinesswithus/guidelines/documentregister/techmanualscurrent.html
www.rta.nsw.gov.au/doingbusinesswithus/downloads/technicalmanuals/technicalmanuals_dll.html
- b) RMS Traffic Technical Directions – Register and Document Location
www.rta.nsw.gov.au/doingbusinesswithus/guidelines/documentregister/techdirectionscurrent.html
www.rta.nsw.gov.au/trafficinformation/downloads/tmdirections_dll.html
- c) RMS Safety Technical Directions and Guidelines – Document Location
www.rta.nsw.gov.au/roadsafety/downloads/roadsafetytechnicaldirections_dll.html
www.rta.nsw.gov.au/roadsafety/downloads/road_safety_audit_practices.html

6.1.3 RMS traffic signs database can be accessed as detailed below.

www.rta.nsw.gov.au/cgi-bin/index.cgi?action=searchtrafficsigns.form

Document List (as at 30/5/2013)

Subject	Reference	Date of original issue	Date of last electronic update
Austroads Guide to Traffic Management Supplements	Part 1 (Version 1.1) Part 2 (Version 1.1) Part 3 (Version 1.1) Part 4 (Version 1.1) Part 5 (Version 1.1) Part 6 (Version 1.1) Part 7 (Version 1.1) Part 8 (Version 1.1) Part 9 (Version 1.1) Part 10 (Version 1.0) Part 11 (Version 1.0) Part 12 (Version 1.0) Part 13 (Version 1.0)		

Subject	Reference	Date of original issue	Date of last electronic update
Australian Standards	Australian Standard AS1742 (Version 1.4) Australian Standard AS1743 (Version 1.1) Australian Standard AS 2890 (Version 1.1)		
Manuals			
Bike Plan, How to Prepare a	RMS 12.595	Nov '12 (Version 2.0)	
Buses - Route Assessment for 14.5 metre Buses	TTT-044	Nov '98 (Version 2.0)	
Delegation to Councils for the Regulation of Traffic (including the operation of Traffic Committees), A Guide to the	RTA/Pub 06.358	Nov '06 (Version 1.0)	Mar '09 (Version 1.3)
Delineation (19 Sections + Appendix)	RTA/Pub 08.091	Apr '08	Nov '12 (Sections 7, 9 & 13)
Filming Projects - Guidelines for parking and road closures	RTA/Pub 09.126	Apr '09	
NSW Bicycle Guidelines	RTA/Pub 03.286	Nov '03 (Version 1.0)	Jul '05 (Version 1.2)
Parking		[Yet to be released]	
Pay Parking	Pub 12.002	Mar '12 (Version 4.0)	
Pedestrian Access and Mobility Plan, How to Prepare a	RTA/Pub 02.024	Mar '02	
Permit Parking	RMS 12.225	Nov '12 (Version 3.0)	
Restricted Parking Areas	RTA/Pub 03.118	Jun '03 (Version 2.0)	
RTA Traffic Management Document Reference List	RTA/Pub 11.163	Apr '11 (Version 1.0)	Jun '11 (Version 1.1)
Tourist Signposting	RMS 12.029	Feb '12 (Version 4.0)	
Traffic Control at Work Sites	RTA/Pub 10.164	Jun '10 (Version 4.0)	Jul '10 (Version 4.0 Issue 2)
Traffic Modelling Guidelines	RMS 13.184	Feb '13	

Subject	Reference	Date of original issue	Date of last electronic update
Traffic Signal Design (16 Sections + 7 Appendices)	RTA/Pub 08.092	Feb '08 (Initial Sections) Aug '08 (Remaining Sections)	Aug '12 (Sections 5, 8, 9, 11, 14 & 15 and Appendix D) Mar '13 (Appendix D)
Traffic Signal Operation Specifications	Various	May '09	Jun '10
RTA-TC-106		Oct '91 (Version 1.0)	Apr '10 (Version 1.3)
Technical Directions			
Requirements for Design of RTA Road Lighting Installations	TD 93/21	Nov '03	
Advertising on RTA Infrastructure	TM P98/3	Aug '98	
Use of Waterborne Paints	TD 98/7	Jun '98	
Route Assessment for 14.5 metre Buses	TD 98/13	Nov '98	
Advertising on RTA Infrastructure	TM P99/2 (Supplements P98/3)	Apr '99	
Bicycle Policy (Maintenance Work), RTA	TM P99/4	Oct '99	
Significant Roadside Environment Area Signs	TM P99/6	Dec '99	
Bicycle Policy (Grates), RTA	TM P00/1	Jan '00	
Shared Zone Signs	TD 2000/6	May '00	
Use of Traffic Calming Devices as Pedestrian Crossings	TDT 2001/04a	Jun '01	May '11
AUTOTURN Swept Path Computer Program - RTA Policy	TDT 2001/06a	Sep '01	Nov '01
How to Prepare a Pedestrian Access and Mobility Plan	TDT 2002/04	Mar '02	
Stopping and Parking Restrictions at Intersections and Crossings	TDT 2002/12c	Aug '02	Oct '11
Traffic Light Inventory - RTA Policy	TDT 2003/03	Jun '03	
Traffic Facilities Inventory - RTA Policy	TDT 2003/04	Jun '03	
Restricted Parking Areas	TDT 2003/05	Jun '03	
NSW Bicycle Guidelines	TDT 2003/08	Dec '03	
Use of Class I Retroreflective Sheeting on Roadworks Signs	TDT 2004/01a	Mar '04	Apr '04
Motor Bike Parking	TDT 2004/02	Mar '04	

Subject	Reference	Date of original issue	Date of last electronic update
Planning Guidelines for Walking and Cycling	TDT 2005/01	Mar '05	
Location and Placement of Variable Message Signs (VMS)	TDT 2005/02b	Mar '05	Dec '08
Design Vehicles and Turning Path Templates	TDT 2006/01	Feb '06	
Signposting for Temporary Rural Road Closures	TDT 2006/05	Sep '06	
A Guide to the Delegation to Councils for the Regulation of Traffic (including the operation of Traffic Committees)	TDT 2006/07	Nov '06	
Use of Fluorescent Material for Road Signs	TDT 2007/01	Jan '07	
Guidelines for the Implementation of On-street Car Share Parking	TDT 2007/04	Sep '07	
Use of Portable Variable Message Signs with Radar Speed Indicators	TDT 2008/01	Sep '08	
Use of Traffic Management Equipment on Multi-function Poles	TDT 2008/03	Sep '08	
Land Use Development Assessment - RTA Guidelines	TDT 2008/04a	Dec '08	Jul '09
Guidelines for the Use of 'No Stopping Taxis Excepted 1 Minute Limit' Zones and Signposting	TDT 2008/06	Dec '08	
Implementation of New Intersection Layout at Traffic Signals	TDT 2009/03b	May '09	Oct '09
Use of Type Approved Illuminated Flashing Arrow Signs	TDT 2009/04	Jun '09	
Bicycle Storage Areas and Advanced Bicycle Stop Lines	TDT 2009/06	Jul '09	
Police Speed Enforcement or Presence on RTA Work Sites	TDT 2009/07	Aug '09	
Traffic Control at Work Sites Training	TDT 2010/01	Feb '10	
Use of Prefabricated Detector Loops	TDT 2010/02	Apr '10	
Traffic Control At Work Sites	TDT 2010/03	Jul '10	
Guidelines for the Selection of Bus Priority Enforcement Camera Sites	TDT 2010/04	Oct '10	
Signposting of Truck Parking Areas and Bus Parking Areas on Freeways/Motorways	TDT 2010/05	Nov '10	
Use of Ground Mounted Controllers for Pedestrian or Small Traffic Signal Sites	TDT 2010/06	Nov '10	
Use of Variable Message Signs (VMS) - RTA Policy	TDT 2010/07	Dec '10	

Subject	Reference	Date of original issue	Date of last electronic update
Pedestrian Refuges	TDT 2011/01a	May '11	Jun '11
Use of Portable Speed Hump Devices	TDT 2011/02	May '11	
Communication Modems for Traffic Control Signals	TDT 2011/03	May '11	
Implementation of Revised Pavement Marking Layouts	TDT 2011/04	May '11	
Use of Uninterrupted Power Supply for Traffic Signals	TDT 2011/06	May '11	
Attachment of Equipment to Traffic Facilities Assets	TDT 2011/07	May '11	
Use of Type Approved Portable Variable Message Signs	TDT 2011/08	Jun '11	
Prequalified retro-reflective raised pavement markers	TDT 2011/10	Nov '11	
Economic Analysis of Traffic Management Projects when using Sidra or Paramics	TDT 2012/01	Jul '12	
Economic Analysis of Variable Message Signs	TDT 2012/02	Jul '12	
Economic Analysis of Closed Circuit Television Cameras	TDT 2012/03	Jul '12	
Footway Parking Schemes	TDT 2012/04	Aug '12	
Pedestrian Bridge Eligibility & Prioritisation Assessment	TDT 2012/05	Sep '12	
Approved Retroreflective Sheeting Materials for Road Signs	TDT 2012/06	Sep '12	
Installation of Light Emitting Diode (LED) Traffic Signal Lanterns	TDT 2012/07	Sep '12	
Approval Requirements for New Traffic Assets	TDT 2012/08	Sep '12	
Pavement Depth for Vehicle & Bicycle Loop Detectors	TDT 2012/09	Sep '12	
Energy Management for New Traffic Assets	TDT 2012/10	Sep '12	
Management of changes to a road name for a State Road in NSW	TDT 2013/01	Jan '13	
Management of changes to the Alphanumeric (MAB) Route Marking system in NSW	TDT 2013/02	Jan '13	
Revised Traffic Signal Cable Installation and Connection	TDT 2013/03	May '13	
Guide to Traffic Generating Developments Updated traffic surveys	TDT 2013/04	May '13	

SCHEDULE 3
COMMERCIAL FRAMEWORK

ITS Maintenance Contracts (ITS MCs)

Schedule 3 – Commercial Framework

Contents

1	Introduction	5
1.1	Purpose of this document	5
2	Payment types.....	6
2.1	Overview.....	6
2.2	Priced Component	7
2.3	Target Cost.....	7
2.4	Cost Plus	8
2.5	Negotiated Terms	8
2.6	Contingency and Escalation.....	9
2.7	Use of unit rates.....	9
2.8	Efficiency Commitment	9
2.9	Evolution of commercial arrangements	10
3	Performance-based arrangements	11
3.1	Overview.....	11
3.2	Cost outcomes of FWPs and SPPs.....	11
3.3	Performance Adjustment and Incentive.....	11
4	Adjustments to Commercial Arrangements	15
4.1	Overview.....	15
4.2	Change Benchmarking Guide	15
4.3	Development of Forward Works Programs	15

Appendices

Appendix 1	Reimbursable Costs	17
Appendix 2	Excluded Costs	20
Appendix 3	Inclusions to Margin	21
Appendix 4	Worked Examples of Commercial Framework	23
Appendix 5	Change Benchmarking Guide	25

Definitions

Defined terms used in this document have the same meaning as those used in the ITS Maintenance Contract document.

List of Abbreviations

CP	Cost Plus
FWP	Forward Works Program
ITS MC	ITS Maintenance Contract
NT	Negotiated Terms
OPS	Overall Performance Score
PC	Priced Component
RFP	Request for Proposal
RMCR	Road Maintenance Contestability Reform
RMS	Roads and Maritime Services
SPP	Special Project Proposal
TC	Target Cost
TMC	Transport Management Centre

I Introduction

I.1 Purpose of this document

- I.1.1 The purpose of this document is to set out the overarching Commercial Framework under which the ITS Maintenance Contract (ITS MC) will operate. This document sets out the commercial arrangements that seek to align the commercial interests of the ITS Contractor with the RMS Objectives and the Stewardship Principles. If the interests of RMS and the ITS Contractor are aligned, then better outcomes should be achievable in the performance of the Services.
- I.1.2 This Commercial Framework:
- a) defines how payments to the ITS Contractor will be structured;
 - b) defines how the performance assessment will impact payments made to the ITS Contractor; and
 - c) describes the key commercial principles that the ITS Contractor must adhere to in performing the Services.
- I.1.3 The objectives of this Commercial Framework are to:
- a) allocate performance and cost risk to the party best able to bear and manage the risk;
 - b) correlate the level of Margin payable with the level of risk taken;
 - c) align payment arrangements with the desired behaviour for the ITS Contractor; and
 - d) provide incentives for the ITS Contractor to:
 - (i) perform the Services in a manner consistent with the Stewardship Principles; and
 - (ii) achieve the RMS Objectives and the outcomes specified in the Forward Works Program Brief.

2 Payment types

2.1 Overview

- 2.1.1 In return for performing the Services under FWP and SPP, RMS will pay the ITS Contractor under four proposed payment types:
- Priced Component (PC)** applies in situations where the scope and costs can be well defined and where the risk of cost performance is best allocated to the ITS Contractor. This arrangement is also suitable where opportunities for productivity improvements are likely to be relatively small;
 - Target Cost (TC)** with painshare / gainshare, applied in situations where scope and costs can be reasonably well defined but where there are potential risks and opportunities that are best shared by RMS and the ITS Contractor;
 - Cost Plus (CP)** only to be applied in limited circumstances where scope or costs cannot be reasonably foreseen or forecast, and/or where an alternative payment structure may encourage misaligned behaviours between RMS and the ITS Contractor in the provision of high risk or critical Services; or
 - Negotiated Terms (NT)** applies where there are Services to be provided that cannot suitably be delivered under the other three arrangements.
- 2.1.2 Payment types are based on the principle that where the ITS Contractor takes less risk, the Margin that it receives will be lower.
- 2.1.3 In addition, payments made by RMS will be subject to a Performance Adjustment based on measured performance as outlined in Section 3.
- 2.1.4 An indicative comparison of the risk allocation of the first three payment types is shown in Figure 1 below. The payment types are discussed in more detail in the following sections.

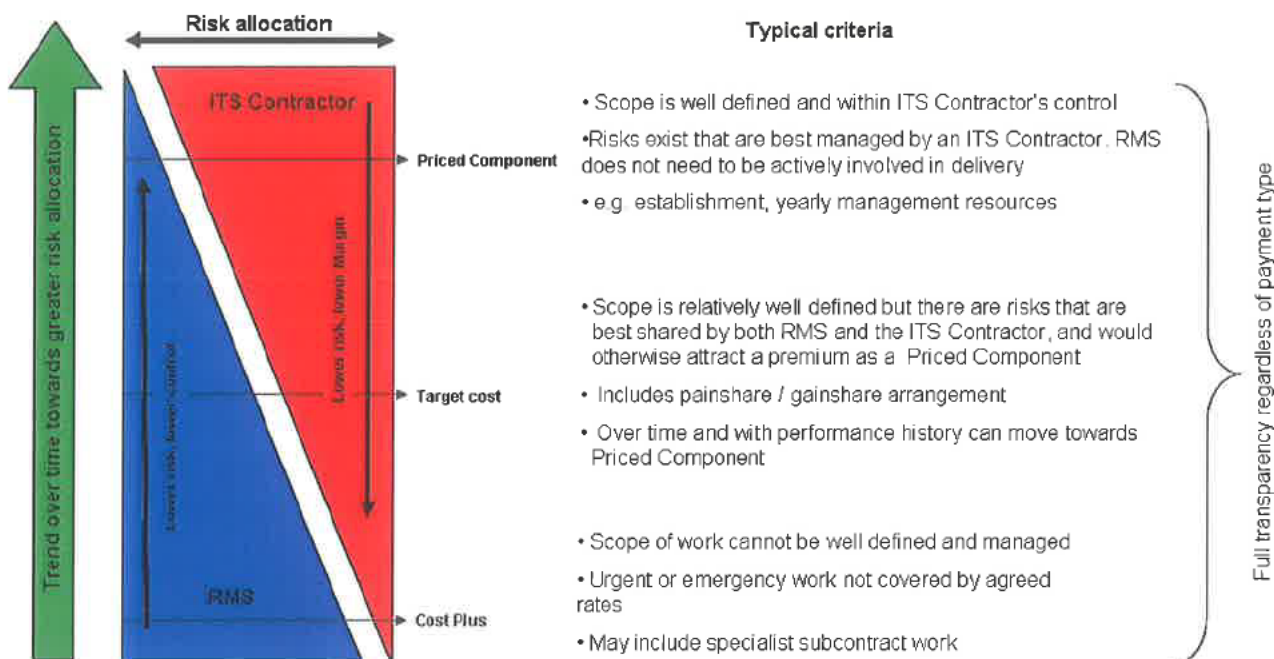


Figure 1 Comparison of payment types

2.2 Priced Component

- 2.2.1 RMS will specify in the Forward Works Program Brief the elements of the Services that will be priced and paid for on a Priced Component basis. For elements of the Services that are carried out on this basis, RMS will pay the ITS Contractor the agreed amount for the element of the Services, regardless of the actual costs incurred by the ITS Contractor. In practical terms, this means that the ITS Contractor assumes all pricing risk, will bear the full cost of any overruns, and will gain the full benefit of any underruns.
- 2.2.2 For elements of the Services that are carried out on a Priced Component basis, the amount payable will be calculated as the sum of:
- a) The agreed estimate of Reimbursable Costs for the relevant elements of the Services, which should include a provision for contingency; and
 - b) Margin calculated by multiplying the appropriate Margin Rates by the price for the relevant element of the Services, agreed at the time of setting the Priced Component.
- 2.2.3 RMS intends that Services will be priced and paid for on a Priced Component basis where one or more of the following criteria apply:
- a) The scope of the Services is well defined and/or the Services can be clearly specified on a performance basis which is within the ITS Contractor's control to manage;
 - b) The cost risks associated with the Services are best managed by the ITS Contractor; and/or
 - c) There is little or no need for RMS to directly influence the delivery of the Services.

2.3 Target Cost

- 2.3.1 RMS will specify in the Forward Works Program Brief the elements of the Services that will be priced and paid for on a Target Cost basis. For elements of the Services that are carried out on this basis, RMS will pay the ITS Contractor:
- a) The actual costs reasonably and properly incurred by the ITS Contractor that are Reimbursable Costs, not including any Excluded Costs, as adjusted in accordance with paragraph 2.3.2; and
 - b) Subject to paragraph 2.3.3, Margin calculated by multiplying the appropriate Margin Rates by the estimate of Reimbursable Costs for the relevant element of the Services, agreed at the time of setting the Target Cost.
- 2.3.2 For all elements of the Services carried out on a Target Cost basis a painshare / gainshare regime will apply as follows:
- a) Where Services are carried out under a TC arrangement, then the actual cost will be compared with the agreed estimate of the Reimbursable Costs and any overruns or underruns will be shared between RMS and the ITS Contractor, or allocated to the Performance Incentive Pool, on the following basis.
 - (i) **Gainshare**
 - RMS – 50%
 - ITS Contractor – 25%
 - Contribution to Performance Incentive Pool – 25%
 - (ii) **Painshare**
 - RMS – 50%
 - ITS Contractor – 50%
 - b) For the purposes of calculating the painshare / gainshare on TC arrangements, all Services performed under a TC arrangement as part of a FWP and any SPPs completed during a Contract Year will be aggregated for the purposes of the calculation.

- c) Painshare and gainshare will be calculated and paid annually, along with contributions to the Performance Incentive Pool (refer Section 3.3).
- 2.3.3 If the actual costs claimed by the ITS Contractor equal the Target Cost, the ITS Contractor will thereafter not be entitled to claim Margin on any costs that it subsequently incurs.
- 2.3.4 RMS intends that Services will be priced and paid for on a Target Cost basis where one or more of the following criteria apply:
- a) The scope of the Services is relatively well defined but there are risks which are best managed by both RMS and the ITS Contractor, and/or risks which would otherwise attract a premium if delivered as a Priced Component; and/or
 - b) There are opportunities for improvement in the productivity and performance of the Services, particularly through collaboration between RMS and the ITS Contractor.

2.4 Cost Plus

- 2.4.1 RMS will specify in the Forward Works Program Brief the elements of the Services that will be priced and paid for on a Cost Plus basis. For elements of the Services that are carried out on this basis, RMS will pay the ITS Contractor:
- a) The actual costs reasonably and properly incurred by the ITS Contractor that are Reimbursable Costs; and
 - b) Margin calculated by multiplying the appropriate Margin Rates by the actual costs incurred that are Reimbursable Costs for the relevant element of the Services.
- 2.4.2 RMS intends that Services will be priced and paid for on a Cost Plus basis where one or more of the following criteria apply:
- a) The scope and risk in the Services is not well defined;
 - b) The Services are unforeseen and/or need to be carried out on an urgent basis, for example incident support services. (Note: reactive maintenance services may be priced on a Cost Plus, Target Cost or Priced Component basis depending on the availability of historical fault incidence data for specific ITS types, in accordance with the criteria in Figure 1);
 - c) The Services need to be directed by RMS or another third party such as the Traffic Management Centre (TMC); and/or
 - d) The use of an alternative payment type may result in a situation where the commercial outcomes for the ITS Contractor being significantly misaligned with the intended outcomes of the ITS MC.

2.5 Negotiated Terms

- 2.5.1 It may be necessary for the parties to negotiate and agree other payment arrangements for particular elements of the Services. Typically, the payment terms will fall into the above categories of Priced Component, Target Cost or Cost Plus. However, other arrangements may be negotiated and agreed as required.
- 2.5.2 Examples of situations where this may be required include where:
- a) There are Services for which the type of work to be performed is well defined but the quantum is not. In this case, payment may be based on an agreed fixed “output” unit rate multiplied by the actual quantum of work performed.
 - b) There is a Special Project Proposal (SPP) to be performed by a specialist or nominated (sub)contractor and there is benefit in the ITS Contractor managing or coordinating the project. To the extent that the time and management effort of the project is able to be defined and is within the ITS Contractor’s control then the cost of the specialist (sub)contractor may be delivered on a CP or TC arrangement or may be contracted directly to RMS, with the direct management costs paid on a PC basis.

2.6 Contingency and Escalation

- 2.6.1 In preparing a FWP or SPP, the ITS Contractor must make appropriate provision for contingencies for risk & opportunity and for cost escalation.
- 2.6.2 For each FWP or SPP the ITS Contractor, with assistance from RMS, will prepare a Risk Management Plan including a detailed risk & opportunity register and treatment plans for the delivery of the corresponding Services.
- 2.6.3 The Risk Management Plan is to serve as a management tool - it will not qualify the ITS Contractor's proposal. For the avoidance of doubt, where a PC or TC payment type is used, the emergence of new risks or the incorrect estimation of risk parameters will not give grounds for an adjustment to the PC or TC.
- 2.6.4 Residual risks will typically be allocated (for example in a PC arrangement) or shared (e.g. in a TC arrangement). Notwithstanding the payment type adopted, RMS and the ITS Contractor may agree to share or allocate any particular risk (including a broad type or class of risk). This will be documented in a specific Change Benchmark Guide (refer also Section 4.2).
- 2.6.5 For all residual risks with a commercial consequence, RMS and the ITS Contractor will calculate and agree an appropriate assessment of cost, which may be expressed in terms of both likelihood and range of consequences.
- 2.6.6 For any Services delivered under a PC or TC arrangement, RMS and the ITS Contractor will use the agreed risk assessment to develop and agree an appropriate contingency allowance. The contingency allowance is not intended to provide substantive coverage against all risks but is intended to provide an appropriate target for driving efficiency through exercising opportunities and managing risks.
- 2.6.7 In addition to contingency, RMS and the ITS Contractor will agree an appropriate allowance for escalation. In so doing, regard shall be made to both historical and forecast escalation of input costs, including wherever possible pre-agreed future increases.
- 2.6.8 Assumptions developed in preparing estimates are for information and do not qualify the ITS Contractor's pricing for a FWP or SPP. The contingency allowance will be used to manage errors and variances in pricing assumptions. If and where the parties have agreed to specifically exclude any particular risk or item of scope from a proposal it will be documented in the Change Benchmarking Guide or as a specific exclusion in the SPP or FWP.

2.7 Use of unit rates

- 2.7.1 The unit rates set out in the Reference Pricing Schedule may be classified as follows:
- a) "Input" unit rates which set out the cost of providing a particular input to the Services, for example labour and plant rates;
 - b) "Output" unit rates which set out the cost of providing a particular output e.g. a rate per metre for supply and installation of multicore control cable in underground conduit, or a cost per item to install and connect a controller housing for traffic signals.
- 2.7.2 These unit rates must be used for preparing estimates of the cost of the Services.
- 2.7.3 The unit rates set out in the Reference Pricing Schedule will apply for each Works Period and may be adjusted by agreement as part of the process for the developing the Forward Works Program.

2.8 Efficiency Commitment

- 2.8.1 The ITS Contractor has undertaken to reduce the cost of providing the Services, in real dollars, by a tendered percentage which will apply to Services performed in each Works Period following the Initial Works Period (the Efficiency Commitment).
- 2.8.2 The ITS Contractor must provide pricing for Services which accounts for this Efficiency Commitment, and must demonstrate to RMS how the Efficiency Commitment is accounted for in its pricing. By default this will be a simple application of the committed percentage reduction to the output rates (after

adjustment for escalation, if applicable) and applicable labour and plant productivity rates used in its estimates.

2.8.3 Alternatively, the ITS Contractor may otherwise demonstrate that it has reduced the overall cost of the Services e.g by:

- a) Offsetting any applicable cost escalation by the Efficiency Commitment;
- b) Applying varying percentage changes in individual rates but such that the Efficiency Commitment is achieved in the aggregate price for performing the Services; and/or
- c) Otherwise demonstrating and assuring that equivalent outcomes will be achieved for reduced expenditure.

2.9 Evolution of commercial arrangements

2.9.1 Over time, and as the ITS Contractor gains better knowledge and becomes more efficient in the performance of the Services, it is recognised that it will be more difficult for the ITS Contractor to gain the benefit of productivity improvements for Services performed as a TC.

2.9.2 In keeping with the objectives of the ITS MC, it is intended that the payment types will move towards a greater transfer of risk to the ITS Contractor over time.

2.9.3 Figure 2 below sets out an indicative guide for how the payment types may change over the Contract Term.

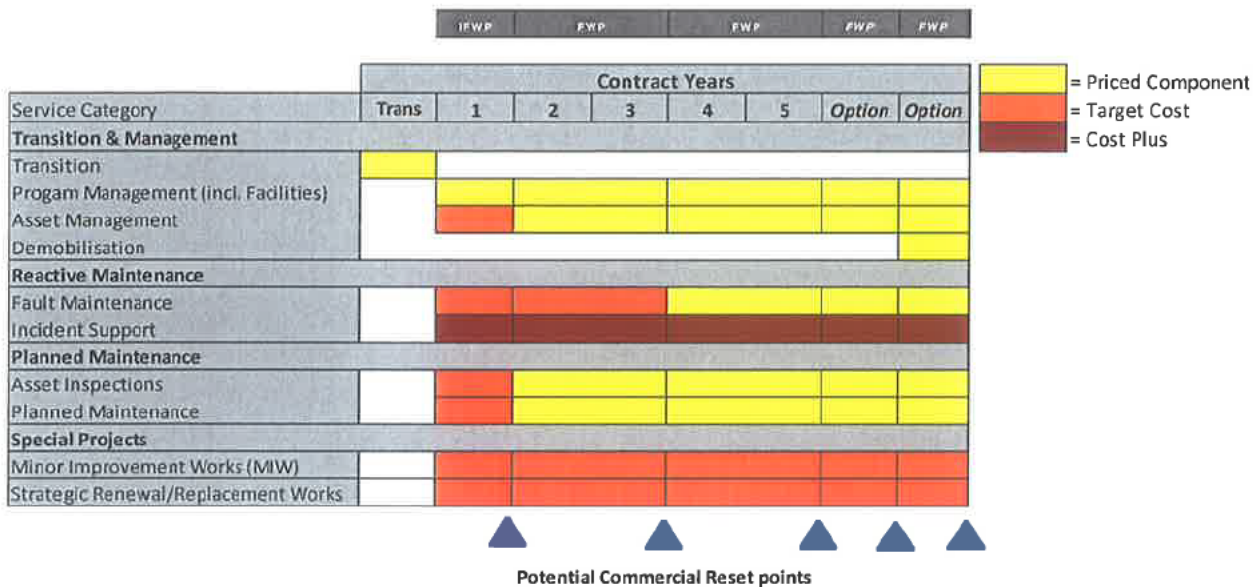


Figure 2 Risk transfer by payment type over the Contract Term

3 Performance-based arrangements

3.1 Overview

- 3.1.1 RMS wishes to encourage the ITS Contractor to provide outstanding performance in meeting the outcomes contemplated by the Forward Works Program Brief, and in particular RMS wishes to encourage the ITS Contractor to assume the role of “steward” of the Assets and carry out the Services in a manner consistent with the Stewardship Principles.
- 3.1.2 To this end, the ITS MC includes for commercial outcomes to be linked to performance by the following mechanisms:
- a) Through shared or allocated savings or overruns on cost outcomes on FWP and SPPs;
 - b) Through a Performance Adjustment to the ITS Contractor’s Margin, dependent on the ITS Contractor’s performance against specified outcomes for Services across the FWP and SPPs; and
 - c) Through opportunities to perform additional Services such as SPPs.
- 3.1.3 The objective of the incentive arrangements is to align the outcomes of RMS and the ITS Contractor such that the commercial outcomes for the ITS Contractor are linked to the commercial and non-commercial outcomes for RMS.

3.2 Cost outcomes of FWPs and SPPs

- 3.2.1 Depending on the payment type adopted for elements of the Services, the risk in the commercial outcomes of FWPs and SPPs will be shared or allocated as follows:
- a) For Priced Component (PC) arrangements, all cost risk will be allocated to the ITS Contractor;
 - b) For Target Cost (TC) arrangements, the risk will be shared between RMS and the ITS Contractor under the “painshare / gainshare” arrangement contemplated by section 2.3.2; or
 - c) For Cost Plus (CP) arrangements, all cost risk will be allocated to RMS.

3.3 Performance Adjustment and Incentive

- 3.3.1 In addition to the measurement of cost outcomes within a FWP or SPP, RMS and the ITS Contractor will measure the ITS Contractor’s performance against the Performance Framework.
- 3.3.2 The performance outcomes for FWPs and SPPs will be determined and agreed in accordance with the Performance Framework using an Overall Performance Score (OPS) determined in accordance with the Performance Framework. If the parties are unable to agree on the KPI Scores and KRA Scores comprising the OPS, these will be determined by RMS.
- 3.3.3 Within 30 Business Days of the end of each Contract Year, RMS will determine the Performance Adjustment, which will be one of the following:
- a) OPS < 70, a negative Performance Adjustment will apply;
 - b) OPS = 70, neither a negative Performance Adjustment nor a positive Performance Incentive will apply; and
 - c) OPS > 70, a positive Performance Incentive will apply.

Negative Performance Adjustment

If the OPS < 70, a negative Performance Adjustment will apply, calculated in accordance with the steps below.

Step 1 – Calculation of the Margin At Risk

The Margin At Risk for each Contract Year will be calculated in accordance with the following formula.

Margin At Risk = Total Margin x Percentage at Risk

Where:

Total Margin = The total Margin paid to the ITS Contractor in respect of the Services for the relevant Contract Year across all Payment Types following the application of pain/gain to the total margin for the contract year.

Percentage at Risk = 75%

Step 2 – Determination of the Performance Adjustment (OPS < 70)

The Performance Adjustment for each Contract Year where the OPS < 70 will be determined in accordance with the table set out below.

OPS (Contract Year)	Performance Adjustment (\$ Amount)
0 < OPS < 30	Margin At Risk
30 < OPS < 70	$(1 - 2.5 \times (OPS/100 - 0.3)) \times \text{Margin At Risk}$

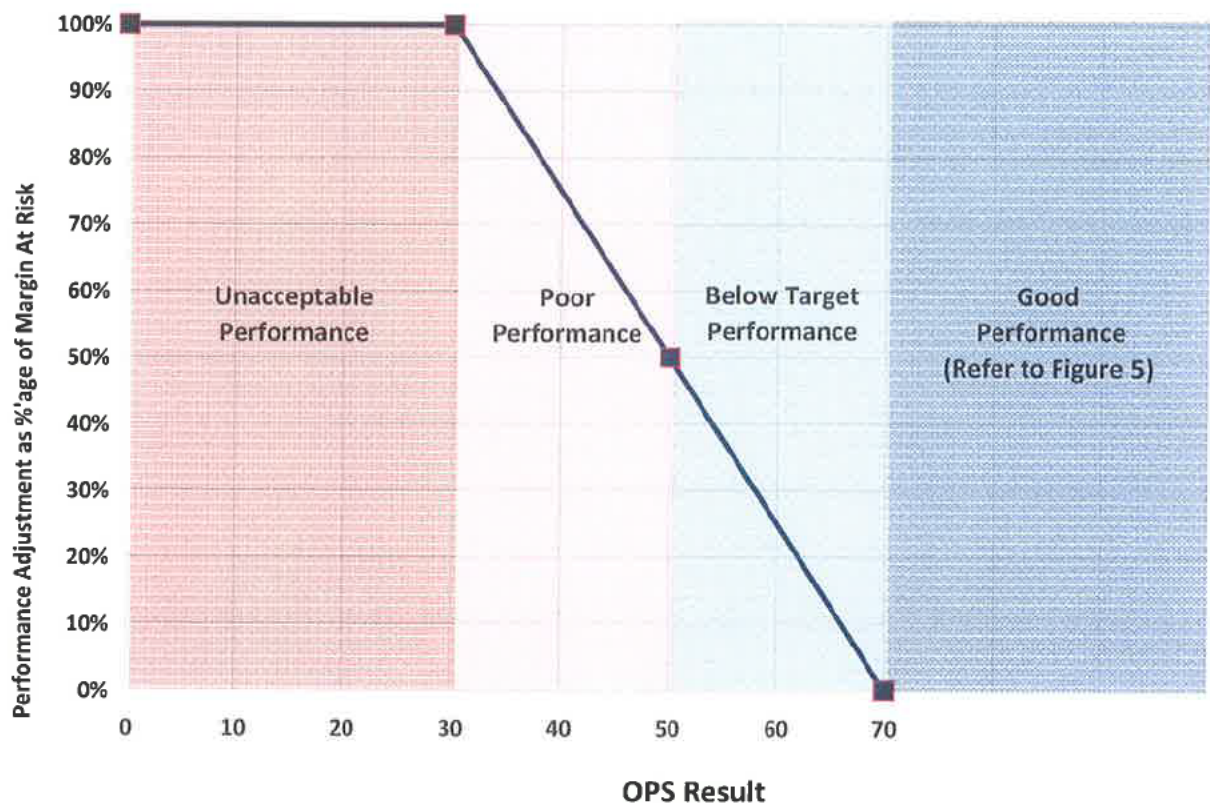


Figure 3: Negative Performance Adjustment where OPS < 70 for the Contract Year

Positive Performance Incentive

If the OPS > 70, a positive Performance Incentive will apply, calculated in accordance with the steps below.

Step 1 – Performance Incentive Pool

The Performance Incentive Pool is determined as follows:

Period	Performance Incentive Pool includes:
Contract Year 1 Oct 1 2014 to Jun 30 2015	<ol style="list-style-type: none"> contribution from TC gainshares within the Initial Works Period; plus up to [REDACTED] contribution from RMS (if the Available Performance Incentive from item 1 is less than [REDACTED]).
Contract Year 2 Jul 1 2015 to Jun 30 2016 And Contract Year 3 Jul 1 2016 to Jun 30 2017	<ol style="list-style-type: none"> any remaining Performance Incentive Pool from previous Contract Year; plus any contributions from TC gainshares in the Contract Year; plus an amount equal to any Performance Adjustment deducted in the previous Contract Year; plus up to [REDACTED] contribution from RMS (but only to the extent that the Available Performance Incentive from items 1 to 3 is less than [REDACTED]).
Contract Year 4 Jul 1 2017 to Jun 30 2018	<ol style="list-style-type: none"> any remaining Performance Incentive Pool from previous Contract Year; plus any contributions from TC gainshares in the Contract Year; plus an amount equal to any Performance Adjustment deducted in the previous Contract Year.
Contract Year 5 (and optionally 6 and 7)	As per Contract Year 4.

NOTE: the maximum available incentive pool to be applied against the OPS score in a given Contract Year is [REDACTED].

Step 2 – Determination of the Performance Incentive (OPS > 70)

The maximum Performance Incentive payable is [REDACTED] in a Contract Year.

The Performance Adjustment for each Contract Year where the OPS > 70 will be determined in accordance with the table set out below:

Contract Year	OPS	Performance Incentive
1	70<OPS<90	$(OPS-70)/20 \times (\text{Performance Incentive Pool or [REDACTED] whichever is less})$
	OPS≥90	$100\% \times (\text{Performance Incentive Pool or [REDACTED] whichever is less})$
2	70<OPS<75	Nil

	75<OPS<95	$(OPS-75)/20 \times (\text{Performance Incentive Pool or } \blacksquare \text{ whichever is less})$
	OPS≥95	100% x (Performance Incentive Pool or \blacksquare whichever is less)
3 and beyond	70<OPS<75	Nil
	OPS≥75	$(OPS - 75)/25 \times (\text{Performance Incentive Pool or } \blacksquare \text{ whichever is less})$

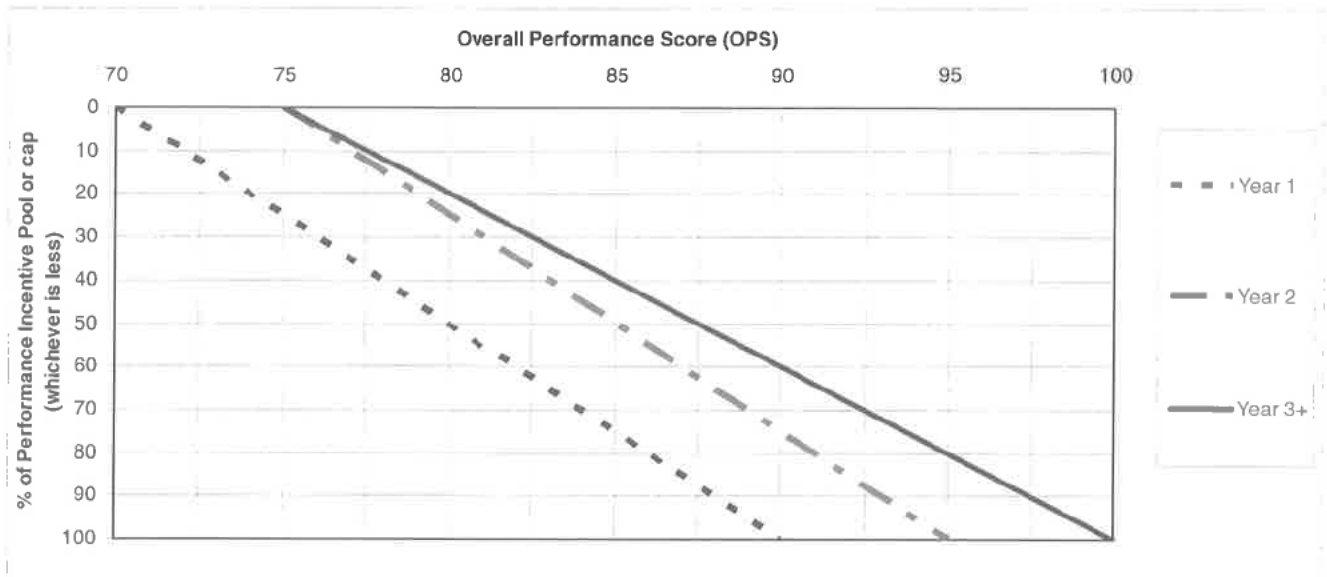


Figure 4: Performance Incentive where OPS > 70 for Contract Year

3.3.4 At the completion of the ITS MC term any remaining amounts in the Performance Incentive Pool will remain with RMS.

4 Adjustments to Commercial Arrangements

4.1 Overview

- 4.1.1 The ITS MC contemplates a variety of mechanisms under which the commercial arrangements can be adjusted over the Contract Term.
- 4.1.2 This section sets out procedures that will govern any amendment to the commercial arrangements for the provision of the Services.

4.2 Change Benchmarking Guide

- 4.2.1 In agreeing a FWP or SPP, RMS and the ITS Contractor will have regard to the Change Benchmarking Guide which sets out the agreed risk allocation for the delivery of the Services.
- 4.2.2 The Change Benchmarking Guide is not intended to be a comprehensive allocation of risks, but is intended to be used to provide guidance as to whether any particular works or services constitute a Change.
- 4.2.3 After being agreed, FWPs and SPPs may be subject to a Change when:
 - a) RMS directs a Change to the Services;
 - b) an event occurs that is a Change Event in the Change Benchmarking Guide; or
 - c) an event occurs that is not specifically dealt with in the Change Benchmarking Guide but is agreed to be consistent with one or more risks that are specifically allocated to RMS in the Change Benchmarking Guide.
- 4.2.4 If an event occurs that is considered by RMS or the ITS Contractor to be a Change but not agreed by the other, then it may be raised as a Dispute.

4.3 Development of Forward Works Programs

- 4.3.1 The commercial arrangements for the provision of the Services will be agreed by the parties as part of the process for developing each Forward Works Program. Subject to the terms of the ITS MC, the commercial arrangements will be fixed for the duration of each Works Period.
- 4.3.2 When agreeing the commercial arrangements for the provision of the Services, the following principles will apply:
 - a) the onus is on the ITS Contractor to provide detailed reconciliation and benchmarking of its historical costs against all tendered cost parameters. With the benefit of this information, RMS and the ITS Contractor may agree new cost parameters to be used for future FWPs and SPPs.
 - b) In agreeing new cost parameters, RMS and the ITS Contractor will agree on a cost parameter that will drive the following outcomes:
 - (i) Demonstrates that the ITS Contractor has accounted for its Efficiency Commitment;
 - (ii) Ensures that the RMS Objectives are achieved and that the Services are carried out in a manner consistent with the Stewardship Principles;
 - (iii) Encourages ongoing efficiency in the delivery of Services;
 - (iv) Discourages preferential selection of Services to improve commercial outcomes for one party at the expense of the other; and
 - (v) Gains from the benefit of lessons learnt and in particular to continue to adopt practices that have beneficial outcomes and to improve on practices that do not.
 - c) In the absence of any other agreement by RMS and the ITS Contractor, the current rates will apply to the next Forward Works Program, adjusted for escalation and the ITS Contractor's Efficiency Commitment.

- 4.3.3 It is intended that the adoption of these principles will result in the real cost of providing the Services decreasing over time. It is expected that this will result in a real saving on 'output' costs as well as a demonstrable benchmark improvement in total asset management costs. It is intended that such savings be actively pursued.
- 4.3.4 The Margin Rates set out in the Reference Pricing Schedule will be fixed for the duration of the Contract Term.
- 4.3.5 In agreeing the commercial arrangements for each Forward Works Program, RMS and the ITS Contractor will take account of historical and future cost escalation. Wherever possible the cost escalation will be calculated with the benefit of appropriate historical and forecast cost indices such as those prepared by Australian Bureau of Statistics or other reputable organisations or publications.

Appendix I Reimbursable Costs

I	Labour
1.1	Salary & wages
	Direct salary or wages paid, adjusted by the Labour Costs Multiplier ¹ to cover all related costs and on-costs (relevant on-costs) for labour employed for the carrying out the Services. Such relevant on-costs included in the Labour Costs Multiplier are (but are not limited to) the following:
A	Workers compensation insurance (including excesses);
B	Payroll taxes;
C	Long service leave (evaluated for actual use);
D	Annual leave and leave loading;
E	Superannuation;
F	Sick leave (evaluated for actual use);
G	Statutory and public holidays;
H	Site and job allowances;
I	Termination benefits;
J	Fringe benefits taxes;
K	Any other payments made pursuant to an enterprise bargaining agreement;
	The ITS Contractor must not claim these relevant on-costs separately or in addition to the Labour Costs Multiplier.
1.2	Mobilisation & Demobilisation
	Mobilisation/demobilisation costs including relocation of employees for the purposes of performing the Services as supported by invoices or evidence of payment, to be used in special cases where prior approval of RMS has been obtained.
2	Plant & Equipment (including traffic control devices for temporary roadworks)
2.1	Owned/Purchased Plant & Equipment
	Where any Plant and Equipment and other capital items are owned by the ITS Contractor or purchased specifically for use on the Services, costs will be those invoiced to the ITS Contractor unless the Amortised Cost Principle ² applies.
2.2	Hired Plant & Equipment
	Where any Plant and Equipment and other capital items are hired by the ITS Contractor for use on the Services, costs will be those invoiced to and paid by the ITS Contractor.
3	Materials
3.1	Materials Generally
	Cost of materials at the cost invoiced to the ITS Contractor inclusive of any rebates or credits from the vendor.
4	Subcontract and Supply Costs
4.1	Subcontract and Supply Costs Generally
	Actual invoiced amount for subcontract works and materials in respect of subcontractors and suppliers engaged by the ITS Contractor to carry out the Services, in accordance with progress certificates, less any amounts the ITS Contractor is able to recover (or would be recoverable, if prosecuted diligently) from the subcontractor.

¹ The Labour Costs Multiplier(s) will be priced by proponents at RFP stage.

² Where the ITS Contractor proposes to acquire any building or Plant and Equipment which exceeds ██████████ indexed by CPI, the Reimbursable Costs will be calculated as the amortised cost of the item over its useful life, even if the useful life exceeds the ITS MC term.

5	Other Costs
5.1	<u>Other Costs Generally</u>
	Other project-specific costs incurred in relation to specific projects arising after the date of this Deed for the carrying out of specific parts of the Services (and not the carrying out of the Services as a whole), to the extent that those costs are supported by invoices or evidence of payment, as follows:
A	Program/project offices, welfare and parking facilities to be reimbursed on an amortised basis, or else on the basis of costs invoiced to the ITS Contractor;
B	Phones – lease and installation, rental and charges including mobiles;
C	Management and running costs of storage areas, depots and facilities required for use in performing the Services, including lease and licence costs.
D	Office supplies, consumables and outgoings;
E	Site services/utilities installations and charges;
F	Office furniture and fittings;
G	Any permits, allowances, certificates or the like that the ITS Contractor is required to obtain and surrender in connection with the carbon pricing scheme;
H	Specialist consultants and advisers as agreed by RMS;
I	Interstate or international travel and accommodation for program/project employees where prior approval is provided by RMS;
J	Reasonable program related taxi charges;
K	Parking costs where reasonably incurred;
L	Computers, network and server hardware and peripherals;
M	Printing, photocopying and stationary;
N	Reproduction of drawings;
O	Purchase costs of dedicated project vehicles purchased by the ITS Contractor, with costs calculated on the Amortised Cost Principle
P	Running costs of dedicated project vehicles including fuel, registration and motorway tolls;
Q	Insurance premiums and excesses required to be effected by the ITS Contractor which are not provided for directly by RMS (contract works / product & public liability) or included under corporate insurance policies including but not limited to: <ul style="list-style-type: none"> i. Motor vehicles ii. Special plant
QI	Insurance excesses for insurances effected by RMS
R	Permits and approvals;
S	Statutory charges;
T	Project specific software licences including CAD/design systems, data processing and network systems;
U	Surveying engineering costs;
V	Site establishment costs;
W	Security;
X	Cleaning;
Y	Postage;
Z	Site communications;
AA	Temporary fencing and drainage;
BB	Temporary utilities;
CC	Personal protective equipment;
DD	Site signage;
EE	Small tools;
FF	Waste disposal;
GG	Testing equipment;
HH	Licence and fees;
II	Employee recruitment and relocation costs (in special cases with the prior approval of RMS);
JJ	In-state travel costs incurred in respect of the Services
KK	Program/project specific training requirements (in special cases with the prior approval of RMS)
LL	Other expenses as may be approved by RMS

ITS Maintenance Contracts (ITS MCs) – Commercial Framework

MM	Research and development carried out for the benefit of the ITS MC Services and agreed by RMS to be a reimbursable cost.
6	Existing Improvements
<u>6.1</u>	<u>Existing Improvements Generally</u>
	Other than where required as a result of any breach of the Contract by the ITS Contractor, its subcontractors or the employees or agents of any of them, the cost incurred by the ITS Contractor in respect of any work required to be undertaken on existing facilities, utilities or structures shall be a Reimbursable Cost.
7	Foreign Exchange
<u>7.1</u>	<u>Foreign Exchange Generally</u>
	Where foreign currency (non-AUD) transactions are required, the parties agree that the ITS Contractor shall not make any gain or loss thereon. Accordingly, for any Reimbursable Costs incurred by the ITS Contractor in a foreign currency, the ITS Contractor shall be reimbursed at the AUD equivalent of the foreign currency amount paid by the ITS Contractor calculated using the exchange rate available to the ITS Contractor on the date of the relevant payment by the ITS Contractor (or, if converted by the ITS Contractor to the relevant foreign currency on a different date to the date of payment, calculated on the conversion date), provided those amounts are not referred to, or captured or paid for as Fee.

Appendix 2 Excluded Costs

I	Excluded Costs
	The ITS Contractor shall not be reimbursed for any of the following costs:
A	Costs, expenses, damages or liabilities which arise from, are contributed to by, or are incurred to mitigate the effect of: <ol style="list-style-type: none"> i. any breach of this ITS MC by the ITS Contractor, its employees, agents or subcontractors; ii. breach by the ITS Contractor of any contract or arrangement between the ITS Contractor and any third party (including any of the ITS Contractor 's subcontractors); iii. a breach by the ITS Contractor, its employees, agents or subcontractors of any Law (or any failure to comply with Law); iv. claims by third parties in connection with any breach by the ITS Contractor or any of its subcontractors of any Intellectual Property Rights; v. any negligent or unlawful act or omission of the ITS Contractor, its employees, agents or sub-contractors.
B	Income tax or other tax payable by the ITS Contractor in respect of income or capital gains of the ITS Contractor or any third party (including any of the ITS Contractor 's subcontractors).
C	Costs and expenses for which the ITS Contractor is, or has the right to be, reimbursed or compensated (whether or not it actually recovers that amount) by any third party (including without limitation any insurer or the ITS Contractor 's subcontractors, or any government or other rebate).
D	Amounts by which costs and expenses are rebated, refunded or discounted.
E	Any amounts in respect of which the ITS Contractor indemnifies or pays by way of damages to, or is obliged to indemnify or pay by way of damages to, RMS under the ITS MC.
F	Any amounts which the ITS MC expressly provides are to be incurred at the cost of the ITS Contractor or are payable by the ITS Contractor to RMS under the ITS MC.
G	Not used.
H	Any amounts which are included in the Margin.
I	Any amount payable for work done or Services carried out that is not in accordance with this ITS MC.
J	Legal fees in respect of legal services provided in house by the ITS Contractor, that in RMS' reasonable opinion: <ol style="list-style-type: none"> i. relate to activities that would not have been carried out by; or ii. that exceed the amount that would have been charged by, external legal advisors (acting reasonably), had external legal advisors been engaged to perform the work.
K	Any other amounts which are described in the ITS MC as Excluded Costs.

Appendix 3 Inclusions to Margin

	All costs and expenses related to general business functions of the ITS Contractor which are incurred in providing the Services, as well as program overhead costs and expenses not specified as a Reimbursable Cost. This includes but is not limited to the following.
A	Safety and quality in so far as it relates to provision of corporate management systems, auditing and accreditation of corporate systems, ongoing development and continuous improvement of corporate systems, corporate safety and quality professionals, organisation wide reporting.
B	Research and development unless carried out for the benefit of the Services and agreed with RMS as a reimbursable cost.
C	Business development, sales and marketing.
D	Financial, legal, human resources (excluding employees engaged exclusively for carrying out the Services) and commercial in so far as it relates to provision of relevant aspects of an integrated management system, corporate specialists in these areas and organisation wide reporting.
E	Executive management.
F	Corporate services (including treasury, taxation and accounting audit services).
G	Internal audit, quality assurance and company continuous improvement or business re-engineering programs (as they broadly relate to the ITS Contractor but excludes those specifically required as part of the Services).
H	Visits to program or project offices by head office personnel to perform management functions (including salary or performance reviews).
I	Parent company fees.
J	Corporate head office's running costs and payroll.
K	Corporate legal costs including regulatory reporting and compliance.
L	The following insurances: i. public liability (corporate policy); ii. professional indemnity; iii. directors and officers liability insurance; iv. industrial special risk insurance (including loss or damage to or destruction of off-site buildings); v. trustees liability insurance; vi. travel insurance; vii. excess liability insurance; viii. carriers liability insurance.
M	The costs of the provision of the Management Review Group (MRG) by the ITS Contractor.
N	The cost of the Dispute Avoidance Board (DAB) and any other costs incurred in respect of a dispute in connection with the ITS MC.
O	General training requirements for all head office based personnel and program specific personnel.
P	The following information communications technology (ICT) services: i. All corporate ICT support staff salaries and travel costs; ii. Corporate ICT office charges; iii. Licensing and usage costs/fees of all software required by the ITS Contractor to perform the Services except for project specific licences outlined in Appendix I, Item T; and iv. Web blocking software & hardware.
Q	The following services provided by corporate support services, head office personnel or Management Review Group members: i. Recruitment, mentoring and performance management of ITS Contractor employees; ii. Internal audits; iii. Assistance with management system implementation for the RMCR Program; iv. Provision of 'subject matter expert' advice; v. Review and input into specific program or project risk assessments; vi. Human resources administrative oversight; vii. Workers compensation case management; viii. Safety intervention and innovation programs; ix. Safety forums.

ITS Maintenance Contracts (ITS MCs) – Commercial Framework

R	Fines and penalties resulting from regulatory breaches
S	Staff bonuses
T	Provision of security under the ITS MC including Security Bonds and Deeds of Guarantee and Indemnity
U	Professional Associations
V	Costs associated with managing joint venture arrangements (if the ITS Contractor is a joint venture)

Appendix 4 Worked Examples of Commercial Framework

Example 1: TC Underspend + OPS >70

Priced Component payment type		AGREED PRICE				Cost Incurred by SP		RMS Payment to SP			Net Outcome for SP (Total Paid less Costs Incurred)	
Ref	Description of Services	Reimbursables \$ Million	PC Rate %	PC Margin \$ Million	Total \$ Million	Reimbursables \$ Million		Reimbursables \$ Million	PC Margin \$ Million	Total \$ Million		Total \$ Million
1	Program Management (incl. Facilities)	[A]	[B]	[C] = [A] x [B]	[D] = [A] + [C]	[E]		[F] = [A]	[G] = [C]	[H] = [F] + [G]		[I] = [H] - [E]
Calculations:												
Priced Component Total												
Target Cost payment type		AGREED TARGET				Cost Incurred by SP		RMS Payment to SP			Net Outcome for SP (Total Paid less Costs Incurred)	
Ref	Description of Services	Reimbursables \$ Million	TC Rate %	TC Margin \$ Million	Total \$ Million	Reimbursables \$ Million		Reimbursables \$ Million	TC Margin \$ Million	Total \$ Million		Total \$ Million
2	Asset Management	[A]	[B]	[C] = [A] x [B]	[D] = [A] + [C]	[E]		[F] = [E]	[G] = [C] + pain/gain	[H] = [F] + [G]		[I] = [H] - [E]
Calculations:												
Target Cost Subtotal												
Cost Plus payment type		ESTIMATE ONLY				Cost Incurred by SP		RMS Payment to SP			Net Outcome for SP (Total Paid less Costs Incurred)	
Ref	Description of Services	Reimbursables \$ Million	CP Rate %	CP Margin \$ Million	Total \$ Million	Reimbursables \$ Million		Reimbursables \$ Million	CP Margin \$ Million	Total \$ Million		Total \$ Million
3	Incident Support	[A]	[B]	[C] = [A] x [B]	[D] = [A] + [C]	[E]		[F] = [E]	[G] = [B] x [E]	[H] = [F] + [G]		[I] = [H] - [E]
Calculations:												
Cost Plus Total												
All Payment Types Sub-total												
OPS Performance Adjustment												
Total												

Example 2: TC Overspend + OPS <70

Priced Component payment type		AGREED PRICE		Cost Incurred by SP		RMS Payment to SP		Net Outcome for SP (Total Paid less Costs Incurred)	
Ref	Description of Services	PC Rate %	PC Margin \$ Million	Reimbursables \$ Million	Reimbursables \$ Million	PC Margin \$ Million	Total \$ Million	Reimbursables \$ Million	Total \$ Million
1	1.1 Program Management (incl. Facilities)	[B]	[C] = [A] x [B]	[A]	[E]	[C] = [A] x [B]	[D] = [A] + [C]	[F] = [A]	[H] = [F] + [G]
Calculations:		[D] = [A] + [C]		[E]		[G] = [C] + pain/gain		[I] = [H] - [E]	
Priced Component Total									
Target Cost payment type		AGREED TARGET		Cost Incurred by SP		RMS Payment to SP		Net Outcome for SP (Total Paid less Costs Incurred)	
Ref	Description of Services	TC Rate %	TC Margin \$ Million	Reimbursables \$ Million	Reimbursables \$ Million	TC Margin \$ Million	Total \$ Million	Reimbursables \$ Million	Total \$ Million
2	2.1 Asset Management	[B]	[C] = [A] x [B]	[A]	[E]	[C] = [A] x [B]	[D] = [A] + [C]	[F] = [E]	[H] = [F] + [G]
	2.2 Asset Inspections								
	2.3 Planned Maintenance								
	2.4 Reactive Maintenance								
	2.5 Minor Improvement Works								
	2.6 Strategic Asset Renewal/Replacement Works								
Calculations:		[D] = [A] + [C]		[E]		[G] = [C] + pain/gain		[I] = [H] - [E]	
Target Cost Subtotal									
Cost Plus payment type		ESTIMATE ONLY		Cost Incurred by SP		RMS Payment to SP		Net Outcome for SP (Total Paid less Costs Incurred)	
Ref	Description of Services	CP Rate %	CP Margin \$ Million	Reimbursables \$ Million	Reimbursables \$ Million	CP Margin \$ Million	Total \$ Million	Reimbursables \$ Million	Total \$ Million
3	3.1 Incident Support	[B]	[C] = [A] x [B]	[A]	[E]	[C] = [A] x [B]	[D] = [A] + [C]	[F] = [E]	[H] = [F] + [G]
Calculations:		[D] = [A] + [C]		[E]		[G] = [B] x [E]		[I] = [H] - [E]	
Cost Plus Total									
All Payment Types Sub-total									
OPS Performance Adjustment									
Total									

Appendix 5 Change Benchmarking Guide

KEY

N	NO
Y	YES
D	DEPENDS

No	Change Driver	Situation / Circumstance	Change Event	Reasoning
1		Environmental Approvals are delayed beyond the time allowed for in the ITS Contractor's Program, resulting in a delay to the planned commencement date of a project.	N	ITS Contractor is responsible for planning and obtaining Approvals.
2	Agency Approvals and actions of Authorities	An Authority or Relevant Body requires the ITS Contractor to stop work on a project due to an alleged breach of an Approval condition.	N	ITS Contractor is responsible for managing compliance with Approval conditions.
3		An Authority or Relevant Body exercises its statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Services.	N	ITS Contractor is responsible for managing interface with Authorities and Relevant Bodies.
4	Community Action	Community action groups cause delay and disruption to a project, where the ITS Contractor is undertaking RMS approved work in accordance with an RMS approved method statement.	N	ITS Contractor is responsible for stakeholder management.

ITS Maintenance Contracts (ITS MCs) – Commercial Framework

5		Residents complain about property damage caused by construction activities (for example, vibration causing cracks)	N	ITS Contractor is responsible for stakeholder management.
6		Residents complain about noise.	N	ITS Contractor is responsible for stakeholder management.
7		RMS provides the ITS Contractor with a concept design from which the ITS Contractor must complete the design. RMS has accepted the ITS Contractor's price to complete the design however it is subsequently determined that the concept design is flawed and additional design and/or redesign needs to be completed by the ITS Contractor.	N	ITS Contractor takes responsibility for the design once it has priced to complete the design. It is expected that the ITS Contractor will carefully review design work undertaken by RMS when pricing to complete design work.
8	Design issues	RMS provides the ITS Contractor with a completed design for any element of the Services and requests it to deliver the works in accordance with the design. The design requires modification for reasons that were not known by the ITS Contractor and could not have been reasonably foreseen by a competent contractor during the period of proposal preparation.	Y	Time and cost risk retained by RMS.
9		Re-design and / or delays result from the discovery of a new heritage or rare flora site or any things of value or archaeological or special interest (including aboriginal artefacts).	Y	Time and cost risk retained by RMS.

ITS Maintenance Contracts (ITS MCs) – Commercial Framework

10	An innovation assumed as viable by the ITS Contractor within its price is in fact, not viable and does not proceed. The eventual solution costs less than the originally proposed solution.	Y	The ITS Contractor's price will be adjusted accordingly.
11	An innovation assumed as viable by the ITS Contractor within its price is in fact, not viable and does not proceed. The eventual solution is more expensive than the originally proposed solution.	D	The ITS Contractor's price may be adjusted accordingly if the innovation is not viable due to circumstances beyond the reasonable control of the ITS Contractor.
12	Latent Conditions Actual ground conditions vary significantly to those indicated within information provided by RMS, or where no information has been provided, to conditions that could have been reasonably foreseen by a competent ITS Contractor (Does not apply to Routine Services).	D	Depends if ITS Contractor was not able to, or not permitted to, undertake investigations during preparation of proposal (Change Event) or whether ITS Contractor was able to undertake all investigations (no Change Event). If the site conditions constitute a Change Event, time and cost risk retained by RMS. Note: see Item 14 below in respect of contamination.
13	ITS Contractor hits a Utility installation that is not identified during survey (Does not apply to Reactive Maintenance and Incident Support).	N	ITS Contractor is required to manage this risk.

ITS Maintenance Contracts (ITS MCs) – Commercial Framework

<p>14</p>		<p>Contaminated ground conditions (e.g. asbestos) which were not discoverable by reasonable investigations agreed between the parties (Does not apply to Reactive Maintenance and Incident Support).</p>	<p>Y</p>	<p>If the condition was concealed (e.g. underground utilities with asbestos protection), the ITS Contractor conducted reasonable investigations as previously agreed with RMS and was unable to ascertain that contaminated conditions existed (e.g. information not available from RMS or utility owner and the ITS Contractor's reasonable attempts to investigate prior to works being undertaken indicated nothing) Time and cost risk retained by RMS.</p>
<p>14A</p>		<p>Hazardous Materials encountered in performing Planned Maintenance, Reactive Maintenance or Incident Support which require the ITS Contractor to carry out additional works and services to ensure the safety of its personnel and the public. "Hazardous Materials" means material which, because it is toxic, corrosive, flammable, explosive, or infectious or because it possesses some other dangerous characteristic, is potentially dangerous to persons or the environment when stored or handled or any part of the environment that is exposed to it. "Hazardous Materials" include asbestos and coal tar.</p>	<p>Y</p>	<p>If the condition was concealed (e.g. underground utilities with asbestos protection), the ITS Contractor was unable to ascertain that contaminated conditions existed from available asset condition records (e.g. information not available from RMS or utility owner and the ITS Contractor's previous Asset Inspections could not have been reasonably expected to detect the contamination) Time and cost risk retained by RMS.</p>

ITS Maintenance Contracts (ITS MCs) – Commercial Framework

15		A Utility service is not in the position marked on 'As Built' drawings supplied by RMS or by a third party Utility company. The Utility is damaged with consequential losses.	N	The ITS Contractor is expected to complete its own surveys to determine the definitive location of Utility services before undertaking physical works
16	Asset Definition	Asset Schedules provided by RMS are not exhaustive and the ITS Contractor incurs additional costs in maintaining Assets located outside of the Nominal Work Limits which were not included in the Schedule.	D	Change Event subject to the Threshold [1]* .
17		New Assets are constructed or inherited during an FWP.	D	Change Event subject to the Threshold [1]* .
18	Estimate Errors or Omissions	With regards to setting a TC or PC, an arithmetical error is identified after the price has been agreed by RMS.	N	The ITS Contractor is responsible for the correctness and integrity of its pricing documents.
19		ITS Contractor has missed or excluded a cost in error from a PC or TC and the price has already been accepted by RMS.	N	The ITS Contractor is responsible for providing pricing that is inclusive of all costs applicable to performing the Services.
20	Owner Initiated	RMS accelerates existing or adds additional high priority Special Project	D	This may change priorities for programme but impact may be redeployment of resource rather than additional resource over and above that already allowed for in the programme development costs.
21		RMS directs a change to a specification which impacts a Milestone or price that has already been agreed between the ITS Contractor and RMS.	Y	Time and cost risk retained by RMS.

ITS Maintenance Contracts (ITS MCs) – Commercial Framework

<p>21A</p>		<p>RMS varies the terms of the contract works or public and products liability insurances set out in Schedule 17.</p>	<p>D</p>	<p>A Change Event will apply where RMS varies the terms of the contract works or public and products liability insurances set out in Schedule 17 and such variation causes the ITS Contractor to incur additional cost.</p>
<p>22</p>	<p>Management Effort</p>	<p>The actual Target Costs for physical works differs compared to the Provisional Sums in the FWP. Issue is with regard to management costs for delivery of the respective services.</p>	<p>D</p>	<p>A Change Event will apply if RMS directs a change to increase or decrease services. A Change Event may also apply where the aggregate scope of services allowed for as a provisional sum is shown to have increased by more than 20%, resulting in a need for additional management. For example, the aggregate quantity of MIW and Strategic Renewal/Replacement projects increases. A Change Event will not apply where the aggregate scope of services allowed for as a provisional sum has increased by less than 20%. For the avoidance of doubt, a comparison of the value of services against the provisional sum alone is not sufficient to demonstrate that the scope of services has increased.</p>
<p>23</p>	<p>Market Factors</p>	<p>Subcontract availability is much more problematic than assumed, due to the large amount of infrastructure work in the market as a result of a government policy / funding change.</p>	<p>N</p>	<p>ITS Contractor retains all risk associated with subcontractual matters.</p>

ITS Maintenance Contracts (ITS MCs) – Commercial Framework

24	Risk Assessment	Risk events quantified within a TC or PC don't eventuate and the contingency is not spent.	N	No adjustment to Target Costs or Priced Components for more or less risks eventuating
25	Qualifying Change in Law	A Qualifying Change in Law increases or decreases the cost to the ITS Contractor of performing the Services.	D	Change Event subject to the Threshold [1]* .
26	Third Party	Crash or other incident adjacent to work site caused by 3rd party - ITS Contractor may be directed by a Relevant Body to take action and this may impact progress on work site under ROL.	D	<p>The ITS Contractor may have taken all reasonable steps to mitigate the delay but still found it is unavoidable.</p> <p>Alternatively the delay may have been avoidable but it may have been acknowledged to be in the best interests of RMS and TMC for the ITS Contractor to reassign its available crews to assist with the incident instead – resulting in a delay on the work site.</p> <p>ITS Contractor would be given relief against Overall Performance Score Modifier impacts in these instances.</p> <p>A Change Event may also apply to the extent that the additional costs have not been met under Incident Support. For example this may include additional cost of remobilising to perform works deferred due to the incident.</p>

ITS Maintenance Contracts (ITS MCs) – Commercial Framework

27	Council fails to perform maintenance to trees resulting in obscured sight lines for Assets (e.g. enforcement camera). The ITS Contractor notifies the Council which is unable to respond in time, and the ITS Contractor agrees to rectify the issue (i.e. prune the trees) on Council's behalf.	N	The ITS Contractor is responsible for developing relationships with stakeholders including councils and should negotiate directly with the council for any additional costs, with RMS assistance.
28	Third Party (Specifically, Incident Support Services) There is an incident that results in damage to Assets. The ITS Contractor rectifies the Assets.	D	Depends if the ITS Contractor is: [A] Required to attend the incident immediately (i.e. within 2hrs response) to make the site safe (e.g. exposed cables) or to repair critical faults resulting from the incident: ITS Contractor is paid under a Cost Plus arrangement for attending the site (if the responding crew was occupied on another work site), travel time to/from incident, inspection of damaged Assets, and any temporary measures implemented to make the site safe (if applicable). The cost of permanent repairs will be included in Reactive Maintenance Services but subject to the Threshold [2]** . [B] Not required to attend the incident immediately (i.e. response time greater than 2hrs): Costs generally included within Reactive Maintenance Services with the cost of any permanent repairs subject to the Threshold [2]** .

ITS Maintenance Contracts (ITS MCs) – Commercial Framework

29		TMC asks ITS Contractor to attend to a traffic incident immediately, but the incident is already cleared by time the crew arrives and no Services need to be performed at incident site (no damage to any Assets, no faults requiring repair).	N	ITS Contractor is paid under a Cost Plus arrangement for attending the site (if the responding crew was occupied on another work site), travel time to/from incident and inspection of the Assets.
30		TMC notifies the ITS Contractor of an incident that may have resulted in damage to an Asset but the ITS Contractor is not required to attend immediately (response time greater than 2hrs) and may schedule a suitable time to attend and inspect the incident site.	N	Costs generally included within Routine Services with the cost of any permanent repairs subject to the Threshold [2]** .
31		A severe storm results in a flash flood which causes significant damage to project works under construction.	N	ITS Contractor prepares insurance claim under the Contract Works Insurance Policy.
32	Weather Events	Severe flood or storm event results in damage to an Asset resulting in additional Reactive Maintenance Services	D	Costs generally included within Reactive Maintenance Services with the cost of any permanent repairs subject to the Threshold [2]** . Repairs may become a SPP depending on scale of issue.

ITS Maintenance Contracts (ITS MCs) – Commercial Framework

<p>33</p>	<p>A prolonged period of wet weather or a severe storm event results in peak Reactive Maintenance requirements and additional resources need to be mobilised to meet the increased workload.</p>	<p style="text-align: center;">D</p>	<p>Only a Change Event if ITS Contractor can demonstrate that weather conditions experienced were outside of the conditions that a competent and experienced provider of similar services would have reasonably anticipated based on the past 10 years of available weather data and that these conditions resulted in a significant increase in costs. For the avoidance of doubt, failure of equipment to maintain its environmental protection (IP) rating, e.g. due to deterioration of door seals, gaskets, shall not be a basis for a Change Event claim.</p> <p>The ITS Contractor, in consultation with RMS and TMC, may re-prioritise Planned Maintenance Services to manage costs and may seek a dispensation from some service level requirements.</p>
<p>34</p> <p style="text-align: center;">Other</p>	<p>RMS gives an instruction to stop or not to start any element of the Services (unless the reason for RMS giving such instruction is, in whole or in part, an act or omission of the ITS Contractor or its Personnel).</p>	<p style="text-align: center;">Y</p>	<p>Time and cost retained by RMS.</p>

** Threshold [1]: For all events against which Threshold [1] applies, if the aggregate change in cost to maintain the Assets exceeds [redacted] per annum, then it is a Change Event. The differential cost over and above [redacted] per annum will be the value of the Change.*

** Threshold [2]: For each event against which Threshold [2] applies, if the actual cost of permanent repair exceeds [redacted] for each repair, then it is a Change Event. The Change will be valued at the additional cost of the permanent repairs over and above [redacted].*

SCHEDULE 4
PERFORMANCE FRAMEWORK

ITS Maintenance Contracts (ITS MCs)

Schedule 4 – Performance Framework

13 March 2014

Contents

1	Introduction	4
2	General	5
3	Measurement of Performance	6
3.1	Key Result Areas	6
3.2	Key Performance Indicators	6
3.3	Positive and Negative Modifiers	6
3.4	Measurement of Performance against KPIs and Modifiers	6
4	Calculation of the Overall Performance Score	7
4.1	General	7
4.2	Procedure for Calculation of the Overall Performance Score	7
4.3	Excepted Risks and Force Majeure Events	8
5	Amendments to the Performance Measures	9

Appendices

Appendix 1	Performance Measures	10
Appendix 2	Performance Measurement Principles and Policy Objectives	11

Definitions

Defined terms used in this document have the same meaning as those used in the ITS Maintenance Contract document.

I Introduction

- I.1.1 This Performance Framework provides mechanisms by which the performance of the ITS Contractor will be regularly assessed against a number of Key Result Areas which are aligned to NSW Government policy and the RMS Objectives.
- I.1.2 In developing this Performance Framework, including the Key Result Areas and Key Performance Indicators, RMS has had regard to the performance measurement principles and policy objectives that are set out in Appendix 2. Any amendments to this Performance Framework agreed under this document must align with these performance measurement principles and policy objectives.

2 General

- 2.1.1 From the Full Services Commencement Date, the ITS Contractor's performance of the Services will be measured by RMS against:
- a) the Key Performance Indicators and Key Result Areas contemplated by this Performance Framework; and/or
 - b) any new or amended Key Performance Indicators or Key Result Areas that may be agreed as part of a Forward Works Program.
- 2.1.2 The ITS Contractor's performance against the Key Performance Indicators and Key Result Areas will be used to:
- a) monitor the performance of the ITS Contractor;
 - b) calculate the Overall Performance Score (OPS); and
 - c) determine the Performance Adjustment or Performance Incentive.

3 Measurement of Performance

3.1 Key Result Areas

- 3.1.1 The Key Result Areas against which the ITS Contractor's performance will be measured are set out in Appendix I and include:
- a) Customer Experience;
 - b) Network Outcomes;
 - c) Environment;
 - d) Asset Outcomes;
 - e) Program Governance;
 - f) Efficiency; and
 - g) Stewardship
- 3.1.2 The weightings applicable to each Key Result Area are specified in Appendix I.
- a) The ITS Contractor's performance against each Key Result Area will be measured by the Key Performance Indicators associated with each Key Result Area.

3.2 Key Performance Indicators

- 3.2.1 The Key Performance Indicators associated with each Key Result Area and the weightings applicable to each Key Performance Indicator are specified in Appendix I.

3.3 Positive and Negative Modifiers

- 3.3.1 In addition to the KPIs, there are a limited number of positive and negative Modifiers which reflect critical areas of performance for RMS. These Modifiers are not subject to weighting and will directly affect the Overall Performance Score. The Modifiers are included at Appendix I under the Stewardship Key Result Area.

3.4 Measurement of Performance against KPIs and Modifiers

- 3.4.1 Measurement of performance against the KPIs and Modifiers will occur monthly wherever possible. Where the measurement cannot be performed monthly (e.g. where the data is available less frequently) then the score from the previous Contract Year or some other period agreed by RMS will be adopted as an interim KPI score for the purpose of monitoring OPS trending on a monthly basis. The ITS Contractor must provide the data within the monthly report.
- 3.4.2 The ITS Contractor will be responsible for collecting all data and information relevant to the measurement of KPIs, other than where RMS advises that this information be gathered from RMS' systems.
- 3.4.3 RMS and the ITS Contractor will jointly review and analyse data so as to agree the ITS Contractor's performance against the KPIs and any Modifiers.
- 3.4.4 If and where RMS and the ITS Contractor are unable to agree the scoring of the KPIs then the KPIs will be referred to the Management Review Group (MRG) for determination.
- 3.4.5 If the MRG is unable to agree KPI scores then RMS will determine the KPI score.

4 Calculation of the Overall Performance Score

4.1 General

- 4.1.1 The Overall Performance Score (OPS) will be calculated in accordance with the procedures set out in this section 4.
- 4.1.2 RMS will determine the Overall Performance Score within 30 Business Days of the end of each Contract Year. The Overall Performance Score will be used to calculate the Performance Adjustment or Performance Incentive in accordance with the Commercial Framework.
- 4.1.3 In addition to the annual determination, RMS and the ITS Contractor will make an interim assessment of the Overall Performance Score on a quarterly basis for the purposes of monitoring and managing the ITS Contractor's performance. If RMS and the ITS Contractor are unable to agree on an interim assessment then RMS may make a determination. The interim assessment of the OPS will be calculated using the current average of the KPI scores, for those KPIs that are measured monthly. For KPIs which are measured annually, RMS and the ITS Contractor may adopt a forecast based on cumulative performance at the time (where KPI data is available), the prior Contract Year's KPI score (where KPI data is not available), or the baseline KPI score (where KPI data is not available during the Initial Works Period). Modifiers will be applied based on actual performance at the time of the interim assessment.

4.2 Procedure for Calculation of the Overall Performance Score

- 4.2.1 The procedure for calculation of the Overall Performance Score is as follows:

Step 1 – Assessment of performance against KPIs

Performance against KPIs will be assessed in accordance with Section 3 and Appendix I.

Step 2 – Assessment of performance against KRAs

The ITS Contractor's performance against each Key Result Area will be determined for each Contract Year in accordance with the following formula:

$$\text{KRA Score} = \text{SUM (KPI Score} \times \text{KPI Weighting)}$$

Where:

KPI Score = The KPI Score for each Key Performance Indicator within each Key Result Area as determined in accordance with Step 1 above.

KPI Weighting = The weighting associated with each Key Performance Indicator within the applicable Key Result Area, as specified in Appendix I.

Step 3 – Calculation of the OPS Modifiers

The value of any negative or positive Modifiers will be assessed in accordance with Section 3 and Appendix I.

Step 4 – Calculation of the OPS

The OPS for each Contract Year will be determined in accordance with the following formula:

$$\text{OPS} = (\text{SUM(KRA Score} \times \text{KRA Weighting)}) - \text{SUM (Negative Modifiers)} + \text{SUM(Positive Modifiers)}$$

Where:

KRA Score = The KRA Score for each Key Result Area as determined in accordance with Step 2 above.

KRA Weighting = The weighting associated with each Key Result Area, as specified in Appendix 1.

OPS Modifiers = The OPS Modifiers as determined in accordance with Step 3 above.

4.2.2 **Note:** the first assessment of the Overall Performance Score will be done over the period from 1 October 2014 through to 30 June 2015.

4.3 Excepted Risks and Force Majeure Events

4.3.1 To the extent that the ITS Contractor's performance against any Key Performance Indicator is adversely affected by an Excepted Risk or a Force Majeure Event, RMS will calculate the Overall Performance Score on the basis that the ITS Contractor's performance was not so adversely affected.

5 Amendments to the Performance Measures

- 5.1.1 The Key Performance Indicators and Key Result Areas will be fixed for each Works Period.
- 5.1.2 As part of the process for agreeing the Forward Works Program, the parties may agree changes to the Key Performance Indicators or Key Result Areas in accordance with the procedure set out in Section 1 of Schedule 8.
- 5.1.3 Any changes to the Key Performance Indicators or Key Result Areas agreed by the parties under Section 5.1.2 will not take effect until the commencement of the next Works Period.
- 5.1.4 When agreeing any amendment to the Key Result Areas or Key Performance Indicators the parties must have regard to:
 - a) the RMS Objectives;
 - b) the Stewardship Principles; and
 - c) the performance measurement principles and policy objectives set out in Appendix 2.

Appendix I Performance Measures

ASSET PERFORMANCE KPI's - SCORE CALCULATION

Availability Definition:

Availability of XXX population A = $[1 - (\text{Total down time' (TDT)} / (\text{'Number of XXX assets in your Zone' (N) x 'Number of days in the month' (D) x 24})] \times 100\%$.

where TDT is measured in hours and XXX is the ITS Asset Type

TDT definition:

- starts when a fault is notified to the ITS Contractor, either:
 - a. automatically by the asset through a Fault Management System being monitored by the ITS Contractor, or
 - b. by SMS, telephone, radio or similar or by manual entry in a Fault Management System being monitored by the ITS Contractor.
- ends when asset is returned to service.

Notes:

- a) For TCS Assets (in Group A), only TDT associated with controller Watchdog (WD) faults is measured; all other TCS fault modes/codes are excluded from TDT.
- b) For TCS Assets (in Group A), all downtime associated with controller Watchdog (WD) faults is counted towards TDT, irrespective of fault cause.
- c) For other ITS Assets (non-TCS) in Group A and Group B faults resulting from certain events beyond the control of the ITS Contractor will not be included in TDT.
- d) Examples of events not counted towards TDT for ITS assets other than TCS:
 - Reported faults for which no job is created (i.e. which do not need to be actioned because they result from manual intervention such as testing).
 - Reported faults which, on attendance, are not found to be actual faults,
 - Loss of asset due to power failures beyond Point of Connection to the asset.
 - Loss of asset due to communication faults in the public telecommunications network,
 - Loss of asset due to traffic accidents,
 - Loss of monitoring of asset, ie the asset is operationally working but cannot be monitored or controlled due to a communication fault in the public telecommunications network,
 - Other events agreed to on a case by case basis between by the RMS Representative (CIMO) and ITS MC.

1) Availability of Group A ITS Assets (Traffic Signals, Tidal Flow Systems, VSLs, VMS).

Availability of each ITS asset population is assessed monthly against availability targets specified in the relevant RMS Specifications for that asset type. An allocation between 90 and 0 points is made depending on the number of months in the Contract Year when one or more of the availability targets is not achieved. (Linear application of 90 points for 0 non-conforming months, 70 for 1 non-conforming month and 0 for 3 or more non-conforming months). An additional 10 points is awarded to if the average TCS availability for the Contract Year exceeds 99.99% (based on WD faults only).

GROUP A ITS ASSETS AVAILABILITY TARGETS:

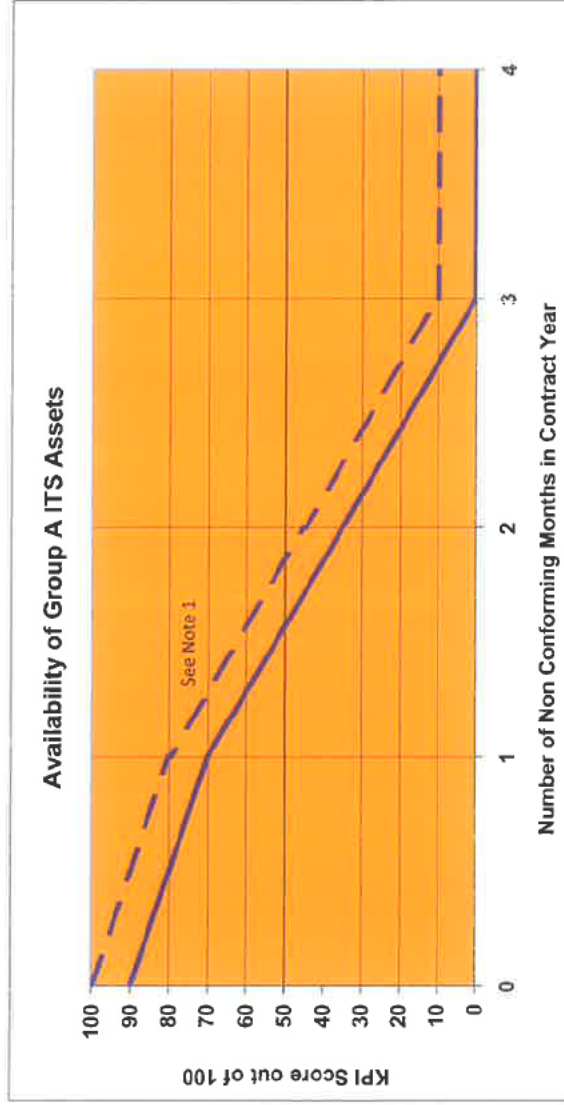
Asset Type	Availability Target
Traffic Control Signals (TCS)	99.985% WD faults only
Tidal Flow Systems (TFS)	98.00%
Variable Speed Limit Signs (VSLs)	98.00%
Variable Message Signs (VMS)	98.00%

A non-conforming month occurs if:

- TCS availability for the month is less than 99.985%
- or TFS availability for the month is less than 98.00%
- or VSL availability for the month is less than 98.00%
- or VMS availability for the month is less than 98.00%

WD faults only

IFS downtime: = When emergency crews are sent to take remedial action in the case of traffic holdups due to failure of a Tidal Flow asset (e.g. Movable median not repositioning; Shutter signs not changing; lane use sign not changing).



Note 1: An additional 10 points is awarded if the average TCS availability for the Contract Year exceeds 99.99% (based on WD faults only).

Note 1

Note 1	Score	Non-Conforming Months
100	90	0
80	70	1
45	35	2
10	0	3
10	0	4

2) Availability of Group B ITS Assets (Weather Stations, Enforcement Systems, TMU).

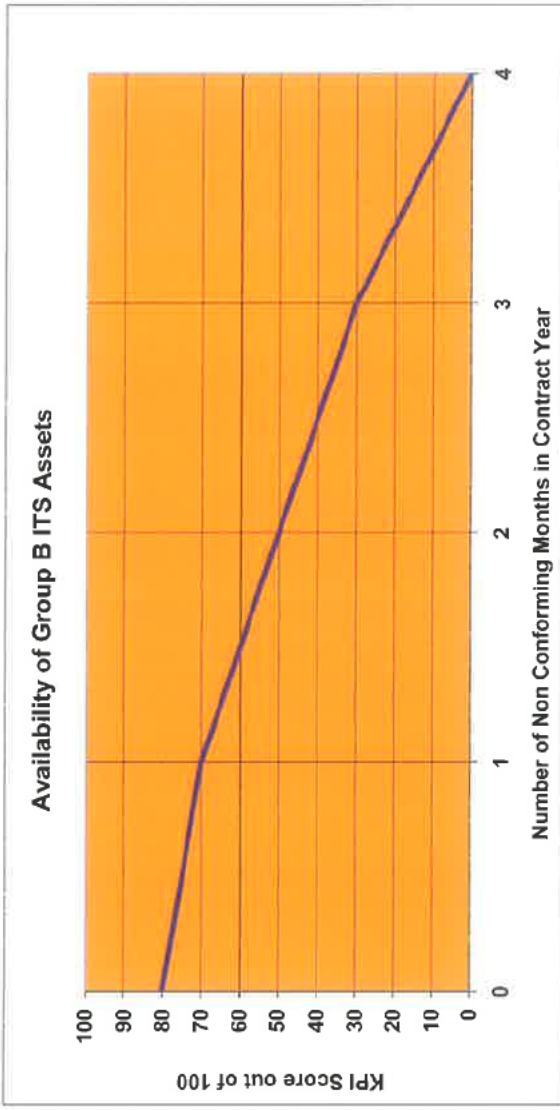
Availability of each ITS asset population is assessed monthly against availability targets specified in the relevant RMS Specifications for that asset type. An allocation between 80 and 0 points is made depending on the number of months in the Contract Year when the availability target is not achieved. (Linear application of 80 points for 0 non-conforming months, 70 points for 1 non-conforming month, 30 points for 3 non-conforming months and 0 for 4 or more non-conforming months).

GROUP B ITS ASSETS AVAILABILITY TARGETS:

Asset Type	Availability Target
Weather Stations (WS)	95.00%
Enforcement Systems (ES)	95.00%
Traffic Monitoring/Cams (TMU)	95.00%

A non-conforming month occurs if:

- WS availability for the month is less than 95.00%
- or ES availability for the month is less than 95.00%
- or TMU availability for the month is less than 95.00%



Score Non-Conforming Months

Score	Non-Conforming Months
80	0
70	1
50	2
30	3
0	4

3) Fault Response and Repair Effectiveness for Group A ITS Assets (Traffic Signals, Tidal Flow Systems, VSLS, VMS).

The Contractor's performance with respect to fault response and repair effectiveness is assessed as conforming or non-conforming each month. An allocation between 100 and 0 points is made depending on the number of non-conforming months in the Contract Year. (Linear application of 100 points for 0 non-conforming months, 70 points for 1 non-conforming month and 0 for 3 or more non-conforming months).

a) Conforming **Fault Response** performance is achieved if 95% of Group A ITS Asset faults are responded to within the specified response times and 99% of Group A ITS Asset faults are responded to within 150% of the specified response times. Otherwise the Contractor's performance for the month is assessed as non-conforming.

b) In addition **Repair Effectiveness** performance is assessed each month as follows:

A non-conformance event occurs if the same reported/actual fault at the same Group A ITS Asset site requires callouts on three (3) occasions within a fourteen (14) day period.

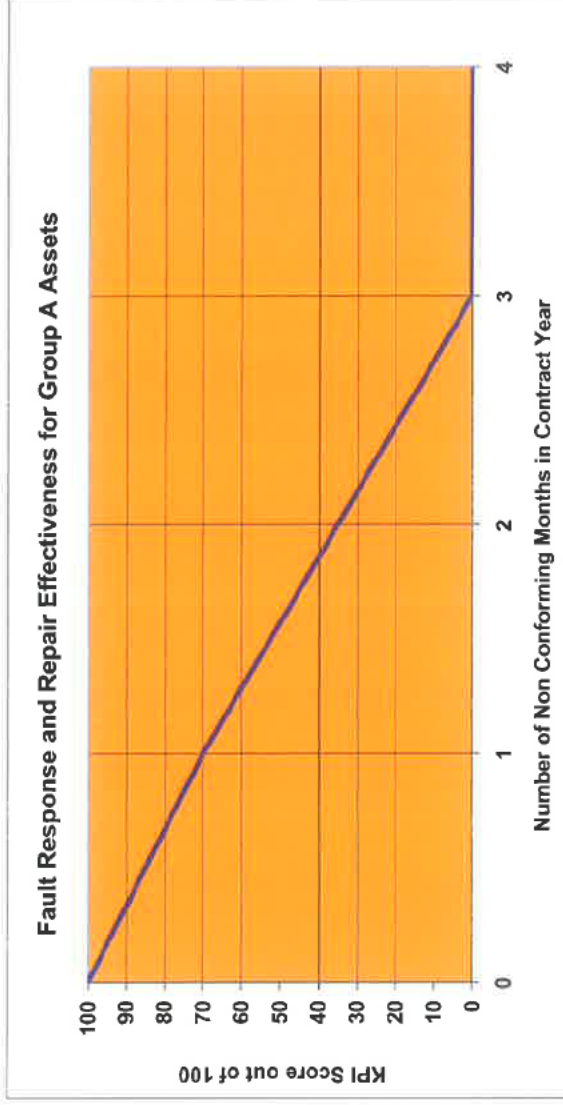
e.g. Fault "A" detected (call or system flag) at site "XYZ" sequence:

Event	Contractor Advises
Fault "A" appears at site "XYZ"	Flood Fault "A" (1)
Fault "A" appears again at site "XYZ"	Flood Fault "A" (2)
Fault "A" appears again at site "XYZ"	Flood Fault "A" (3)

The Repair Effectiveness performance for the month is assessed as conforming if the number of non-conformance events during the month is [2] or less. The Repair Effectiveness performance for the month is assessed as non-conforming if the number of non-conformance events during the month exceeds [2].

A conforming month occurs if both the Fault Response and the Repair Effectiveness performance in that month are conforming.

A non-conforming month occurs if either the Fault Response or the Repair Effectiveness performance in that month is non-conforming (or both).



Score	Non-Conforming Months
100	0
70	1
35	2
0	3
0	4

4) Fault Response and Repair Effectiveness for Group B ITS Assets (Weather Stations, Enforcement Systems, TMU).

The Contractor's performance with respect to fault response and repair effectiveness is assessed as conforming or non-conforming each month. An allocation between 80 and 0 points is made depending on the number of non-conforming months in the Contract Year. (Linear application of 80 points for 0 non-conforming months, 70 points for 1 non-conforming month, 30 points for 3 non-conforming months and 0 for 4 or more non-conforming months).

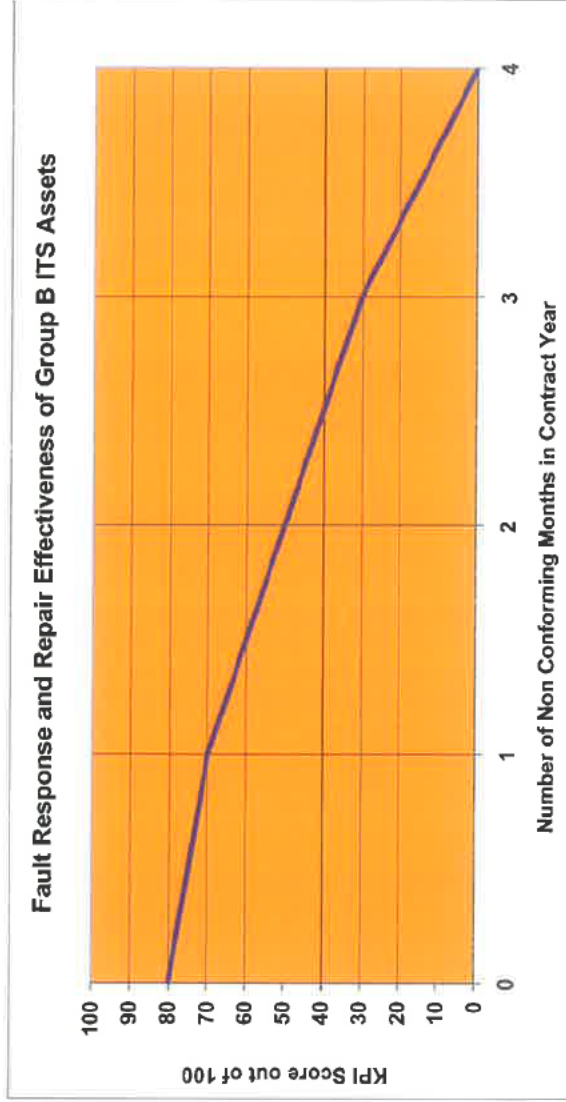
- a) Conforming **Fault Response** performance is achieved if **95%** of Group B ITS Asset faults are responded to within the specified response times and **99%** of Group B ITS Asset faults are responded to within 150% of the specified response times. Otherwise the Contractor's performance for the month is assessed as non-conforming.
- b) In addition **Repair Effectiveness** performance is assessed each month as follows:
 A non-conformance event occurs if the same reported/actual fault at the same Group B Asset site requires callouts on three (3) occasions within a fourteen (14) day period.

e.g. Fault "A" detected (call or system flag) at site "XYZ"; sequence:

Event	Contractor Address
Fault "A" appears at site "XYZ"	Fault "A" (1)
Fault "A" appears again at site "XYZ"	Fault "A" (2)
Fault "A" appears again at site "XYZ"	Fault "A" (3)

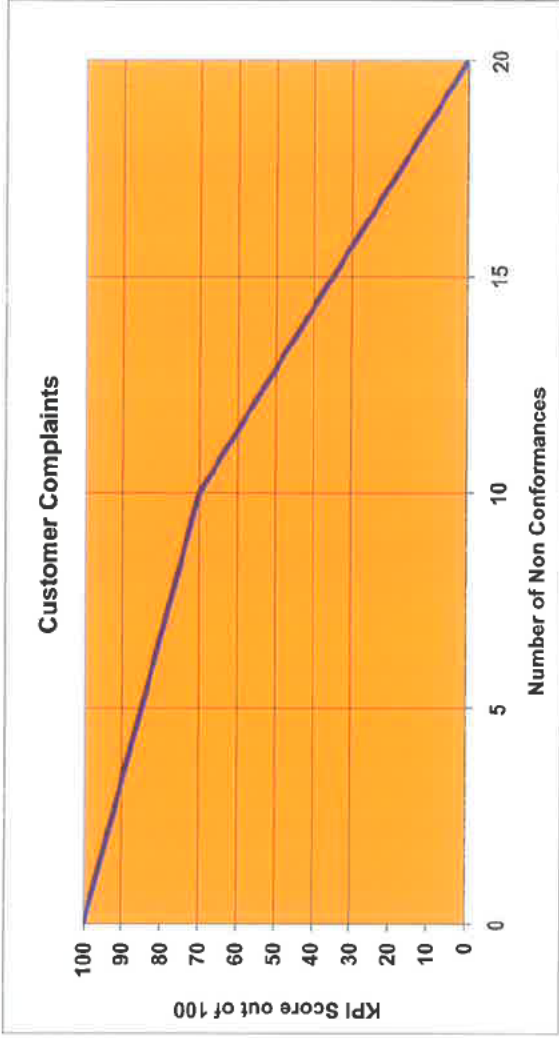
The Repair Effectiveness performance for the month is assessed as conforming if the number of non-conformance events during the month is **[2]** or less. The Repair Effectiveness performance for the month is assessed as non-conforming if the number of non-conformance events during the month exceeds **[2]**.

- A conforming month occurs if both the Fault Response and the Repair Effectiveness performance in that month are conforming.
- A non-conforming month occurs if either the Fault Response or the Repair Effectiveness performance in that month is non-conforming (or both).

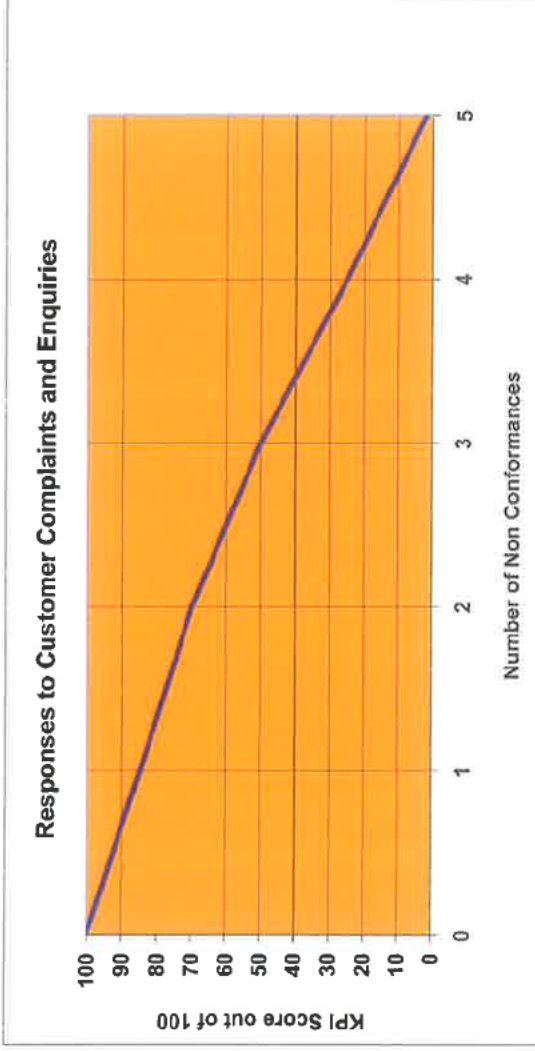


Score	Non-Conforming Months
80	0
70	1
50	2
30	3
0	4

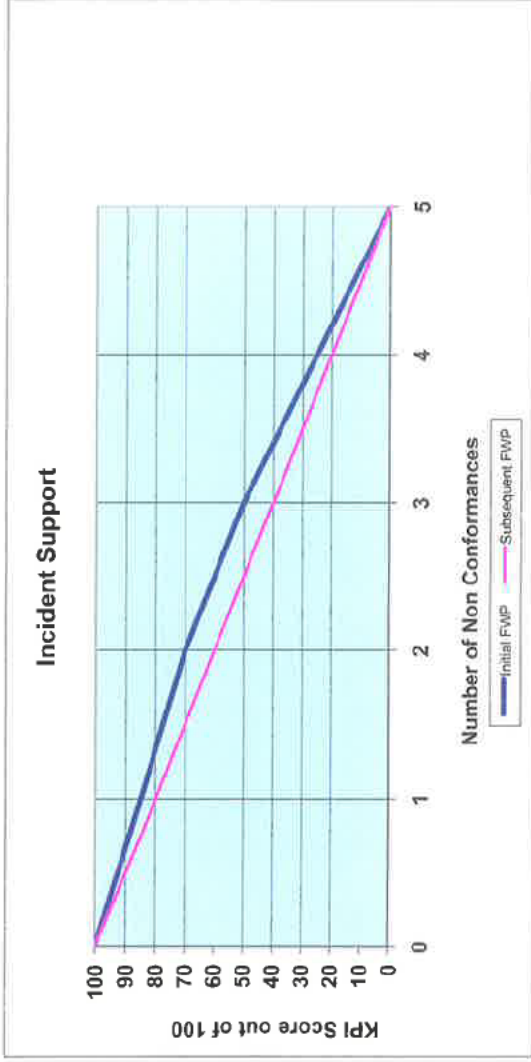
Stewardship Maintenance Contract (SMC) - Sydney - KPI's



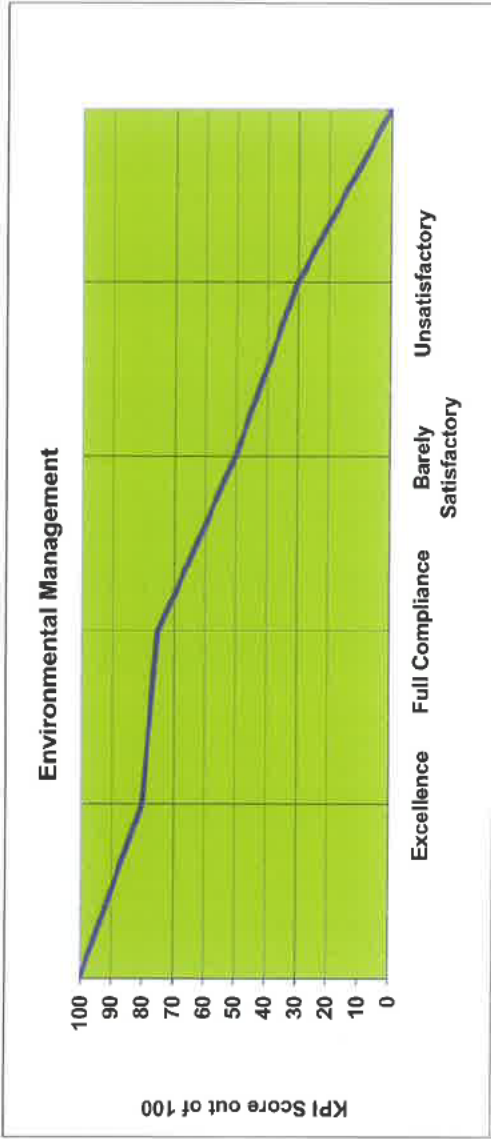
Stewardship Maintenance Contract (SMC) - Sydney - KPI's



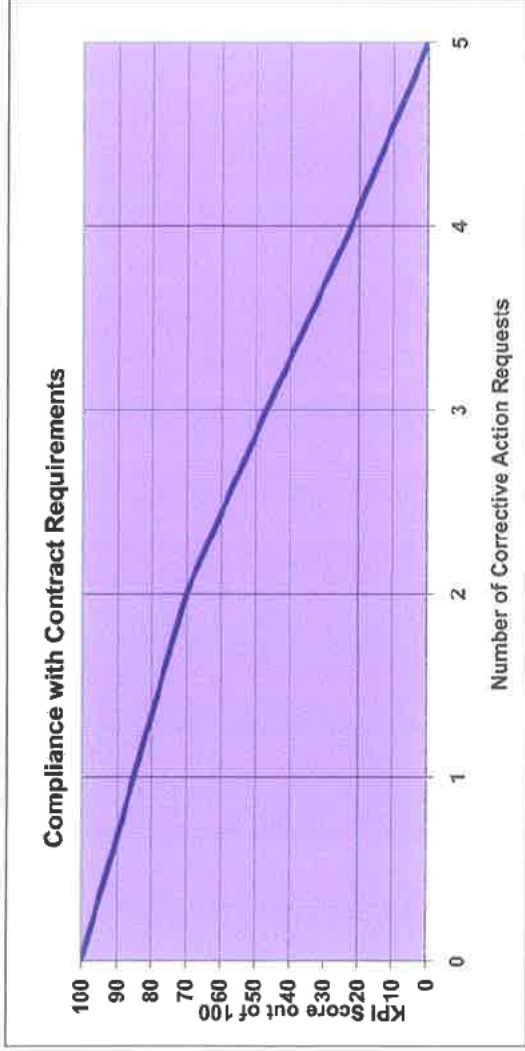
Stewardship Maintenance Contract (SMC) - Sydney - KPI's



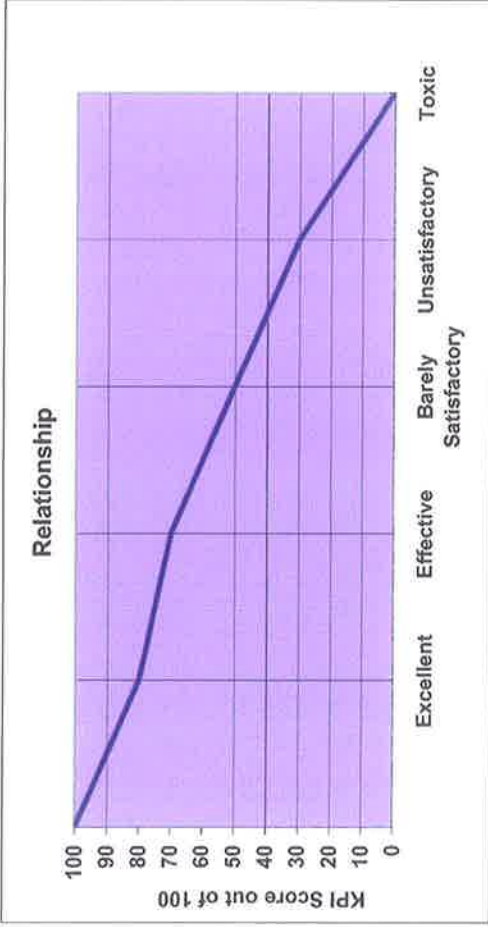
Stewardship Maintenance Contract (SMC) - Sydney - KPI's



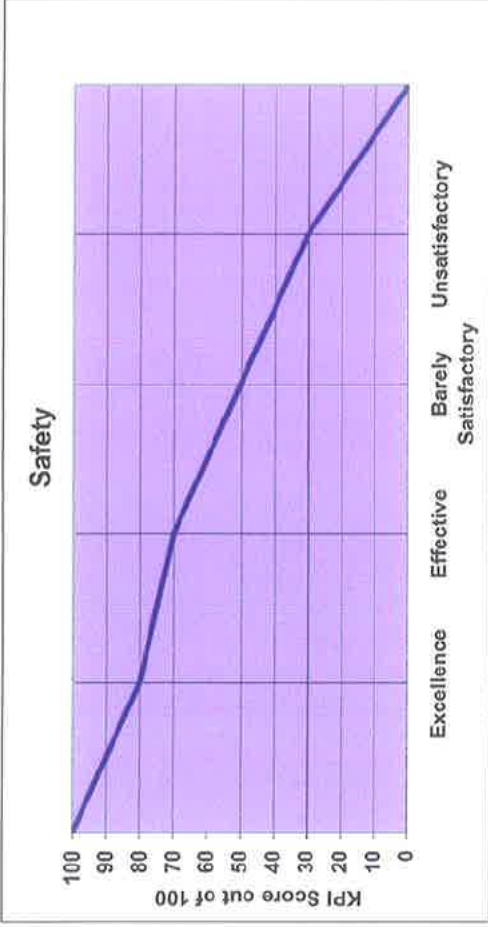
Stewardship Maintenance Contract (SMC) - Sydney - KPI's



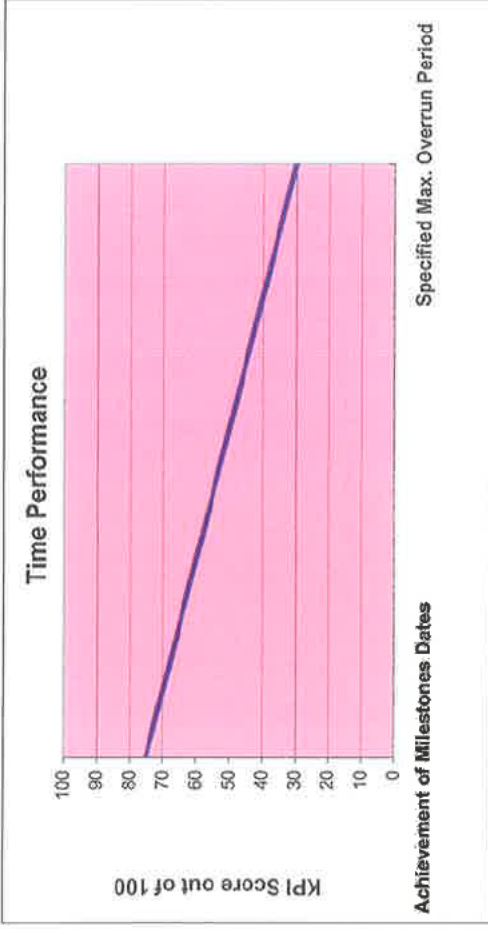
Stewardship Maintenance Contract (SMC) - Sydney - KPI's



Stewardship Maintenance Contract (SMC) - Sydney - KPI's



Stewardship Maintenance Contract (SMC) - Sydney - KPI's



Appendix 2 Performance Measurement Principles and Policy Objectives

1. General

The objectives and principles that RMS has had regard to in developing this Performance Framework and which the parties must have regard to in agreeing any amendment to this Performance Framework include:

- a) the Performance Measurement Principles set out in section 2 of this Appendix; and
- b) the NSW Government policy objectives details in section 3 of this Appendix.

2. Performance Measures Principles

The key principles for the Performance Framework are:

- c) performance measures are aligned with NSW Government and RMS policy and strategy;
- d) the Performance Framework will provide a consistent performance measurement across different ITS contractors for different Zones;
- e) the commercial outcomes for the ITS Contractor will be aligned to the performance outcomes which RMS wishes to achieve under this document;
- f) the ITS Contractor is encouraged to take a "Stewardship" role over the Assets and be involved in defining and delivering good performance;
- g) the Performance Framework will be as simple and practical as possible and not require undue effort to manage. Wherever possible the effort expended in measuring and assessing performance will be to assist in the management of the Assets, rather than for the administration of this document.
- h) the Performance Framework will be flexible to allow adjustments subject to lesson learnt, performance of the ITS Contractors and RMS, and changes to NSW Government policy or RMS strategy.

3. NSW Government Policy Objectives

3.1 Key Policy Documents

The key NSW Government policy documents that provide the context for the Performance Framework include:

- a) NSW Government, NSW 2021 – A plan to make NSW number one (NSW2021)
- b) TfNSW, Long Term Transport Masterplan (LTTMP)
- c) NSW Road Safety Strategy (NSW2021)
- d) Infrastructure NSW, First things first - The State Infrastructure Strategy 2012-2032 (SIS)
- e) TfNSW, Connections – 2012-17 Corporate Plan (TfNSW Corp Plan)
- f) NSW Planning, Sydney towards 2036 - Metropolitan Strategy Review
- g) Draft NSW Freight and Ports Strategy
- h) Roads and Maritime Services 2012–2016 Corporate Strategy (RMS Corp Strategy)
- i) Roads and Maritime Services 2012–2013 Corporate Delivery Plan (RMS Corp Plan)
- j) RTA Customer Attributes & Citizen Expectation Survey 2011 (CA&CES)

ITS Maintenance Contracts (ITS MCs) – Performance Framework

In particular it is intended that the Performance Framework will be aligned with the TfNSW Corporate Plan and the RMS Corporate Plan to ensure that the Program contributes to the performance measures included in these documents.

Over the course of the Contract Term it is expected that policy may evolve and the Performance Framework may need to be adjusted to suit.

3.2 Policy and Strategy Overview

The key strategy areas and strategy subgroups identified from the NSW Government policy document listed in section 3.1 of this Appendix above are summarized in Figure 1 below and discussed briefly in the proceeding sections.

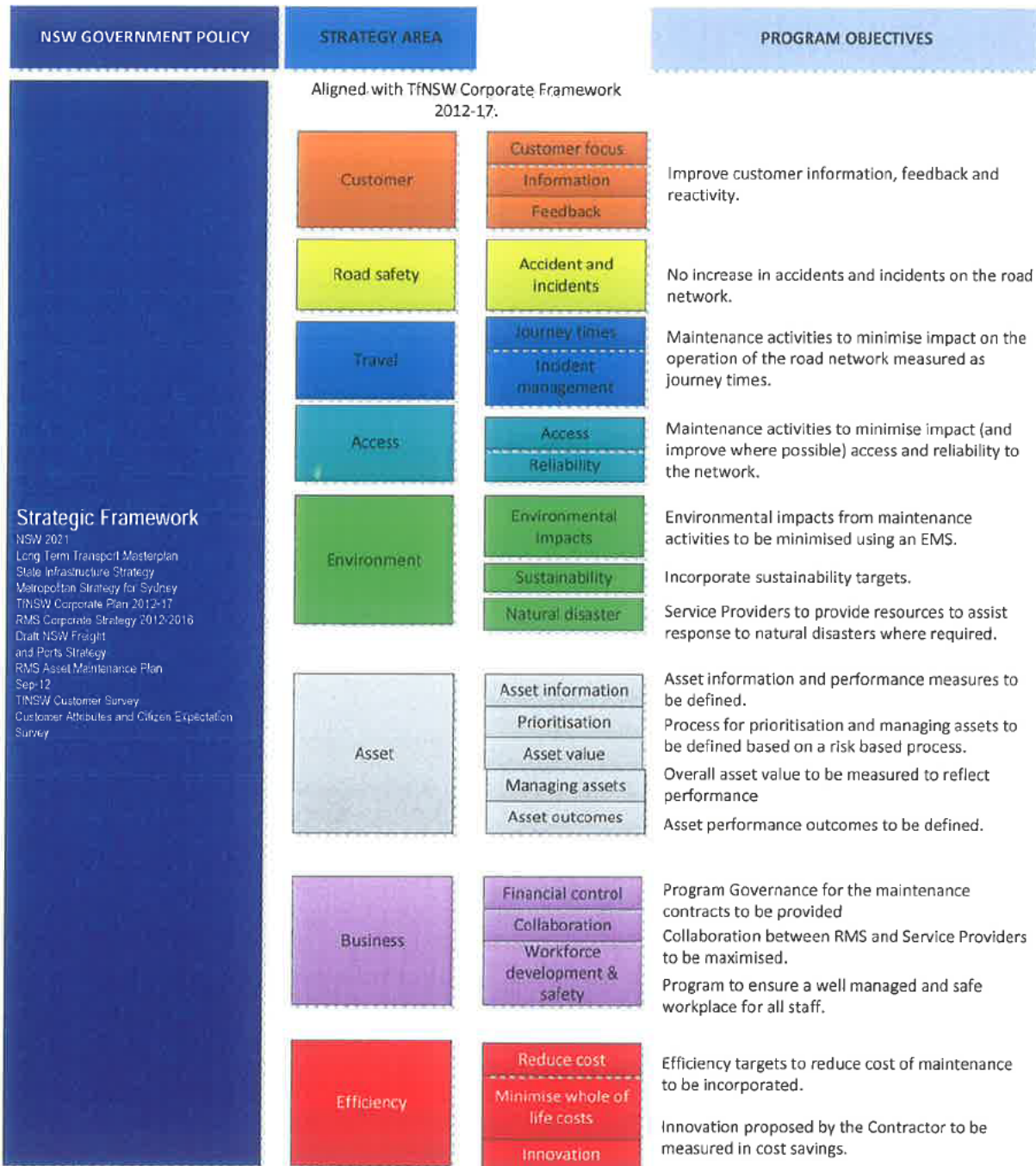


Figure 1 – Policy and strategy framework

3.3 Strategy Objectives and Key Result Areas

The manner in which the NSW Government Strategy objectives have been translated into the Key Result Areas for the Performance Framework are detailed below:

- a) Customer Experience – transport policy statements emphasise the need to focus on the customer as the user of the road network. The key focus of Transport for NSW (TfNSW) is “*We place the customer at the centre of everything we do*”. Other key policy statements also carry through this intent.
- b) Network Outcomes - NSW transport policy encourages a focus on improving the performance of the road network with focus on improving road safety, travel and access. These two areas have been combined into a “Network outcomes” KRA, as they both relate to how the road network is performing from the perspective of road users and other customers.
- c) Environment and Sustainability - the environment and sustainability has increasingly become a key area of focus within transport. Current policy requires that impacts be minimised on the environment and that continuous improvement is sought in the delivery of Services.
- d) Asset Outcomes - transport policy encourages a focus on improving the performance of the road asset to ensure that there are flow-on effects into other outcomes. Performance measures in relation to assets will focus on ensuring that the asset is maintained to minimum expected standards and will provide the best outcomes on a whole of life basis.
- e) Program Governance - ensuring that the RMCP is managed in an effective way is a key requirement of transport policy. A set of performance measures for Program Governance will ensure that appropriate management systems, processes and controls are put in place by the ITS Contractors. By ensuring effective governance of the ITS Contractor the reputation of the RMS and NSW Government will be protected.
- f) Efficiency - the key reason for developing the Program is to improve the efficiency in delivery of road asset maintenance and minor improvement works. On this basis efficiency has been identified as a specific KRA to incorporate a number of outcome measures. Efficiency must be measured not only in the cost of works, but also the benefits measured in the whole of life costs for the assets.

SCHEDULE 5
PAYMENT SCHEDULE

1. GENERAL

1.1 This Schedule sets out the basis for determining the amounts payable by:

- (a) RMS to the ITS Contractor; and
- (b) the ITS Contractor to RMS,

in each month of the Contract Term or following the termination or expiry of this document.

1.2 All amounts payable under this Schedule are exclusive of GST.

1.3 Provisional sums in the Pricing Schedule will not themselves be payable and the parties will agree a Payment Type for all elements of the Services that are the subject of a provisional sum.

2. TRANSITION SERVICES

2.1 In consideration for the provision of the Transition Services, the ITS Contractor is entitled to claim the amounts specified in Pricing Table 4B on the basis set out below.

(a) Monthly payments

- (i) In respect of the Transition Services, the ITS Contractor may claim, subject to paragraphs (ii) and (iii), 50% of the value of work completed in the relevant month being:
 - (A) 50% of the actual costs reasonably and properly incurred by the ITS Contractor that are Reimbursable Costs (not including any Excluded Costs) in respect of the Transition Services; and
 - (B) Margin calculated by multiplying the actual costs contemplated in paragraph (A) above by the appropriate Margin Rate for the relevant Service Category.
- (ii) If the actual costs claimed by the ITS Contractor under paragraph (i) equal the amount specified in Item 1 of Pricing Table 4B, the ITS Contractor is thereafter not entitled to claim any additional costs in respect of the Transition Services under this clause 2.1(a).
- (iii) To the extent that the actual costs claimed by the ITS Contractor at the date of completion of the Transition Services under this clause 2.1(a) are less than the amount specified in Item 1 of Pricing Table 4B, the ITS Contractor may claim the difference between these amounts plus Margin following completion of the Transition Services.

(b) Milestone payments

Item	Milestone Description	ITS Contractor entitlement to claim payment
1.	Transition Readiness	The ITS Contractor may claim

	Assessment	payment of the amount in Item 2 of Pricing Table 4B plus Margin calculated by multiplying the amount by the appropriate Margin Rate for the relevant Service Category following completion of the "Transition Readiness Assessment" contemplated by section 3.3 of the Brief for Transition Services to the reasonable satisfaction of RMS.
2.	Completion of the Transition Services	The ITS Contractor may claim payment of the amount in Item 3 of Pricing Table 4B plus Margin calculated by multiplying the amount by the appropriate Margin Rate for the relevant Service Category following completion of the Transition Services as determined by RMS.

- 2.2 The amounts contemplated by Pricing Table 4B plus Margin are a limit on RMS' liability to the ITS Contractor in respect of the Transition Services and the ITS Contractor will have no entitlement to any additional payments in respect of the Transition Services other than those specified in Pricing Table 4B plus Margin.

3. RMS PLANT AND EQUIPMENT

- 3.1 If the ITS Contractor purchases any RMS Plant and Equipment, the ITS Contractor must pay to RMS the purchase price for the relevant RMS Plant and Equipment in accordance with the applicable agreement for sale.
- 3.2 When these amounts become due and payable under any agreement for sale they will be a debt due and payable to RMS by the ITS Contractor and RMS may deduct such amounts from any amounts that are due and payable to the ITS Contractor under this document.

4. LICENCE PAYMENTS IN RESPECT OF RMS DEPOTS

- 4.1 If the ITS Contractor and RMS agree that the ITS Contractor may use any RMS Depots, the ITS Contractor must pay to RMS the licence fee for use of such RMS Depots in accordance with the terms of the RMS Depot Licence.
- 4.2 When these amounts become due and payable under any RMS Depot Licence they will be a debt due and payable to RMS by the ITS Contractor and RMS may deduct such amounts from any amounts that are due and payable to the ITS Contractor under this document.

5. FORWARD WORKS PROGRAM PAYMENTS

In consideration for the provision of each Service Category contemplated by the Forward Works Program (other than Demobilisation and Handover Services which are dealt with in clause 14 of this Schedule), in each month the ITS Contractor may claim payment in the manner set out in this section 5.

(a) Priced Component

- (i) For each Service Category that the Forward Works Program contemplates will be carried out on a Priced Component basis, the ITS Contractor may

claim, subject to paragraphs (ii) and (iii), the value of work completed in the relevant month being:

- (A) the actual costs reasonably and properly incurred by the ITS Contractor that are Reimbursable Costs (not including any Excluded Costs) in respect of the relevant Service Category; and
- (B) Margin calculated by multiplying the actual costs contemplated in paragraph (A) above by the appropriate Margin Rate for the relevant Service Category.

- (ii) For each Service Category that is carried out on a Priced Component Basis, the total amount contemplated by the relevant Pricing Table of the Pricing Schedule is a limit on RMS' liability to the ITS Contractor in respect of such Service Category and the ITS Contractor will have no entitlement to claim any additional payments in respect of such Service Category once it has claimed the full amount contemplated by the relevant Pricing Table.
- (iii) To the extent that the actual costs and Margin claimed by the ITS Contractor at the date of completion of the relevant works is less than the total amount contemplated by the relevant Pricing Table of the Pricing Schedule, the ITS Contractor may claim the difference between these amounts following completion of the relevant works.

(b) **Target Cost**

- (i) For each Service Category that the Forward Works Program contemplates will be carried out on a Target Cost basis, the ITS Contractor may claim, subject to paragraph (ii), for the value of work completed in the relevant month being:
 - (A) the actual costs reasonably and properly incurred by the ITS Contractor that are Reimbursable Costs (not including any Excluded Costs) in respect of the relevant Service Category; and
 - (B) Margin calculated by multiplying the actual costs contemplated in paragraph (A) above by the appropriate Margin Rate for the relevant Service Category.
- (ii) Once the actual costs claimed by the ITS Contractor equal the Target Cost, the ITS Contractor is thereafter not entitled to claim Margin on any actual costs that it subsequently incurs.
- (iii) The ITS Contractor acknowledges and agrees that any amounts claimed under this clause 5(b) are payable by RMS on account only and remain subject to the Pain Gain Adjustment contemplated by clause 9 of this Schedule.

(c) **Cost Plus**

For each Service Category that the Forward Works Program contemplates will be carried out on a Cost Plus basis, the ITS Contractor may claim the value of work completed in the relevant month calculated by reference to section 2.4 of the Commercial Framework.

(d) **Negotiated Terms**

For each Service Category that the Forward Works Program contemplates will be carried out on a Negotiated Terms basis, the ITS Contractor may claim such

amounts as are permitted in the relevant month under the payment terms applicable to the relevant Service Category as agreed by the parties as part of the Forward Works Program.

6. SPECIAL PROJECT PAYMENTS

In consideration for the provision any element of the Services that is carried out as a Special Project, in each month the ITS Contractor may claim payment in the manner set out in this section 6.

(a) Priced Component

- (i) For each Special Project that is carried out on a Priced Component basis, the ITS Contractor may claim, subject to paragraphs (ii) and (iii) the value of work completed in the relevant month being:
 - (A) the actual costs reasonably and properly incurred by the ITS Contractor that are Reimbursable Costs (not including any Excluded Costs) in respect of the Special Project; and
 - (B) Margin calculated by multiplying the actual costs contemplated in paragraph (A) above by the appropriate Margin Rate for the Special Project.
- (ii) For each Special Project that is carried out on a Priced Component Basis, the total amount contemplated by the applicable Work Terms is a limit on RMS' liability to the ITS Contractor in respect of such Special Project and the ITS Contractor will have no entitlement to claim any additional amounts in respect of such Special Project once it has claimed the total amount contemplated by the applicable Work Terms.
- (iii) To the extent that the actual costs and Margin claimed by the ITS Contractor at the date of completion of the relevant works is less than the total amount contemplated by the relevant Pricing Table of the Pricing Schedule, the ITS Contractor may claim difference between these amounts following completion of the relevant works.

(b) Target Cost

- (i) For each Special Project carried out on a Target Cost basis, the ITS Contractor may claim, subject to paragraph (ii), for the value of the work completed in the relevant month being:
 - (A) the actual costs reasonably and properly incurred by the ITS Contractor that are Reimbursable Costs (not including any Excluded Costs) in respect of the Special Project; and
 - (B) Margin calculated by multiplying the actual costs contemplated in paragraph (i) above by the appropriate Margin Rate for the Special Project.
- (ii) Once the actual costs claimed by the ITS Contractor equal the Target Cost, the ITS Contractor is thereafter not entitled to claim Margin on any actual costs that it subsequently incurs.
- (iii) The ITS Contractor acknowledges and agrees that any amounts claimed under this clause 6(b) are payable by RMS on account only and remain subject to the Pain Gain Adjustment contemplated by clause 9 of this Schedule.

(c) **Cost Plus**

For each Special Project carried out on a Cost Plus basis, the ITS Contractor may claim the value of work completed in the relevant month calculated by reference to section 2.4 of the Commercial Framework.

(d) **Negotiated Terms**

For each Special Project carried out on a Negotiated Terms basis, the ITS Contractor may claim such amounts as are permitted in the relevant month under the Work Terms applicable to the relevant Special Project.

7. PERFORMANCE ADJUSTMENT

7.1 The ITS Contractor must pay RMS the Performance Adjustment for each Contract Year following receipt of written notice from RMS of Performance Adjustment for the relevant Contract Year.

7.2 Following the issue by RMS of such notice the Performance Adjustment is a debt due and payable to RMS by the ITS Contractor and RMS may deduct the Performance Adjustment from any amounts that are due and payable to the ITS Contractor under this document following the issue of such notice.

8. PERFORMANCE INCENTIVE

The ITS Contractor may claim the Performance Incentive for each Contract Year, if any, following receipt of written notice from RMS of the amount of the Performance Incentive for the Contract Year.

9. PAIN GAIN ADJUSTMENT

If the Pain Gain Adjustment for a Contract Year results in:

(a) Gainshare, the ITS Contractor may claim any Gainshare to which it is entitled following receipt of written notice from RMS of the Pain Gain Adjustment for the Contract Year; or

(b) Painshare, any Painshare for which the ITS Contractor is liable will be a debt due and payable to RMS by the ITS Contractor and RMS may deduct such Painshare from any amounts that are due and payable to the ITS Contractor under this document following the issue of written notice to the ITS Contractor of the Pain Gain Adjustment for the Contract Year.

10. RMS RETAINED ENTITLEMENTS

In any month during the period commencing on the full Services Commencement Date and expiring on the Original Expiry Date, the ITS Contractor may claim payment for any RMS Retained Entitlements that become payable in such month under the terms of the ITS Maintenance Transitional Agreement.

11. DEMOBILISATION AND HANDOVER SERVICES

11.1 In consideration for the provision of the Demobilisation and Handover Services, the ITS Contractor is entitled to claim the amount specified in Pricing Table 4C following receipt of notification from RMS that the Demobilisation and Handover Services have been completed to the reasonable satisfaction of RMS.

11.2 The amount contemplated by Pricing Table 4C is a limit on RMS' liability to the ITS Contractor in respect of the Demobilisation and Handover Services and the ITS Contractor

will have no entitlement to claim any additional payments in respect of the Demobilisation and Handover Services other than those specified in Pricing Table 4C.

12. **CHANGES**

In each month the ITS Contractor may claim amounts payable in respect of any Changes that are agreed or directed under the terms of the General Conditions.

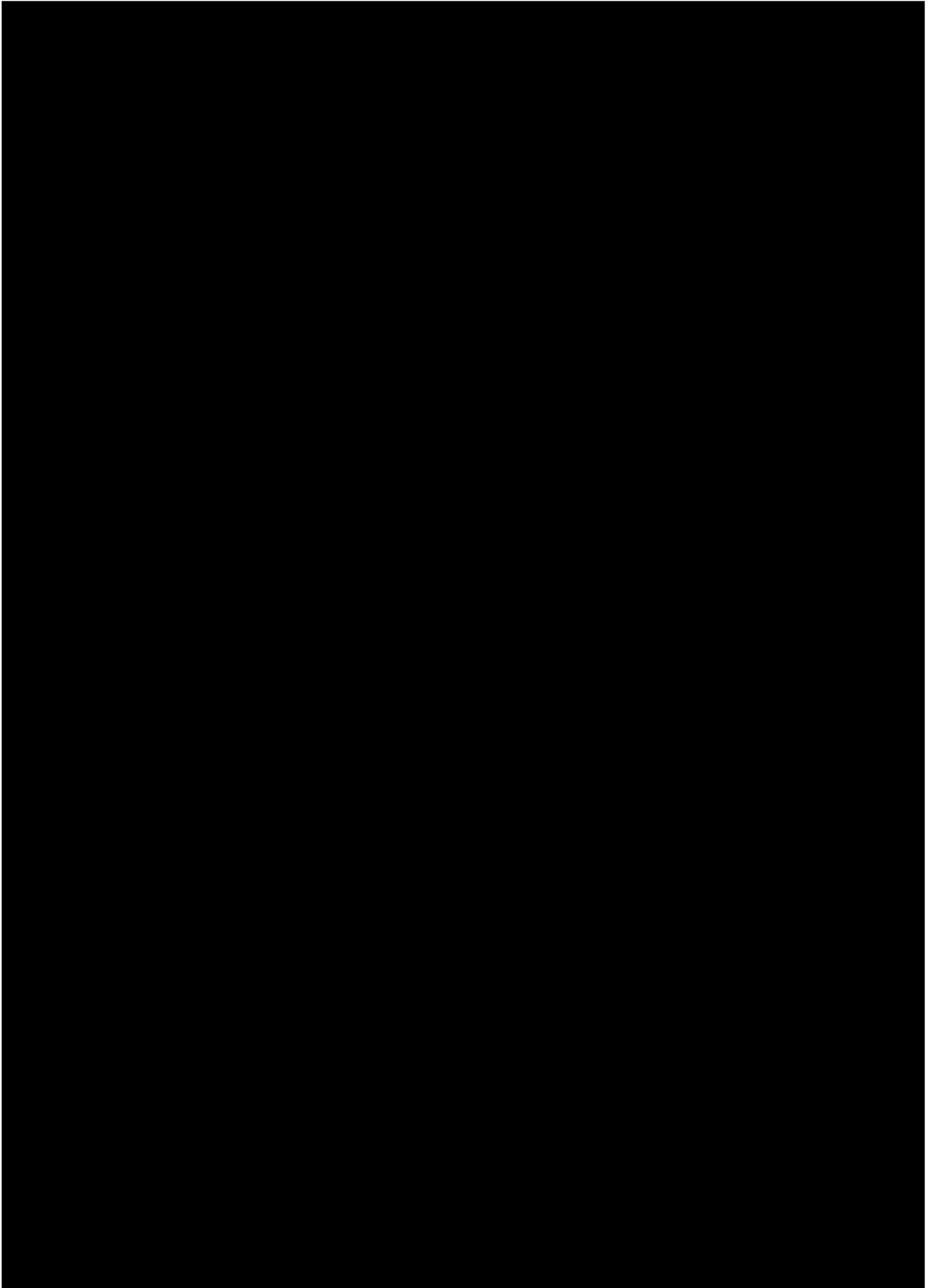
13. **LONG SERVICE LEAVE LEVY**

In any month where the long service leave levy is paid by the ITS Contractor in accordance with clause 11.10 of the General Conditions, RMS will reimburse the ITS Contractor the actual cost of the levy plus a margin calculated using the Cost Plus Margin Rate following receipt of documentary evidence of payment of the levy.

14. **OTHER AMOUNTS**

The ITS Contractor may claim other amounts to which it is entitled under this document when they become due and payable under the terms of this document.

SCHEDULE 6
REFERENCE PRICING SCHEDULE



SCHEDULE 7
BRIEF FOR TRANSITION SERVICES

ITS Maintenance Contracts (ITS MCs)

Schedule 7 – Brief for Transition Services

5 February 2014

Contents

1	Introduction	6
1.1	Overview of the transition.....	6
1.2	Purpose of this document.....	6
1.3	ITS Maintenance Transitional Agreement.....	6
1.4	Interpretation.....	6
1.5	Structure of this Brief.....	6
2	Scope of the Transition Services	7
2.1	Scope Overview	7
3	Timing of the Transition Services	8
3.1	Staging of the Transition Services	8
3.2	Milestones and duration of the Start-up Stage.....	9
3.3	Transition Readiness Assessment.....	9
3.4	Mobilisation Completion	9
3.5	Completion of the Transition Services	10
4	Management of the transition	11
4.1	General	11
4.2	Requirements for the Transition Management Plan.....	11
4.3	Requirements for the Transition Management Team.....	12
5	Development of Systems	14
5.1	Integrated Contract Management System	14
5.2	Business systems	14
6	Establishment of personnel	15
6.1	Management of Industrial Relations.....	15
6.2	RMS Wages Staff Transfer	15
6.3	RMS Salaried Staff Transfer	16
6.4	Entitlements for RMS Staff Transferring	18
7	Transfer of RMS plant and equipment	19
7.1	General	19
7.2	Process for Sale of Plant and Equipment	19
7.3	Sale for plant and equipment	20
7.4	Sale price of plant and equipment.....	20
7.5	Conditions of sale of plant and equipment.....	20
7.6	Payment for the plant and equipment transferred.....	20
8	Establishment of depots	21
8.1	Background	21
8.2	Depot Management Plan	21
8.3	RMS depots	22
8.4	Process for transfer of RMS depots.....	22
8.5	Conditions for licence of RMS Depot	22
8.6	Depot facility costs	22
9	Existing RMS legacy contracts	23
9.1	General	23
9.2	Alternative proposals for delivery of legacy contract services.....	23

10	Knowledge transfer	24
10.1	General	24
10.2	Knowledge transfer strategy	24
11	Finalisation of the Initial Forward Works Program	25
11.1	General	25

Appendices

Appendix 1	Depot Information	26
Appendix 2	Items for Sale	28

List of Abbreviations

FWP	Forward Works Program
ITS	Intelligent Transport Systems
ITS MC	ITS Maintenance Contract
RFS	Road and Fleet Services (a branch of RMS)
RMS	Roads and Maritime Services
TEPS	Traffic Emergency Patrol Services
TfNSW	Transport for New South Wales

Glossary

RMS Retained Entitlements	RMS Retained Entitlements are those entitlements for which RMS is responsible under the Transitional Agreement, and will be funded directly by RMS.
Transfer Package	Transfer package is the package agreed by NSW Treasury and TfNSW through which RMS staff will transfer to the ITS Contractors.
Transitional Agreement	ITS Maintenance Transitional Agreement between the Roads and Maritime Services Division of the Government Services of NSW, the [ITS Contractor XX name to be inserted] and XXX for Roads and Maritime Services dated [XXX insert date].
Salaried Staff	RMS Affected staff employed under the Crown Employees (RMS – Salaried Staff) Award, the Professional Engineers (RMS – Salaries) Award, or Supervisors and Inspectors covered by the Crown Employees (RMS – Traffic Signal Staff) Award.
Wages Staff	RMS Affected staff employed under the Crown Employees (RMS – Wages Staff) Award and the Crown Employees (RMS – Traffic Signals Staff) Award (excluding Supervisors or Inspectors).

I Introduction

I.1 Overview of the transition

- I.1.1 The ITS Maintenance Services are currently being undertaken by RMS through the in-house delivery provider, Road and Fleet Services (RFS) which has a mix of wages and salaried employees and through existing (legacy) maintenance contracts. In addition a number of salaried staff within RMS Asset Maintenance and Journey Management Divisions are also involved in the provision of ITS Maintenance Services.
- I.1.2 The ITS Contractor will be responsible for the management of the transition of the Services from RMS to the ITS Contractor, in close consultation with RMS.
- I.1.3 RMS will be responsible for the delivery of the Services during the Mobilisation Stage as defined in section 3. The ITS Contractor will be responsible for delivery of the Services during the Start-Up Stage.
- I.1.4 RMS requires the ITS Contractor to develop a Transition Management Plan to ensure that delivery of the Services continues throughout the process.
- I.1.5 The ITS Contractor and RMS will be required to work collaboratively during the transition to ensure the success of the transfer. RMS intends that the culture of the Transition Management Team be developed with a focus on collaboration and teamwork between the parties.

I.2 Purpose of this document

- I.2.1 The purpose of this document is to define the scope and minimum requirements of the Transition Services to be delivered under the ITS Maintenance Contract (ITS MC).
- I.2.2 RMS requires a seamless transition of Services to ensure that the road network within the Zone continues to operate throughout the transition process. To ensure a seamless transfer, the ITS Contractor will need to develop procedures, processes and systems that address the transfer of staff, plant, equipment and depot transition in a considered and efficient manner whilst maintaining customer service.
- I.2.3 This Brief provides the requirements for the Transition Stage, being the Mobilisation Stage and Start-up Stage. The Brief for Transition Services supplements the ITS MC Services Requirements during the Transition Stage.

I.3 ITS Maintenance Transitional Agreement

- I.3.1 This Brief must be read in conjunction with the ITS Maintenance Transitional Agreement (Transitional Agreement).

I.4 Interpretation

- I.4.1 Unless otherwise defined in this Brief, terms which have a defined meaning in the ITS MC or Transitional Agreement have the same meaning in this Brief.

I.5 Structure of this Brief

- I.5.1 This Brief is structured as follows:
 - a) Section 2 provides the scope of the Transition Services to be delivered by the ITS Contractor;
 - b) Section 3 provides the overall timing and staging for the delivery of the Transition Services; and
 - c) Section 4 onwards provides the specific requirements for the delivery of the Transition Services.

2 Scope of the Transition Services

2.1 Scope Overview

- 2.1.1 The scope of the Transition Services includes all tasks and things necessary to:
- a) Manage the transition including:
 - (i) Submission of the Transition Management Plan;
 - (ii) Establishment of the Transition Management Team; and
 - (iii) Implementation of the Transition Services and Transition Management Plan.
 - b) Develop business systems including:
 - (i) Preparation of Service Plans in accordance with the ITS MC Services Requirements and achieve Not Rejected status for all Service Plans;
 - (ii) Development of business processes and procedures required to deliver Services for the ITS MC in accordance with the ITS MC Services Requirements;
 - c) Validate the ITS Asset inventory in the ITS Contractor's Zone.
 - d) Establish staff required for the ITS MC including:
 - (i) Mobilise staff required to deliver all Services for the ITS MC;
 - (ii) Make offers and transfer RMS Wages Staff that accept an offer; and
 - (iii) Make offers and transfer RMS Salaried Staff selected by the ITS Contractor.
 - e) Establish plant and equipment required to deliver the Services;
 - f) Establish facilities and depots required to deliver the Services, including establishment on RMS depots if required;
 - g) Establish protocols for the coordination of the Services with other service providers engaged by RMS under "legacy" maintenance contracts ;
 - h) Transfer key knowledge of the Assets from RMS to the ITS Contractor, and develop in-house capabilities through training;
 - i) Establish subcontractor and supply arrangements to deliver the Services;
 - j) Engage with key stakeholders and establish interface protocols;
 - k) Finalise the Initial Forward Works Program;
 - l) Manage the start-up; and
 - m) Deliver any other services needed for the performance of the Services.
- 2.1.2 For the avoidance of doubt the scope of the transition will include all tasks and things necessary to transfer the Services from RMS to the ITS Contractor, ensuring continuity of the Services at all times.
- 2.1.3 Without limitation the Transition Services must be delivered in accordance with the minimum requirements defined in this Brief.

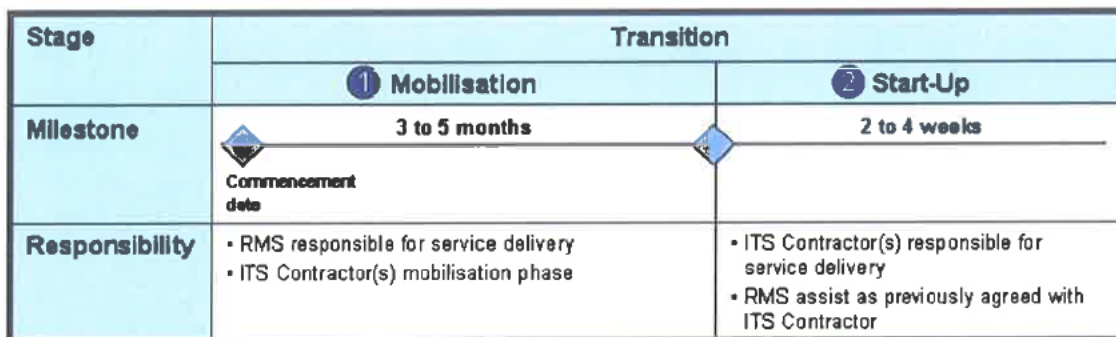
3 Timing of the Transition Services

3.1 Staging of the Transition Services

3.1.1 Following the Mobilisation Stage, the Start-up Stage will involve the transfer of the Services from RMS to the ITS Contractor. Notwithstanding the transfer of Services, the ITS Contractor will be responsible for the delivery of the Services during the Start-up Stage. RMS may provide some support during this stage, subject to the availability of suitable resources.

3.1.2 The transition will be staged as follows:

Figure 1: Transition Framework



3.1.3 The key activities that will occur during the Transition Stage are as follows:

Stage	Key activities
Stage 1: Mobilisation	<ul style="list-style-type: none"> • Finalisation of the ITS Contractor's Transition Management Plan confirming processes and procedures for the Transition. • Set up joint RMS & ITS Contractor transition review meeting. • Undertake due diligence and selection processes for salaried staff, RMS equipment, RMS depots and facilities. • Facilitate Wages Staff offer and acceptance for the transfer. • Establish business systems and processes for management of the ITS MC. • Finalise Initial Forward Works Program with RMS. • Establish initial Special Projects. • Transfer key knowledge from RMS to the ITS Contractor. • Establish facilities, processes and systems required to the deliver the Services.
Stage 2: Start-up	<ul style="list-style-type: none"> • Transfer staff, RMS equipment, RMS depots and facilities. • Commence delivery of all other Services.

Table 1: Transition Services Stages

3.2 Milestones and duration of the Start-up Stage

- 3.2.1 The Initial Transition Management Plan will detail the milestones within the Mobilisation Stage and duration of the Start-up Stage.
- 3.2.2 The minimum duration of the Start-up Stage must be one week.

3.3 Transition Readiness Assessment

- 3.3.1 The ITS Contractor must undertake a Transition Readiness Assessment no later than 30 Business Days prior to the Full Services Commencement Date.
- 3.3.2 The Transition Readiness Assessment will involve:
 - a) A workshop involving representatives of RMS and the ITS Contractor; and
 - b) A report detailing the outcomes of the workshop.
- 3.3.3 The Transition Readiness Assessment workshop and report must include consideration of the following:
 - a) Appointment of key positions within the establishment;
 - b) Readiness for the transfer of personnel from RMS to the ITS Contractor;
 - c) Development of business systems;
 - d) Establishment of depots, facilities, plant and equipment;
 - e) Preparation of work plans and task allocation;
 - f) Transfer of key knowledge of the Assets;
 - g) Risks to the operation of the Assets;
 - h) Readiness to transfer projects and scope of work to the ITS Contractor;
 - i) Any other key items that may be a risk to a seamless transition; and
 - j) Action Plan to address any key matters that are outstanding.
- 3.3.4 The workshop and report must clearly set out the activities remaining to be performed and the program for such activities.
- 3.3.5 RMS will within 5 Business Days of receipt of the Transition Readiness Assessment report advise the ITS Contractor of those other matters that RMS considers that the ITS Contractor must address in order to be ready to undertake the Services.

3.4 Mobilisation Completion

- 3.4.1 The ITS Contractor must notify RMS in writing no later than 8 Business Days prior to the Full Services Commencement Date of any matters notified by RMS under section 3.3.5 or recently arising, that will not be completed prior to the Full Services Commencement Date, and whether these will impact the transfer of Services at the time of commencement of full Services.
- 3.4.2 The ITS Contractor must issue a Mobilisation Completion Certificate no later than 3 Business Days prior to the Full Services Commencement Date:
 - a) certifying that the ITS Contractor is ready to commence the Services;
 - b) listing any matters remaining to be completed as part of the Transition Services, including any matters notified by RMS in accordance with section 3.3.5 above; and
 - c) attaching a program showing when such matters will be completed during the Start-up Stage.

3.5 Completion of the Transition Services

- 3.5.1 The ITS Contractor must submit to RMS the Transition Services Report as a condition precedent to completion of the Transition Services.
- 3.5.2 The Transition Services Report must:
- a) specify each of the Transition Services activities required to be undertaken by the ITS Contractor under the Transition Management Plan and this Transition Services Brief; and
 - b) confirm that each has been completed, including the date of completion.
- 3.5.3 RMS will respond to the Transition Services Report within 5 Business Days and determine as follows:
- a) the Transition Services have been completed; or
 - b) the Transition Services have not been completed and detailing the outstanding activities that are required to be undertaken.
- 3.5.4 Where RMS determines that the Transition Services have not been completed, the ITS Contractor must undertake those outstanding activities identified and then resubmit the Transition Services Report to RMS.

4 Management of the transition

4.1 General

- 4.1.1 The ITS Contractor is responsible for the collaborative management of the transition including facilitation of all activities to be undertaken by RMS.
- 4.1.2 To support the collaborative process, RMS will nominate a person to be the contact within the ITS Contractor's Transition Management Team for the duration of the Mobilisation Stage if requested by the ITS Contractor.

4.2 Requirements for the Transition Management Plan

- 4.2.1 The ITS Contractor submitted the Initial Transition Management Plan during the RFP stage.
- 4.2.2 The Transition Management Plan must:
 - a) be submitted within 10 Business Days after the Commencement Date;
 - b) address the requirements specified in this Brief; and
 - c) be substantively based on and consistent with the Initial Transition Management Plan.
- 4.2.3 The Transition Management Plan must address this Brief and, as a minimum, include the following:
 - a) Organisation of the Transition Management Team including an organisation chart and details of all staffing required;
 - b) The method for interaction with RMS and the RMS transition team, including the process and method to ensure that interactions are collaborative, effective and efficient;
 - c) The deliverables to be provided for the Transition Services, and demonstrate conformance with the minimum requirements in this Transition Services Brief;
 - d) A transition program and key milestones for both the Mobilisation and Start-up Stages;
 - e) Detail the required RMS resources and information requirements to be provided in the transition;
 - f) Detail the key interfaces and stakeholders that will be managed in the Transition Services;
 - g) Detail the processes for mobilisation of the ITS Contractor's personnel, depots, facilities, plant and equipment to undertake the Services;
 - h) Detail the processes for transfer of RMS staff, depots, facilities, plant and equipment where relevant;
 - i) Development of the Depot Management Plan in accordance with section 8.2 of this Transition Services Brief;
 - j) Detail the knowledge transfer strategy in accordance with section 10 of this Transition Services Brief;
 - k) Detail a risk management process that addresses all operational and business continuity risks that may affect the ITS Contractor and RMS in the transition; and
 - l) Provide details of the process for assessing readiness for the transfer of the Services and personnel.
- 4.2.4 RMS will review the Transition Management Plan in accordance with the requirements of the ITS MC, however, the ITS Contractor must comply with the Transition Management Plan submitted unless otherwise notified by RMS that the Transition Management Plan is rejected.

4.3 Requirements for the Transition Management Team

- 4.3.1 The minimum requirements of the Transition Management Team will be as follows:
- a) Within 5 Business Days of the Commencement Date, commencement of the Transition Manager and approximately 50% strength of other members of the Transition Management Team.
 - b) Within 20 Business Days of the Commencement Date all of the nominated Transition Management Team must have commenced.
- 4.3.2 The Proponent must provide a Transition Management Team structured to manage the Transition Services.
- 4.3.3 The Transition Management Team as a minimum, must include the following positions. Such positions may be combined with other duties within the ITS Contractor's delivery team or may be part time head office support as determined by the ITS Contractor, however, responsibility for such positions must be nominated.

<p>Transition Manager</p>	<p>Responsibilities:</p> <ul style="list-style-type: none"> • Overall responsibility for the delivery of the transition. • Ensuring seamless transfer of the maintenance and other nominated works from RMS to the ITS Contractor. • Ensuring that the transition of RMS staff occurs and that all the requirements to establish their employment with the ITS Contractor are in place. • Leadership and management of the ITS Contractor's transition team. <p>Minimum Requirements:</p> <ul style="list-style-type: none"> • Strong leadership and negotiation skills and proven ability to work collaboratively with business partners. • Demonstrated experience in managing personnel transition or business change process. • Knowledge and experience of managing industrial relations matters, including exposure to negotiations with unions.
<p>Human Resources Manager</p>	<p>Responsibilities:</p> <ul style="list-style-type: none"> • Management of the employment arrangements for the RMS staff transferring to the ITS Contractor and the ITS Contractor's own staff. • Establishment of management processes for employment conditions and entitlements. • Establishment of HR systems and processes for the personnel transferring to the ITS Contractor. <p>Minimum Requirements:</p> <ul style="list-style-type: none"> • Demonstrated experience in managing human resources change. • Experience in developing and establishing human resources systems and processes. • Proven ability to work collaboratively within a business

ITS Maintenance Contracts (ITS MCs) – Brief for Transition Services

	environment.
Industrial Relations Advisor	<p>Responsibilities:</p> <ul style="list-style-type: none"> • Responsibility to ensure the establishment of appropriate instruments and arrangements for the transfer and employment of RMS staff. • Liaison with RMS and other bodies nominated by RMS to inform them regarding the progress of the transfer of staff. • Provide industrial relations advice to the Transition Management Team. <p>Minimum Requirements:</p> <ul style="list-style-type: none"> • Demonstrated experience in managing industrial relations matters involving outsourcing of Services. • Knowledge of industrial relations in Australia including a demonstrated understanding of all relevant law, regulations and other instruments. • Experience of leading industrial relations matters, including exposure as lead in negotiations with unions.
Equipment, plant and Facilities Transition Manager	<p>Responsibilities:</p> <ul style="list-style-type: none"> • Management of the establishment of all equipment, plant and facilities required to undertake the ITS MC.
Other positions	Other positions as specified by the ITS Contractor in the Initial Transition Management Plan.

5 Development of Systems

5.1 Integrated Contract Management System

- 5.1.1 The ITS Contractor must develop the Integrated Contract Management System in accordance with the ITS MC.
- 5.1.2 The Integrated Contract Management System must be audited by an independent auditor during the Mobilisation Stage to demonstrate readiness for implementation.

5.2 Business systems

- 5.2.1 During the Mobilisation Stage the ITS Contractor must develop and implement any other business systems required to undertake the ITS MC and manage its business.

6 Establishment of personnel

6.1 Management of Industrial Relations

- 6.1.1 The ITS Contractor must manage all aspects of industrial relations in the transfer of RMS staff to the ITS Contractor. Such management must include consultation and coordination with RMS.
- 6.1.2 The ITS Contractor must establish all required instruments for the employment of the RMS staff including enterprise bargaining agreement, collective agreements and individual agreements.
- 6.1.3 The ITS Contractor must ensure that the terms and conditions of all agreements between RMS and representative bodies of RMS staff are incorporated in the instruments established for the employment of RMS staff.
- 6.1.4 The ITS Contractor must comply with the NSW Government's Industrial Relations Management Guidelines.

6.2 RMS Wages Staff Transfer

Overview

- 6.2.1 The ITS Contractor must employ RMS permanent Wages Staff (as defined in the Glossary) in accordance with the Transitional Agreement.
- 6.2.2 Following the transfer, RMS permanent Wages Staff may be employed on any activity being undertaken by the ITS Contractor, provided it meets the conditions of the Transitional Agreement and the applicable award.

Allocation and Transfer of RMS Wages Staff

- 6.2.3 The ITS Contractor must engage in a collaborative process with RMS to allocate RMS permanent Wages Staff for employment by the ITS Contractor.
- 6.2.4 The outline process for allocation and transfer of RMS Permanent Wages Staff is as follows:

Stage	Description	Responsibility	Approximate Timing
1	The ITS Contractor will be given an opportunity to meet and undertake presentations to RMS permanent Wages Staff.	RMS ITS Contractor	On or around the Commencement Date
2	RMS will issue a letter to RMS permanent Wages Staff to explain the transfer to the ITS Contractor and alternative options. The letter will include a response form to allow the RMS permanent Wages Staff to nominate a preference for a transfer and for a Zone.	RMS	2 to 3 weeks after the Commencement Date
3	RMS permanent Wages Staff provide response to the letter and <u>nominate preference</u> for a Zone. Staff will be advised that it may not be possible to accommodate the preference.	RMS	4 weeks after the Commencement Date
4	RMS consults with the ITS Contractor to allocate	RMS	4 to 6 weeks

Stage	Description	Responsibility	Approximate Timing
	RMS permanent Wages Staff to the ITS Contractor.	ITS Contractor	after the Commencement Date
5	ITS Contractor provides an offer of transfer and employment to each RMS permanent Wages Staff allocated to the Zone.	RMS ITS Contractor	6 weeks after Commencement Date
6	RMS permanent Wages Staff accept or decline the offers of transfer and employment.	RMS	8 weeks after Commencement Date
7	RMS will provide the ITS Contractor with full employment details and history of the RMS permanent Wages Staff transferring to the ITS Contractor.	RMS	3 weeks prior to the Full Services Commencement Date
8	RMS permanent Wages Staff transfer to ITS Contractor.	ITS Contractor	At or around the Full Services Commencement Date

- 6.2.5 This outline process for the allocation and transfer of RMS permanent Wages Staff must be allowed for in the Initial Transition Management Plan.
- 6.2.6 RMS intends to use a collaborative approach to undertake the allocation of RMS permanent Wages Staff to the ITS Contractor, however RMS retains absolute discretion to determine the allocation of RMS permanent Wages Staff to the ITS Contractor.
- 6.2.7 In determining the allocation of RMS permanent Wages Staff to the ITS Contractor, RMS will take into consideration the following:
- a) Mix of trades, experience and staff numbers between Zones;
 - b) Current work location of the permanent Wages Staff; and
 - c) Permanent Wages Staff nominated preferences.

6.3 RMS Salaried Staff Transfer

Overview

- 6.3.1 The ITS Contractor may at its discretion offer employment to RMS Salaried Staff (as defined in the Glossary) through the RMS Salaried Staff selection and transfer process.
- 6.3.2 The ITS Contractor must employ RMS Salaried Staff that transfer, in accordance with the Transitional Agreement.

Selection and Transfer of RMS Salaried Staff

- 6.3.3 The ITS Contractor must engage in a collaborative process with RMS to manage the selection and transfer of RMS Salaried Staff to the ITS Contractor.
- 6.3.4 An outline of the RMS Salaried Staff selection and transfer process is as follows:

ITS Maintenance Contracts (ITS MCs) – Brief for Transition Services

Stage	Description	Responsibility	Approximate Timing
1	RMS will undertake an Expression of Interest (EOI) process to identify RMS Salaried Staff that would like to be considered for transfer to the ITS Contractor(s). RMS Salaried Staff that are interested in a transfer will respond with the requested details.	RMS	Prior to the Commencement Date
2	RMS will provide details of RMS Salaried Staff that responded to the EOI to the ITS Contractor. The details that are provided are anticipated to include CVs and supporting documentation.	RMS	2 weeks after the Commencement Date
3	The ITS Contractor will identify any RMS Salaried Staff that they would like to consider for employment. The ITS Contractor will carry out a selection process. During this stage the ITS Contractor(s) may present to RMS salaried staff or provide details of the ITS Contractors organisation.	ITS Contractor	1-4 weeks after the Commencement Date
4	ITS Contractor will nominate the personnel that they would like to offer employment under the transfer process (First Round).	ITS Contractor	4-6 weeks after the after the Commencement Date
5	The RMS Transition Team will forward the offers of transfer to the RMS Salaried Staff for consideration. Where RMS Salaried Staff have received offers from more than one ITS Contractor, they will be required to make their selection within the above period.	RMS	4-6 weeks after the Commencement Date
6	RMS will forward acceptances through to the ITS Contractor (First Round).	RMS	6-8 weeks after the Commencement Date
7	The ITS Contractor will identify any additional RMS Salaried Staff that they would like to consider for employment following the outcome of the first round acceptances (Second Round). RMS and the ITS Contractor will facilitate a similar process to the first round for the selection and engagement of staff.	SP	6 weeks prior to the Full Services Commencement Date
8	RMS Salaried Staff will transfer to the ITS Contractor.	RMS / SP	At the timing agreed between the ITS Contractor and RMS.

- 6.3.5 The timing for transfer from RMS to the ITS Contractor will be agreed jointly between RMS, the ITS Contractor and the staff member, taking into account the business continuity needs for RMS in the transition and the ITS Contractor's mobilisation needs.

6.4 Entitlements for RMS Staff Transferring

Responsibilities for Entitlements

- 6.4.1 The responsibility for entitlements of RMS transferring employees is detailed in the Transitional Agreement.
- 6.4.2 RMS permanent Wages Staff and RMS Salaried Staff transferring to the ITS Contractor will be given an option to have all or part of the accrued annual leave and long-service leave paid as part of the Transfer Package.
- 6.4.3 RMS will provide a full account of the RMS Retained Entitlements for RMS permanent Wages Staff and RMS Salaried Staff that transfer to the ITS Contractor.

7 Transfer of RMS plant and equipment

7.1 General

- 7.1.1 RMS currently owns plant and equipment that is used to undertake work for delivery of maintenance Services in the Metro East and Metro West zones. The plant and equipment owned by RMS will be excess to requirements on appointment of a ITS Contractor(s) to undertake the work.
- 7.1.2 RMS intends to make this plant and equipment available for sale to the ITS Contractor. The ITS Contractor may, at its discretion, purchase any RMS plant and equipment.
- 7.1.3 The plant and equipment will be employed by RMS during the Mobilisation Stage and will be transferred at an agreed date during the Start-up Stage.

7.2 Process for Sale of Plant and Equipment

- 7.2.1 An outline of the process for the sale of RMS plant and equipment is as follows:

Stage	Description	Approximate Timing
1	A list of major plant and equipment available for purchase by the ITS Contractor is included at Appendix 2. The ITS Contractor will have an opportunity to identify other minor plant and equipment after the Commencement Date.	Prior to the Commencement Date
2	The ITS Contractor will be given an opportunity to inspect plant and equipment whilst continuing to undertake operations in the field.	1 to 3 weeks after the Commencement Date
3	The ITS Contractor will identify the list of plant and equipment which it is interested in purchasing from RMS.	2 to 4 weeks after the Commencement Date
4	The ITS Contractor(s) will undertake due diligence on the plant and equipment. The ITS Contractor will make an offer at its discretion for the plant and equipment that it would like to purchase from RMS on the basis of 'as is where is'.	4 to 8 weeks after the Commencement Date
5	RMS will accept or reject the offer.	8 to 10 weeks after the Commencement Date
6	The plant and equipment will continue in service of RMS until the date it is transferred to the ITS Contractor.	
7	The Plant and equipment will transfer to the ITS Contractor at an agreed date between RMS and the ITS Contractor.	At the timing agreed between the ITS Contractor and RMS.

- 7.2.2 Where the ITS Contractor has committed to the purchase of plant and equipment, the timing for the transfer must be agreed jointly between RMS and the ITS Contractor taking into account the business continuity needs of RMS in the transition.

7.3 Sale for plant and equipment

- 7.3.1 The agreement for sale of the plant and equipment is set out in Schedule 20.
- 7.3.2 The ITS Contractor must enter into this form of agreement for sale for any plant and equipment that it would like to purchase from RMS.

7.4 Sale price of plant and equipment

- 7.4.1 The sale price for the plant and equipment will be determined at the time of offer based on an "as is, where is" basis (within Metropolitan Sydney) to take effect on an agreed date.

7.5 Conditions of sale of plant and equipment

- 7.5.1 The plant and equipment will be transferred on an 'as is where is' basis.
- 7.5.2 The ITS Contractor is not required to utilise RMS plant and equipment in the delivery of the Services.
- 7.5.3 Ownership of the plant and equipment will transfer to the ITS Contractor on the date agreed for the transfer. After the transfer of the plant and equipment RMS will have no obligation or liability in relation to the performance of the plant and equipment.
- 7.5.4 Stamp duty on sale and any other associated charges will be met by the ITS Contractor(s).

7.6 Payment for the plant and equipment transferred

- 7.6.1 The price for the plant and equipment transferred to the ITS Contractor may be deducted from payments due to the ITS Contractor following the Full Services Commencement Date.

8 Establishment of depots

8.1 Background

- 8.1.1 The ITS Contractor must establish depot facilities to support the delivery of Services under the ITS MC. The ITS Contractor may establish its own depots or use existing available RMS depot facilities.
- 8.1.2 RMS currently delivers road maintenance, minor improvement works, traffic services and other operations from a number of depots owned by RMS across Sydney.
- 8.1.3 RMS will make available existing RMS depot facilities to the ITS Contractor, through consolidation of RMS's remaining activities. RMS will provide to the ITS Contractor control and exclusive access of the RMS depots for use on the ITS MC, except to the extent of the remaining RMS facilities noted in section 8.3 below.
- 8.1.4 The ITS Contractor will be offered a licence to use the available depot facilities within its Zone to deliver the works under the ITS MC. The ITS Contractor at its discretion may choose whether to utilise none, part or all of the available RMS depots for delivery of the ITS MC.

8.2 Depot Management Plan

- 8.2.1 The ITS Contractor must develop the Depot Management Plan to detail its strategy and plan for depot facilities to deliver the Services.
- 8.2.2 The Depot Management Plan must:
 - a) be submitted within 20 Business Days after the Commencement Date;
 - b) contain the contents specified in this Brief for Transition Services; and
 - c) be substantively based and consistent with the Initial Depot Management Plan provided at the RFP Stage.
- 8.2.3 The Depot Management Plan must include the following:
 - a) Location of depot facilities for delivery of Services under the ITS MC.
 - b) Layout of the proposed depot(s) including any proposed improvements.
 - c) Organisation of the Services workforce and management to be established between the depot(s).
 - d) Management process for any improvement proposal:
 - e) WHS requirements and strategy for the depot
 - f) Fire and life safety assessment for the depot.
 - g) Timeframe for establishment of the depot and development of any improvements, including the transfer of RMS depots to the ITS Contractor.
 - h) Plan to establish services in relation to the depot locations and any plan to base services at another temporary depot location.

8.3 RMS depots

8.3.1 The RMS depots to be available for the ITS Contractor are detailed as follows:

Zone	Depot	Address	Available Area for ITS Contractor	Remaining Facilities
Metro East Zone	Rockdale	422 West Botany Street, Rockdale	Approx 250m ²	TEPS and driver aid compound and access.

[Note to proponents: this table currently represents the availability of the depots and will be replaced by the response to the RFP for each ITS Contractor detailing the planned use for each depot.]

- 8.3.2 The RMS Depots have various existing temporary and permanent improvements. The existing improvements will be available for the ITS Contractor to use, except for the remaining facilities above.
- 8.3.3 The ITS Contractor must allow for the remaining facilities to be maintained at the RMS depots. The ITS Contractor must allow adequate access to the remaining facilities to allow RMS to undertake the intended function of the facilities. The ITS Contractor shall ensure there is clear demarcation between RMS remaining facilities and those of the ITS Contractor.

8.4 Process for transfer of RMS depots

- 8.4.1 The ITS Contractor and RMS will undertake a collaborative process to develop a process to transfer control and responsibility for the RMS depots to be transferred to the ITS Contractor where the ITS Contractor wishes to use the RMS depots. The process will identify the date for the transfer of control of the RMS depots.
- 8.4.2 RMS will retain control of the RMS depot facilities during the Mobilisation Stage. Control of the RMS Depots will be transferred to the ITS Contractor at a date agreed during the Start-Up Stage.
- 8.4.3 The ITS Contractor must prepare a condition survey before the date of transfer of control of the RMS depot.
- 8.4.4 RMS must confirm in writing acceptance that the condition survey provided by the ITS Contractor represents an accurate condition of the depot prior to the transfer of control of the RMS depots.
- 8.4.5 The transfer of the RMS depots will be on an as is basis at the date of the transfer.

8.5 Conditions for licence of RMS Depot

- 8.5.1 RMS and the ITS Contractor must execute a licence within 6 weeks of the Commencement Date in the form provided in Schedule 21.
- 8.5.2 RMS will continue to provide property management services at the depots in accordance with the licence agreement.

8.6 Depot facility costs

- 8.6.1 The ITS Contractor must provide a detailed breakdown of all depot facility costs within the Initial Forward Works Program and Forward Works Program.

9 Existing RMS legacy contracts

9.1 General

- 9.1.1 RMS has in place a number of legacy maintenance contracts with varying expiry dates as indicated in the ITS MC Services Requirements.
- 9.1.2 The ITS Contractor's responsibilities in respect of the assets maintained under these contracts are as outlined in the ITS MC Services Requirements.
- 9.1.3 During the Transition Stage, the ITS Contractor must develop interface protocols governing the interface between the different service providers. RMS will assist the ITS Contractor including by arranging meetings and workshops with the respective service providers to discuss the arrangements and developing or modifying its own procedures to suit the new arrangements.

9.2 Alternative proposals for delivery of legacy contract services

- 9.2.1 RMS will provide further details of the legacy maintenance contracts to the ITS Contractor after the Commencement Date. The information provided may be subject to confidentiality arrangements or contain information that it is commercially sensitive.
- 9.2.2 The ITS Contractor may propose alternative arrangements for delivery of maintenance to any assets being maintained by other service providers (e.g. maintenance of TIRTL and HARE detectors at HVCS). This may include novating, renegotiating or amending the scope of the legacy contract. RMS will reasonably consider any such proposal but is not obliged to accept it. In considering any such proposal, RMS will consider:
 - a) Whether the proposal represents value-for-money;
 - b) The impact of the proposal on the incumbent service provider, and the service provider's views;
 - c) Commercial and contractual risk associated with the proposal; and
 - d) Any other matters that RMS considers relevant.
- 9.2.3 In providing a proposal, the ITS Contractor must address the above matters and set out what actions are required of RMS to execute the proposed alternative arrangements.
- 9.2.4 If RMS accepts any such proposal, the acceptance may be conditional.

10 Knowledge transfer

10.1 General

- 10.1.1 RMS staff have developed a considerable level of knowledge and experience of Assets through the provision of maintenance and other Services.
- 10.1.2 RMS has conducted its own process to map the key knowledge and experience of RMS staff.
- 10.1.3 RMS will share with the ITS Contractor the details of the RMS staff with specialist knowledge and experience relevant to the Zone.
- 10.1.4 The ITS Contractor must develop and implement its strategy for knowledge transfer in the Transition Stage. The knowledge transfer strategy may include:
 - a) Direct employment of the relevant staff;
 - b) Conducting collaborative workshops to facilitate knowledge transfer;
 - c) Training of staff;
 - d) Formalisation of knowledge in the ITS Contractor's systems and processes.

10.2 Knowledge transfer strategy

- 10.2.1 The ITS Contractor must develop a knowledge transfer strategy as part of the Transition Management Plan. The knowledge transfer strategy must detail the following:
 - a) The process and methodology for the ITS Contractor to capture key knowledge to deliver the ITS MC efficiently and effectively;
 - b) Key issues and risks that need to be addressed through the development of adequate knowledge sources;
 - c) Sources of knowledge from RMS or RMS personnel that need to be captured in the knowledge transfer strategy;
 - d) Systems required to capture the knowledge and make it available for personnel working on the ITS MC with the ITS Contractor; and
 - e) The time commitment of RMS personnel required to support the delivery of the knowledge transfer strategy.
- 10.2.2 RMS will assist the ITS Contractor to make available its personnel, systems and support where reasonably possible to support the delivery of the ITS Contractor's knowledge transfer strategy.
- 10.2.3 RMS at its discretion will not make available to the ITS Contractor any knowledge that is deemed commercially confidential or sensitive.
- 10.2.4 The ITS Contractor must identify any training requirements needed as part of the knowledge transfer strategy. This may include reasonable use of RMS staff and resources as a mechanism to transfer critical knowledge of the Assets.

II Finalisation of the Initial Forward Works Program

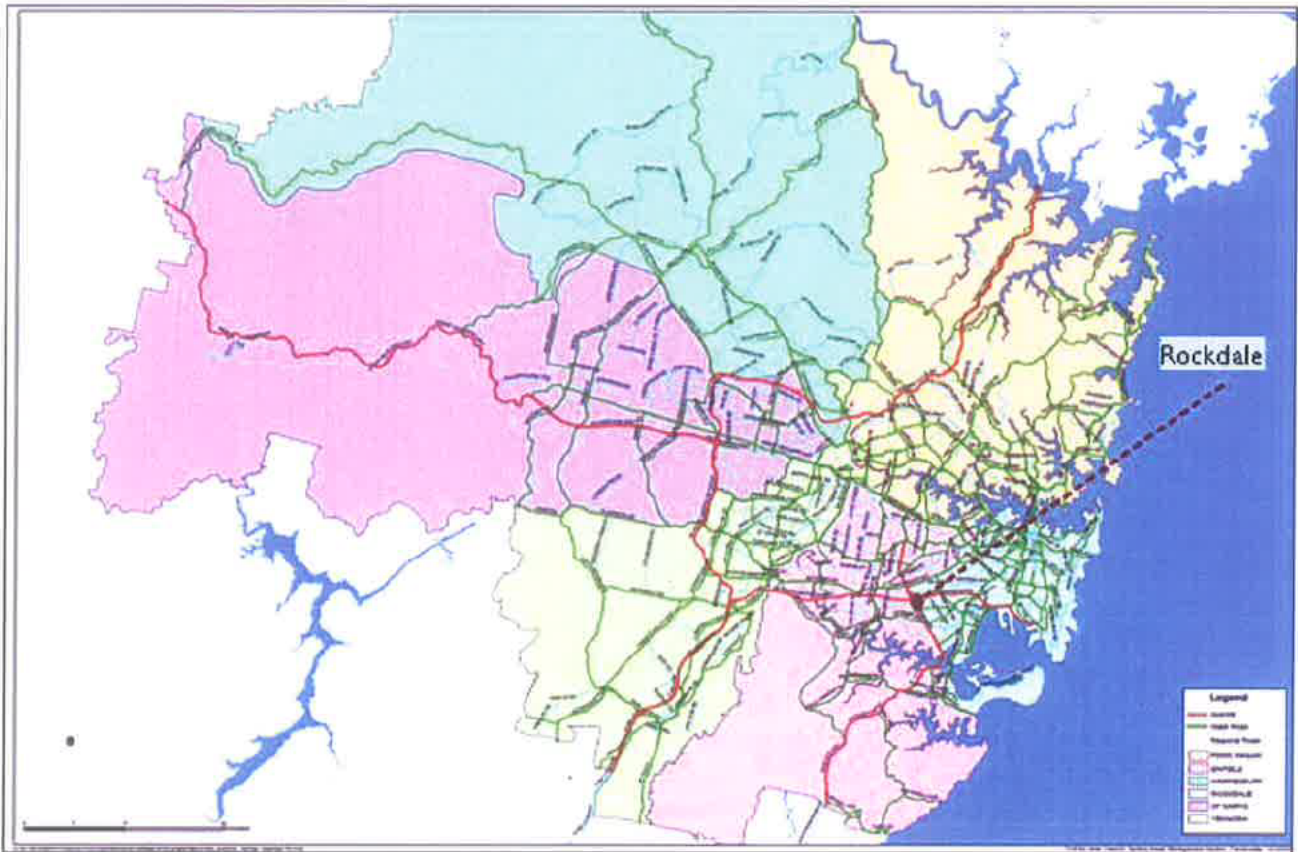
II.1 General

- II.1.1 RMS and the ITS Contractor are to develop and agree the Initial Forward Works Program during the Mobilisation Stage.
- II.1.2 The Initial Forward Works Program must be consistent with the Draft Initial FWP.
- II.1.3 The ITS Contractor and RMS are to:
 - a) Develop project briefs and target costs for the provisional outputs identified in the Initial FWP Brief;
 - b) Develop and agree target costs for routine services not priced in the RFP;
 - c) Develop and agree the detailed procedures for measurement of the KPIs, where needed; and
 - d) Resolve any residual issues relating to the Draft Initial FWP pricing (provided as part of the RFP). (e.g. qualifications).

Appendix I Depot Information

Depot locations are in the following Zones

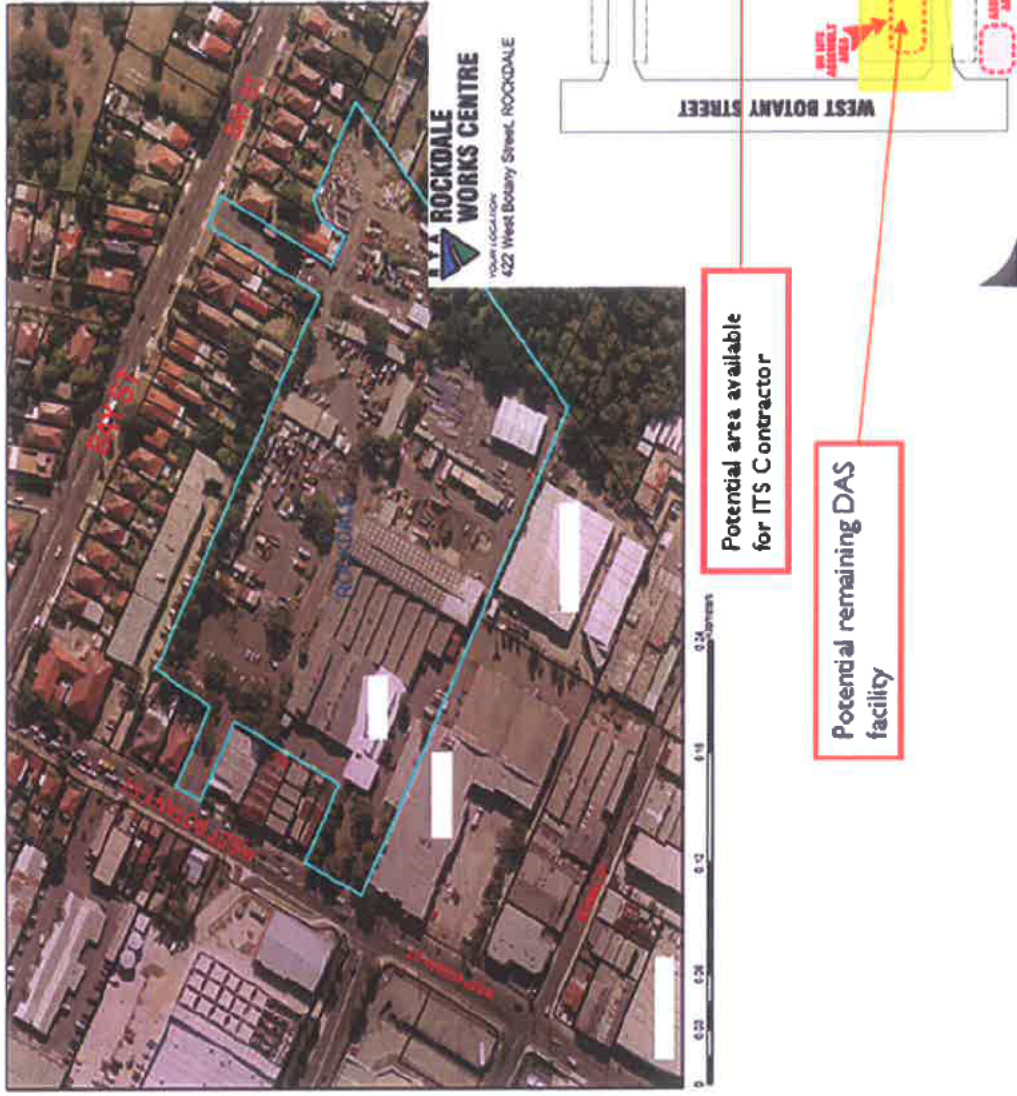
- a) Metro East Zone - Rockdale



Depot Details

Depot	Owned / Leased	Land Area (m ²)	Int Floor Area (m ²)	Current Use	Future Use
Rockdale	Owned	33,305	7,800	ITS Traffic Signals, RFS Civil Works, RFS Bridge Services, RFS Fleet Workshop, RFS Special Event Signage, ETS Survey, Driver Aid Location	SMC South Zone Service Provider ITS MC Metro East ITS Contractor Driver Aid Location (As determined by RMS)

RTA Rockdale



Appendix 2 Items for Sale

Description	Quantity	Comments
PTF Test Housing & Module	1	
DELTA3 Test Housing & Module	1	
Thermoline Environmental Chamber	1	
PSC N12 Test Housing & Module	1	
PSC Test Station Phillips TMS	1	
Oscilloscope 240V with cart	1	
Lift Stacker Crown	1	
Lift Stacker HYTSU	1	
Generator Honda EV201	5	
Arrow Board Small LED 12V	1	
Wrench Impact Drive 18V	5	
Wrench Impact Cordless 18V	2	
Drill Driver 18V	2	
Suparule Cable Height Meter	1	
Desoldering System ST-75E	3	
Cleaner Ultrasonic EL/Component	1	
Saw Electric	1	
Saw Demolition Quick Cut	1	
Detector Pipe/Cable	2	
Saw Concrete Cutter	1	
Smart Class ADSL (A) Tester & Complete	5	
Rammer Petrol driven	2	
Soundpro Datalogging Meter	1	
Boxed trailer (single axle 750 kg)	1	
White classic trailers (dual axle 2000kg)	4	
Compressor 60<90L/Sc	2	Leased
EPV (Truck Mounted Type) 5<10m Reach	2	Leased
Scissor Lift Truck NVE - 9 Metre	1	Leased
Truck GVM 1 to 6000	1	Leased
Truck GVM 1 to 9000	2	Leased
Truck GVM 6001 to 9000	4	Leased
Truck GVM 9001 to 12000	8	Leased
Vehicles for field staff	67	Leased

RFS also maintains stock of ITS spare parts, including spare parts for traffic signals controllers which are no longer supported by the Original Equipment Manufacturers. Some of these spare parts may also be offered to the ITS Contractor for purchase. An inventory of available spares will be provided in the RFP.

SCHEDULE 8

PROCEDURE FOR DEVELOPING AND UPDATING THE FORWARD WORKS PROGRAM

1. **DEVELOPMENT OF THE FORWARD WORKS PROGRAM**
- 1.1 No later than 9 months prior to the expiry of each Works Period, RMS will provide the ITS Contractor with the Forward Works Program Brief relating to the next Works Period and, at RMS' discretion, an updated version of the Overarching Asset Maintenance Plan.
- 1.2 Following receipt of the documents contemplated by paragraph 1.1, the ITS Contractor must, in collaboration with RMS, commence development of a Forward Works Program Proposal for the next Works Period which:
 - (a) outlines how the ITS Contractor will achieve the outcomes specified in the Forward Works Program Brief and the objectives of the Overarching Asset Maintenance Plan;
 - (b) addresses the requirements of section 4 of this Schedule; and
 - (c) addresses any other matters that RMS and the ITS Contractor have agreed will be addressed in the Forward Works Program Proposal.
- 1.3 No later than 6 months prior to the expiry of each Works Period, the ITS Contractor must submit to RMS for its review and comment a draft Forward Works Program Proposal for the next Works Period.
- 1.4 Following submission of a draft Forward Works Program Proposal under paragraph 1.3, RMS and the ITS Contractor must collaboratively discuss and agree the manner in which the initial draft Forward Works Program Proposal will be further developed and amended.
- 1.5 No later than 4 months prior to the expiry of each Works Period, the ITS Contractor must submit to RMS a Forward Works Program Proposal for the next Works Period.
- 1.6 Within 20 Business Days after submission by the ITS Contractor of a Forward Works Program Proposal to RMS under paragraph 1.5, RMS will notify the ITS Contractor in writing that the Forward Works Program Proposal is:
 - (a) "Agreed";
 - (b) "Agreed (Subject to Conditions)"; or
 - (c) "Not Agreed".
- 1.7 If RMS issues a notice under:
 - (a) paragraph 1.6(a), the Forward Works Program Proposal will become the Forward Works Program for the next Works Period;
 - (b) paragraph 1.6 (b), the Forward Works Program Proposal will become the Forward Works Program for the next Works Period and the ITS Contractor must satisfy the relevant conditions within the time required by RMS; or
 - (c) paragraph 1.6(c) and the time contemplated by clause 7.3(b) of the General Conditions has expired, then clause 7.4 of the General Conditions will apply.
- 1.8 The ITS Contractor must bear all costs that it incurs in preparing all Forward Works Program Proposals.

2. **AMENDMENT OF THE FORWARD WORKS PROGRAM**

- 2.1 If RMS and the ITS Contractor agree under clause 20.2(b) of the General Conditions that amendments are required to the Forward Works Program, the ITS Contractor must, in collaboration with RMS, commence development of a Forward Works Program Amendment Proposal which:
- (a) details the effect that the amendments will have, if any, on the Services to be provided under the Forward Works Program; and
 - (b) details any changes to the commercial basis on which the Services are to be provided.
- 2.2 No later than 20 Business Days after RMS and the ITS Contractor reach agreement under clause 20.2(b) of the General Conditions, the ITS Contractor must submit to RMS a Forward Works Program Amendment Proposal which addresses the requirements of paragraph 2.1.
- 2.3 Within 10 Business Days after submission by the ITS Contractor of a Forward Works Program Amendment Proposal, RMS will notify the ITS Contractor in writing that:
- (a) the Forward Works Program Amendment Proposal is "Agreed";
 - (b) "Agreed (Subject to Conditions)"; or
 - (c) the Forward Works Program Amendment Proposal is "Not Agreed".
- 2.4 If RMS issues a notice under:
- (a) paragraph 2.3(a), the Forward Works Program will be amended in the manner contemplated by the Forward Works Program Amendment Proposal; or
 - (b) paragraph 2.3(b), the Forward Works Program will be amended in the manner contemplated by the Forward Works Program Amendment Proposal and the ITS Contractor must satisfy the relevant conditions within the time required by RMS
 - (c) paragraph 2.3(c) and the time contemplated by clause 20.2(b)(i) of the General Conditions has expired, clause 20.2(c) of the General Conditions will apply.
- 2.5 The ITS Contractor must bear all costs that it incurs in preparing all Forward Works Program Amendment Proposals.

3. **REQUIREMENTS FOR FORWARD WORKS PROGRAM PROPOSALS**

- 3.1 Each Forward Works Program Proposal must include details of the proposed arrangements for the provision of the Services that will be the subject of the relevant Forward Works Program.
- 3.2 These details include:
- (a) scope of and detailed estimates for the Services to be provided;
 - (b) the proposed delivery program for the Services;
 - (d) proposed Milestones for relevant elements of the Services;
 - (c) details of all elements of the Services that are to be performed by Subcontractors;

- (d) details of any departures from the Forward Works Program Brief to apply to applicable aspects of the Services;
- (e) a detailed risk assessment for the Services;
- (f) the proposed contingency allowances for each element of the Services;
- (g) the proposed cash flow for the Services;
- (h) comments on the Payment Types specified by RMS in the Forward Works Program Brief for each Service Category;
- (i) details of any proposed changes to:
 - (i) the Key Performance Indicators and Key Result Areas and their associated weightings;
 - (ii) the rates set out in Pricing Tables 8A, 8B and 9A, for the next Works Period;
- (j) details of any proposed changes to the RMS Specifications;
- (k) details of any key dependencies;
- (l) a benchmarking report providing historical details of outcomes achieved and respective costs including detailed reconciliation of the cost of providing similar services against the current estimates;
- (m) details of lessons learnt outlining what has worked well and what has not worked well in previous FWPs (including the Initial FWP) and setting out how the ITS Contractor intends to improve on previous performance with the benefit of these lessons learnt;
- (n) all other documents, plans, specifications and information that that are required to be provided by the ITS Contractor as part of a Forward Works Program Proposal by any other provisions of this document; and
- (o) any other details required by RMS.

3.3 All pricing for the Services that will be the subject of the Forward Works Program must reflect the Efficiency Commitment.

4. **DETAILS TO BE INCLUDED IN THE FORWARD WORKS PROGRAM BRIEF**

4.1 Each Forward Works Program Brief will set out:

- (a) the outcomes required by RMS from the Services provided by the ITS Contractor;
- (b) the Services that are required to be provided by the ITS Contractor;
- (c) relevant works and services that will be performed by RMS to enable the ITS Contractor to provide the Services;
- (d) RMS' proposed commercial arrangements for the provision of each Service Category, including the Payment Type for each Service Category; and
- (e) such other details and requirements as RMS considers appropriate.

SCHEDULE 9
INITIAL FORWARD WORKS PROGRAM BRIEF

ITS Maintenance Contracts (ITS MC) – Sydney

Schedule 9 – Initial Forward Works Program Brief

February 5 2014

Contents

1	Introduction.....	6
1.1	Background	6
1.2	Purpose of this document.....	6
2	Scope of Services for Initial FWP.....	8
2.1	Overview	8
2.2	Scope of Services.....	8
3	Program Positions.....	19
3.1	Overview	19
3.2	Initial Forward Works Program – Program Positions.....	19
3.3	Likely Special Projects Proposals (SPP) - Program Positions.....	21
4	Indicative FWP 2015/17	22
5	Indicative Timeline	24
5.1	Indicative Planning Timeline for Initial FWP.....	24
5.2	Indicative Planning Timeline for Special Project Proposals	25
6	Exclusions	26
6.1	Overview.....	26

Appendices

Appendix 1	Detailed Scope of Works - VMS.....	27
Appendix 2	Detailed Scope of Works – Traffic Control Signals	28

Definitions

Defined terms used in this document have the same meaning as those used in the ITS Maintenance Contract document.

List of Abbreviations:

AMP	Asset Maintenance Plan
CBD	Central Business District (Sydney)
CCTV	Closed Circuit Television
CMCS	Central Management Computer System
CMO	Contract Management Office
CTOC	Chief Traffic Operations Controller (TMC)
COB	Compliance Operations Branch
DAS	Driver Aid Services
DBYD	Dial Before You Dig
EWS	Emergency Warning System
FWP	Forward Works Program
HVCS	Heavy Vehicle Checking Station
ITS	Intelligent Transport System
ITS MC	ITS Maintenance Contract
ITSMCSR	ITS MC Scope and Services Requirements
KPI	Key Performance Indicator
Initial FWP Brief	Initial Forward Works Program Brief (this document)
LUMS	Lane Use Management Sign
MIW	Minor Improvement Works
OAMP	Over-arching Asset Maintenance Plan

ITS Maintenance Contracts (ITS MC) – Initial Forward Works Program Brief

OEM	Original Equipment Manufacturer
PSMC	Performance-Specified Maintenance Contract for North East Sydney let to Downer
RFP	Request for Proposal
RMS	Roads and Maritime Services
RWIS	Road Weather Information System
SCATS	Sydney Coordinated Adaptive Traffic System
SHB	Sydney Harbour Bridge
SMC	Stewardship Maintenance Contract
SPP	Special Projects Proposal
SZAS	School Zone Alert Sign
TCS	Traffic Control Signals
TEPS	Traffic Emergency Patrol Works
TFS	Tidal Flow System
TIRTL	The Infra Red Traffic Logger
TfNSW	Transport for New South Wales
TMC	Transport Management Centre, New South Wales
TMU	Traffic Monitoring Units
TTIS	Travel Time Information System
UPS	Uninterruptable Power Supply
VMS	Variable Message Signs
VSLs	Variable Speed Limit Signs
WAE	Work as Executed (drawings)

ITS Maintenance Contracts (ITS MC) – Initial Forward Works Program Brief

WH&S	Work Health and Safety
WIM	Weigh-In-Motion

1 Introduction

1.1 Background

- 1.1.1 RMS develops and delivers a number of programs to improve the safety, reliability and performance of existing ITS assets and to improve the safety and efficiency of the road network through improvement projects such as the installation of new ITS assets.
- 1.1.2 Programs are funded by the NSW Government (Treasury), typically on an annual planning/budgeting cycle. Funds are allocated to the relevant Program Positions at the beginning of each financial year, allowing RMS to plan and prioritise the works which can be delivered during that financial year. Such works include recurrent maintenance activities, strategic renewal/replacement of ITS assets and Minor Improvement Works.
- 1.1.3 Under the ITS MC's the Forward Work Program (FWP) is a mechanism within which RMS and the ITS Contractor will develop and agree the scope of Services to be delivered during each FWP period. The requirements for preparation and review of the FWP are described in Schedule 2 – ITS MC Services Requirements part 4.3. The FWP is subject to an annual review cycle (with a rolling 2 year look-ahead) in order to align it with RMS's funding constraints, priorities and strategic planning objectives.
- 1.1.4 RMS may from time to time request the ITS Contractor to deliver additional Services, not included in the FWP. Such Services will be developed and agreed as Special Project Proposals (SPP's).

1.2 Purpose of this document

- 1.2.1 The purpose of this Initial Forward Work Program Brief document is to describe the scope of Services which will be delivered by the ITS Contractors during the Initial FWP period of the ITS MC, nominally a nine (9) month period from 1 October 2014 to 30 June 2015 or an alternative timeframe to be agreed by RMS and the ITS Contractor. The Initial FWP Brief also provides guidance on the indicative funding likely to be available under various Program Positions for FY2014/15, FY2015/16 and FY2016/17.
- 1.2.2 This Initial FWP Brief has been provided to Proponents during the Request for Proposal (RFP) stage. Proponents will submit a draft proposal for the Initial FWP in accordance with Attachment 2 – RFP Information Requirements Table 1 part 3.6.
- 1.2.3 Following contract award and during the Transition Stage, RMS and the ITS Contractor will work collaboratively to finalise and agree all residual aspects of the ITS Contractor's proposal for the Initial FWP.
- 1.2.4 Once finalised, the ITS Contractor will deliver the Services in the agreed Initial FWP during the Initial Works Period.
- 1.2.5 This Initial FWP Brief sets out:
 - a) RMS' required outcomes for the Initial FWP;
 - b) Indicative timeline leading up to, and during the Initial Works Period;
 - c) Services which will be provided by the ITS Contractor;
 - d) RMS' intended commercial arrangements including pricing structure for the Initial FWP; and
 - e) Applicable performance measures for the Initial FWP.
- 1.2.6 In defining the Services to be provided, this Initial FWP Brief should be read in conjunction with the broader ITS MC documents, and in particular:
 - a) ITS MC Brief for Transition Services;
 - b) ITS MC Services Requirements which describes the requirements for performing the Services;
 - c) ITS MC Asset Definition Specification which defines the broad range of Assets that are under the ITS Contractor's Stewardship;
 - d) ITS MC Commercial Framework;

ITS Maintenance Contracts (ITS MC) – Initial Forward Works Program Brief

- e) ITS MC Performance Framework; and
 - f) RMS Specifications.
- 1.2.7 In order to establish the ITS Contractor in a Stewardship role over the Assets within the ITS Contractor's Zone, RMS seeks the following outcomes from the Initial FWP:
- a) To execute a smooth and successful transition from current service delivery arrangements to the ITS Contractor;
 - b) To successfully deliver an agreed program of works which provides the ITS Contractor with an opportunity to learn about the Assets, within agreed commercial targets;
 - c) To develop and agree a "baseline" for the inventory, condition, performance and cost of maintaining the Assets;
 - d) To establish an effective working relationship between the ITS Contractor, RMS and other key stakeholders; and
 - e) To establish robust service delivery systems, plans and procedures.

2 Scope of Services for Initial FWP

2.1 Overview

- 2.1.1 The main purpose of the ITS MC is to undertake maintenance and renewal/replacement of Assets within the Sydney Metropolitan Area as well as selected Assets outside Sydney (in some cases NSW wide) which are currently being maintained and supported by RMS through its Sydney Workforce.
- 2.1.2 Some new ITS installation projects will also be included in the ITS MC scope as Minor Improvement Works. Specific projects which have not been sufficiently identified and defined in time for inclusion in the Initial FWP will be treated as Special Project Proposals (SPP's). Table 1 outlines the types of projects which will be undertaken as part of the ITS MC Services.

Table 1: Project Types Included in ITS MC Services

Scope of Works	Included in ITS MC
Civil Works only	No
Major Civil Works with Minor ITS works	No
Major ITS Works with Minor Civil Works	Yes
ITS only	Yes

- 2.1.3 Indicative timeline – the parties are to work together collaboratively to complete the development and delivery of FWPs as indicated below:
- Target Contract Award 30 May 2014, commence finalisation of Initial FWP during Transition Stage.
 - Agree Initial FWP, 10 days prior to Full Services Commencement Date (FSCD).
 - Deliver Initial FWP, from FSCD until 30 June 2015 (Initial Works Period).
 - Develop and agree ensuing FWP (notionally for 2015/2016 and 2016/2017) during the Initial FWP period in accordance with the ITS MC Requirements.

2.2 Scope of Services

- 2.2.1 The Service categories required to be included in the Initial FWP and delivered during the Initial Works Period are outlined in Table 2.

Table 2: Scope of Services in Initial FWP

Service Category	Services Requirements	Commercial Arrangements
Program Management	Refer ITS MC Service Requirements (section 2, table 1 S.1)	<ul style="list-style-type: none"> RMS requires Program Management to be a Priced Component for the Initial FWP and ensuing FWP (July 2015 to June 2017) Program Management services will commence on the Full Services Commencement Date unless otherwise agreed by RMS Any site overheads that are needed as part of a project should be priced as Service Category Overheads. It is expected that all project management, top level supervision and all administration will be included within Program Management.

ITS Maintenance Contracts (ITS MC) – Initial Forward Works Program Brief

Service Category	Services Requirements	Commercial Arrangements
		<ul style="list-style-type: none"> The overarching organisation including supporting facilities must be sufficient to be able to deliver the SPPs. However, additional project management and site supervision needed to deliver the SPPs may be priced in the SPP. For the avoidance of doubt, Program Management includes for the preparation of SPPs.
Asset Management	Refer ITS MC Service Requirements (section 2, table I S.2)	<ul style="list-style-type: none"> RMS requires Asset Management to be priced as a Target Cost for the Initial FWP. Pricing is to be provided during the Initial FWP, for years 2 & 3 for Asset Management on a Price Component basis. Asset Management services will commence upon Full Services Commencement Date unless otherwise agreed by RMS. Asset Management is to be priced on a 9 month duration.
Asset Inspections Works	Refer ITS MC Service Requirements (section 2, table I S.3)	<ul style="list-style-type: none"> RMS requires Asset Inspections to be priced as a Target Cost for the Initial FWP, provided on an annual basis and then adjusted for 9 months. To support the pricing, estimated quantities of accomplishment are required to provide an indication of relative effort.
Planned Maintenance Works	Refer ITS MC Service Requirements (section 2, table I S.4)	<ul style="list-style-type: none"> RMS requires Planned Maintenance Works to be priced as a Target Cost for the Initial FWP, provided on an annual basis and then adjusted for 9 months. To support the pricing, estimated quantities of accomplishment are required to provide an indication of relative effort.
Reactive Maintenance Works	Refer ITS MC Service Requirements (section 2, table I S.5)	<ul style="list-style-type: none"> RMS requires Reactive Maintenance Works to be priced as a Target Cost for the Initial FWP, provided on an annual basis and then adjusted for 9 months. To support the pricing, estimated quantities of accomplishment are required to provide an indication of relative effort.
Incident Support	Refer ITS MC Service Requirements (section 2, table I S.6)	<ul style="list-style-type: none"> Services will be provided on a Cost Plus basis as detailed within the ITS MC and related documents.
Minor Improvement Works and Strategic Asset Renewal / Replacement Works (Special Projects)	Refer ITS MC Service Requirements (section 2, table I S.7)	<ul style="list-style-type: none"> This service category is to be priced as a Target Cost. At this stage no specific project briefs are available. Some projects may be required to be priced and included in the Initial FWP during transition or alternatively will become SPPs when available. Costs for developing SPPs are covered under Program Management but by agreement with RMS may include external design, investigations or specialist input. Any other management costs such as proposal management, estimating, scheduling, and the like required are to be included for in Program Management.
Facilities Support Services	Refer ITS MC Service Requirements (section 2, table I S.8)	<ul style="list-style-type: none"> To be included in the pricing for the Initial FWP as detailed within the Reference Pricing Schedule.

2.2.2 Table 3 below sets out specific maintenance related Services to be delivered by the ITS Contractor during the Initial Works Period and included in the Initial FWP. (N.B. This list is not necessarily comprehensive and complete.)

Table 3: Scope of Services for Assets Maintenance

ITS ASSET TYPE	SCOPE OF SERVICES (MAINTENANCE)
<p>Traffic Control Signals (TCS)</p>	<p>Scope of Services for Traffic Control Signals under the ITS maintenance contract may include, but is not limited to:</p> <ul style="list-style-type: none"> a) Inspections b) Planned Maintenance Works (Routine/Preventative Maintenance); c) Reactive Maintenance Works (Fault Maintenance); d) Incident Support; <ul style="list-style-type: none"> • Incident Support includes responding to vandalism, traffic accidents or natural disasters which result in TCS asset defects or faults. • Incident Support may initially involve Asset Inspection and those Reactive Maintenance activities necessary to make the site safe, followed by repair or replacement of damaged assets. It may also include connection of portable generators to Traffic Signals during prolonged power outages. <p>All TCS works under this program shall be carried out in accordance with the TCS maintenance specifications R301.</p> <p>All Graffiti removal from Traffic Signal Controller Boxes shall be carried out in accordance with the specifications.</p>
<p>Variable Message Signs (VMS);</p>	<p>Scope of Services for Variable message Signs (VMS) under the ITS maintenance contract may include, but is not limited to:</p> <ul style="list-style-type: none"> a) Inspections b) Planned Maintenance Works (Routine/Preventative Maintenance); c) Reactive Maintenance Works (Fault Maintenance); <p>All VMS inspections shall be carried out in accordance with the VMS maintenance specifications R302</p> <ul style="list-style-type: none"> d) Incident Support; <ul style="list-style-type: none"> • Incident Support includes responding to vandalism, traffic accidents or natural disasters which result in VMS defects or faults. • Incident Support may initially involve Asset Inspection and those Reactive Maintenance activities necessary to make the site safe, followed by repair or replacement of damaged assets in accordance with VMS Maintenance specifications R302.

ITS Maintenance Contracts (ITS MC) – Initial Forward Works Program Brief

ITS ASSET TYPE	SCOPE OF SERVICES (MAINTENANCE)
Variable Speed Limit Signs (VSLs)	<p>Scope of Services for Variable Speed Limit Signs under the ITS maintenance contract may include, but is not limited to:</p> <ul style="list-style-type: none"> a) Inspections b) Planned Maintenance Works (Routine/Preventative Maintenance); c) Reactive Maintenance Works (Fault Maintenance); <p>All VSLs inspections shall be carried out in accordance with the VSLs maintenance specifications R303</p> <ul style="list-style-type: none"> d) Incident Support; <ul style="list-style-type: none"> • Incident Support includes responding to vandalism, traffic accidents or natural disasters which result in VSLs defects or faults. • Incident Support may initially involve Asset Inspection and those Reactive Maintenance activities necessary to make the site safe, followed by repair or replacement of damaged assets in accordance with VSLs Maintenance Specifications R303.
Tidal Flow Systems and Lane Use Management Systems	<p>Scope of Services for Tidal Flow Systems under the ITS maintenance contract may include, but is not limited to:</p> <ul style="list-style-type: none"> a) Inspections b) Planned Maintenance Works (Routine/Preventative Maintenance); c) Reactive Maintenance Works (Fault Maintenance); <p>All TFS and LUMS inspections shall be carried out in accordance with the TFS maintenance specifications R305 and LUMS Maintenance specifications R316.</p> <ul style="list-style-type: none"> d) Incident Support; <ul style="list-style-type: none"> • Incident Support includes responding to vandalism, traffic accidents or natural disasters which result in TFS and LUMS defects or faults. • Incident Support may initially involve Asset Inspection and those Reactive Maintenance activities necessary to make the site safe, followed by repair or replacement of damaged assets in accordance with TFS Maintenance Specifications R305 and LUMS Maintenance specifications R316.

ITS Maintenance Contracts (ITS MC) – Initial Forward Works Program Brief

ITS ASSET TYPE	SCOPE OF SERVICES (MAINTENANCE)
<p>Changeable Message Signs/ Prismatic Message Signs (CMS/PMS);</p>	<p>Scope of Services for Changeable Message Signs (CMS/PMS) under the ITS maintenance contract may include, but is not limited to:</p> <ul style="list-style-type: none"> a) Inspections b) Planned Maintenance Works (Routine/Preventative Maintenance); c) Reactive Maintenance Works (Fault Maintenance); <p>All CMS/PMS inspections shall be carried out in accordance with the VMS maintenance specifications R320</p> <ul style="list-style-type: none"> d) Incident Support; <ul style="list-style-type: none"> • Incident Support includes responding to vandalism, traffic accidents or natural disasters which result in CMS/PMS defects or faults. • Incident Support may initially involve Asset Inspection and those Reactive Maintenance activities necessary to make the site safe, followed by repair or replacement of damaged assets in accordance with CMS Maintenance specifications R320.
<p>Enforcement systems</p>	<p>Scope of Services for Enforcement Systems as per section 2.0 (excluding devices/ systems as per section 3.0 of this document) under the ITS maintenance contract may include, but is not limited to:</p> <ul style="list-style-type: none"> a) Inspections b) Planned Maintenance Works (Routine/Preventative Maintenance); c) Reactive Maintenance Works (Fault Maintenance); d) Interface support. e) Supporting the interconnection between traffic TCS and enforcement systems. f) Facilitation of electrical power. g) Facilitation of the installation of speed measurement and red light enforcement sensors, which may require the relocation of traffic light loops. <p>All Enforcement Systems (part) inspections shall be carried out in accordance with the Maintenance of Enforcement Systems specifications R319</p> <ul style="list-style-type: none"> h) Incident Support; <ul style="list-style-type: none"> • Incident Support includes responding to vandalism, traffic accidents or natural disasters which result in Enforcement Systems defects or faults. • Incident Support may initially involve Asset Inspection and those Reactive Maintenance activities necessary to make the site safe, followed by repair or replacement of damaged assets in accordance with the Maintenance of Enforcement Systems specifications R319.

ITS Maintenance Contracts (ITS MC) – Initial Forward Works Program Brief

ITS ASSET TYPE	SCOPE OF SERVICES (MAINTENANCE)
<p>Traffic Monitoring Systems - Traffic Monitoring Units (TMUs), Queue Detection System, Traffic Counters, Vehicle Detection and Classification Systems, Weigh-In-Motion Systems, TIRTLs;</p>	<p>Scope of Services for Traffic Monitoring Systems under the ITS maintenance contract may include, but is not limited to:</p> <ul style="list-style-type: none"> a) Inspections b) Planned Maintenance Works (Routine/Preventative Maintenance); c) Reactive Maintenance Works (Fault Maintenance); d) Incident Support; <ul style="list-style-type: none"> • Incident Support includes responding to vandalism, traffic accidents or natural disasters which result in TMUs, WIMs defects or faults. • Incident Support may initially involve Asset Inspection and those Reactive Maintenance activities necessary to make the site safe, followed by repair or replacement of damaged assets in accordance with the relevant Maintenance specifications e.g. R 304, R313, R321,. <p>All Traffic Monitoring Systems' inspections, planned maintenance works, reactive maintenance and Incident Support shall be carried out in accordance with the Maintenance of Vehicle Detection and Classification Systems specifications R313. Traffic Monitoring Unit maintenance and incident support shall be carried out in accordance with the Maintenance of Traffic Monitoring Unit specification R304. Weigh-In-Motion Systems' maintenance and incident support shall be carried out in accordance with the Maintenance of Weigh-In-Motion Systems R321.</p>
<p>Sydney CBD Emergency Warning Systems (EWS)</p>	<p>Scope of Services for Sydney CBD Emergency Warning Systems (EWS) under the ITS maintenance contract may include, but is not limited to:</p> <ul style="list-style-type: none"> a) Inspections b) Planned Maintenance Works (Routine/Preventative Maintenance); c) Reactive Maintenance Works (Fault Maintenance); d) Incident Support; <ul style="list-style-type: none"> • Incident Support includes responding to vandalism, traffic accidents or natural disasters which result in Sydney CBD EWS defects or faults. • Incident Support may initially involve Asset Inspection and those Reactive Maintenance activities necessary to make the site safe, followed by repair or replacement of damaged assets in accordance with the Maintenance of Sydney CBD EWS specifications R314. <p>All Emergency Warning Systems (EWS) inspections, planned maintenance works, reactive maintenance and Incident Support shall be carried out in accordance with the Maintenance of Sydney CBD Emergency Warning System specifications R314.</p>

ITS Maintenance Contracts (ITS MC) – Initial Forward Works Program Brief

ITS ASSET TYPE	SCOPE OF SERVICES (MAINTENANCE)
<p>Road Weather Information Systems – Flood Management Systems, Fog Detection systems, snow and Ice Detection Systems; Wet Weather Systems Excluding Enforcement Cameras;</p>	<p>Scope of Services for Road Weather Information Systems (RWIS) under the ITS maintenance contract may include, but is not limited to:</p> <ul style="list-style-type: none"> a) Inspections b) Planned Maintenance Works (Routine/Preventative Maintenance); c) Reactive Maintenance Works (Fault Maintenance); d) Incident Support; <ul style="list-style-type: none"> • Incident Support includes responding to vandalism, traffic accidents or natural disasters which result in Road Weather Information Systems defects or faults. • Incident Support may initially involve Asset Inspection and those Reactive Maintenance activities necessary to make the site safe, followed by repair or replacement of damaged assets in accordance with the Road Weather Information System Maintenance specifications R308. <p>All Road Weather Information System (RWIS) inspections, planned maintenance works, reactive maintenance and Incident Support shall be carried out in accordance with the Maintenance of Road Weather Information System specifications R308.</p>
<p>Travel Time Information System (TTIS)</p>	<p>Scope of Services for Travel time Information System under the ITS maintenance contract may include, but is not limited to:</p> <ul style="list-style-type: none"> a) Inspections b) Planned Maintenance Works (Routine/Preventative Maintenance); c) Reactive Maintenance Works (Fault Maintenance); d) Incident Support; <ul style="list-style-type: none"> • Incident Support includes responding to vandalism, traffic accidents or natural disasters which result in Road Weather Information Systems defects or faults. • Incident Support may initially involve Asset Inspection and those Reactive Maintenance activities necessary to make the site safe, followed by repair or replacement of damaged assets in accordance with the Travel time Information System Maintenance specifications R306. <p>All Travel time Information System inspections, planned maintenance works, reactive maintenance and Incident Support shall be carried out in accordance with the Maintenance of Travel time Information System specifications R306.</p>

ITS ASSET TYPE	SCOPE OF SERVICES (MAINTENANCE)
Advance Warning Systems	<p>Scope of Services for Advance Warning Systems under the ITS maintenance contract may include, but is not limited to:</p> <ul style="list-style-type: none"> a) Inspections b) Planned Maintenance Works (Routine/Preventative Maintenance); c) Reactive Maintenance Works (Fault Maintenance); d) Incident Support; <ul style="list-style-type: none"> • Incident Support includes responding to vandalism, traffic accidents or natural disasters which result in Road Weather Information Systems defects or faults. • Incident Support may initially involve Asset Inspection and those Reactive Maintenance activities necessary to make the site safe, followed by repair or replacement of damaged assets in accordance with the Advance warning Systems Maintenance specifications R315. <p>All Advance Warning System inspections, planned maintenance works, reactive maintenance and Incident Support shall be carried out in accordance with the Maintenance of the Advance warning System specifications R315.</p>

2.2.3 Table 4 below sets out examples of Asset replacement/renewal and MIW related Services to be delivered by the ITS Contractor during the Initial Works Period. Where specific project briefs are provided by RMS to the ITS Contractor before the Initial FWP is finalised such projects will be included in the Initial FWP, otherwise projects may be delivered as SPP's when project briefs become available.

ITS Maintenance Contracts (ITS MC) – Initial Forward Works Program Brief

Table 4: Scope of Services for Asset Renewal/Replacement and other MIW as Initial FWP or SPP

ITS ASSET TYPE	DESCRIPTION OF WORKS
Traffic Control Signals (TCS)	<p>Scope of Works for Traffic Control Signals under the ITS MC Initial FWP or SPP may include, but is not limited to:</p> <p>Minor Improvement Works and Strategic Asset Renewal/Replacement Works;</p> <p>Examples of Minor Improvement Works include:</p> <ul style="list-style-type: none"> a) Traffic signals reconstruction due to minor intersection improvement works; b) Construction of new traffic signals for road upgrade or road widening works; c) Relocation/modification of existing TCS installations due to RMS' road/rail upgrade projects such as Pinch Point Program, NW Rail Link. <p>Examples of Strategic Asset Renewal/Replacement works include:</p> <ul style="list-style-type: none"> a) End-of-life asset replacement in full or part e.g. controller, push button replacement; b) Technology change/upgrade e.g. new generation controllers; c) Other asset renewal/replacement driven by traffic efficiency and road safety programs;
Tidal Flow Systems (TFS)	<p>Scope of Minor Works for Tidal Flow Systems under the ITS MC Initial FWP or SPP may include but is not limited to:</p> <p>Minor Improvement Works and Strategic Asset Renewal/Replacement Works</p> <p>Examples of Minor Improvement Works include:</p> <ul style="list-style-type: none"> a) Modify semi-automated TFS to fully automated system; b) Installation of new sub system for existing TFS to support RMS' network efficiency improvement objectives; c) new TFS installation driven by network efficiency, road safety etc. <p>Examples of Strategic Asset Renewal/Replacement works include:</p> <ul style="list-style-type: none"> a) End-of-life asset (whole system or part) replacement e.g. in-pavement lights, controller/ replacement; b) Technology change/upgrade; c) Other asset renewal/replacement programs driven by energy efficiency, safety etc.

ITS ASSET TYPE	DESCRIPTION OF WORKS
<p>Changeable Message Signs/ Prismatic Message Signs/Shutter Message Signs (CMS/PMS);</p>	<p>Scope of Minor Works for Changeable Message Signs/ Prismatic Message Signs/Shutter Message Signs under the ITS MC Initial FWP or SPP may include but is not limited to:</p> <p>Minor Improvement Works and Strategic CMS/PMS/SMS Asset Renewal/ Replacement Works;</p> <p>Examples of Minor Improvement Works include:</p> <ul style="list-style-type: none"> a) Convert semi-automated CMS/PMS/SMS to fully automated system; b) Installation of new system to support RMS' network efficiency and safety improvement objectives; c) relocation of existing CMS/PMS/SMS installations (fully or in part) due to RMS' road/rail upgrade projects such as Pinch Point Program, NW Rail Link. <p>Examples of Strategic Asset Renewal/Replacement works include:</p> <ul style="list-style-type: none"> a) End-of-life asset (in full or part) replacement e.g. motor; sign face; b) new technology; c) Other asset renewal/replacement programs driven by traffic efficiency, road safety etc.
<p>Variable Message Signs (VMS);</p>	<p>Scope of Minor works for Variable Message Signs under the ITS MC Initial FWP or SPP may include but is not limited to:</p> <p>Minor Improvement Works and Strategic VMS Asset Renewal/ Replacement Works;</p> <p>Examples of Minor Improvement Works include:</p> <ul style="list-style-type: none"> a) Installation of new VMS to support RMS' objectives through various road safety and traffic efficiency improvement programmes e.g. Pinch Point program. b) Installation of new VMSs for road safety/incident management for major road/rail construction works; c) Relocation of existing VMS due to road upgrade or widening. <p>Examples of Strategic Asset Renewal/Replacement works include:</p> <ul style="list-style-type: none"> a) End-of-life asset replacement such as replacement of electronics, VMS board, controller, LED panels, structure; b) Technology change/upgrade e.g. colour VMS board, new structure design; c) Other asset renewal/replacement programs driven by energy efficiency, traffic efficiency, road safety, etc

ITS ASSET TYPE	DESCRIPTION OF WORKS
Variable Speed Limit Signs (VSLs)	<p>Scope of Minor works for Variable Speed Limit signs (VSLs) under the ITS MC Initial FWP or SPP may include but is not limited to:</p> <p>Minor Improvement Works and Strategic VMS Asset Renewal/ Replacement Works;</p> <p>Examples of Minor Improvement Works include:</p> <ul style="list-style-type: none"> a) Installation of new VSLs as part of weather information system to improve road safety; b) Installation of new VSLs, to support RMS' network efficiency improvement objectives; c) Relocation of existing VSLs due to road widening or upgrade works d) Examples of Strategic Asset Renewal/Replacement Works include: <ul style="list-style-type: none"> • End-of-life asset replacement (in part or full) such as replacement of electronics, controller, LED panel, structure; • Technology change/upgrade; • Other asset renewal/replacement programs driven by energy efficiency, safety, etc.

2.2.4 Project (MIW) related Services within the Initial FWP and SPPs may include but not be limited to:

- a) Concept design;
- b) Community consultation;
- c) Environmental Management Plans;
- d) Road safety audits;
- e) Risk management;
- f) WHS Plans;
- g) Traffic Management Plans
- h) Requirements Specification;
- i) Site survey, including dial before you dig, geotechnical survey and others
- j) Utility Relocation
- k) Detailed Design
- l) Procurement;
- m) Construction / Installation;
- n) Integration into TMC Systems/SCATS;
- o) Testing and commissioning; and
- p) Documentation and drawings including WAE drawings for the system handover.

Detailed project Services scope examples for a Variable Message Sign installation project and a new Traffic Control Signals (TCS) installation project are attached as Appendix 1 and Appendix 2 respectively.

3 Program Positions

3.1 Overview

- 3.1.1 RMS has designated program position numbers for asset maintenance recurrent program and for capital works program. Each program has different categories such as Road Safety, Network Efficiency, Asset Maintenance, Compliance Operations etc. Separate budget is allocated for the planned and reactive maintenance and for MIW and capital works programs. Indicative program codes for Initial FWP and SPPs are provided in Table 5 and Table 6 below
- 3.1.2 The ITS Contractor will not be required to deliver those maintenance works programmed for FY 2014/15, which are currently being delivered by OEMs or specialist contractors under existing ("legacy") contracts. However, the ITS Contractor will be required to coordinate its works with these or other service providers operating in the ITS Contractor's Zone.
- 3.1.3 From time to time the ITS Contractor will be required to prepare SPPs for additional works or Services which have not been included in the current FWP. RMS may accept or reject such proposals depending on funding availability or other reasons.

3.2 Initial Forward Works Program – Program Positions

- 3.2.1 The dollar values in Table 5 are based on the total figures for all of NSW averaged over the last two/three years and are indicative only. Not all available funding or program position codes may be allocated to the ITS MC's. Certain funding and program codes may be delivered via other contracts or arrangements. Funding allocations also include for RMS management of the various programs.
- 3.2.2 Budget allocations to the program codes below for FY 2014/15 will be finalised by RMS in June/July 2014.

Table 5: Initial FWP Program Positions

PROGRAM CODE	PROGRAM POSITION	DESCRIPTION	INDICATIVE ALLOCATION FY2014/15 \$M
22503	Traffic Control Devices	Includes asset inspections, planned maintenance, reactive maintenance and MIW for TCS, other ITS devices and graffiti removal.	\$12M - \$13M
22505	Traffic Facilities Asset Upgrades	Includes upgrade/relocation of TCS and other ITS devices such as VMSs, SMSs, CMSs.	\$4M - \$5M
22802	Information Management	WIM, Traffic Counters & Classifiers maintenance	\$0.1M - \$0.15M
27108	Sydney Congestion Treatments	State funded program to improve network efficiency	\$3M - \$5M
14205	On Road Enforcement	Heavy Vehicle Checking Stations (HVCS) Over-Height Detection System Over-Length Detection System Smoke Enforcement (VEES) Noise Enforcement	Minor \$'s

ITS Maintenance Contracts (ITS MC) – Initial Forward Works Program Brief

PROGRAM CODE	PROGRAM POSITION	DESCRIPTION	INDICATIVE ALLOCATION FY2014/15 \$M
14205	On Road Enforcement	Compliance Operations Heavy Vehicle Checking Stations (HVCS) and Heavy Vehicle Inspection Stations (HVIS) maintenance	\$1.5M - \$1.8M
17801	Fixed Digital Speed Cameras	Compliance Operations Fixed Digital Speed Camera Site Maintenance non school zone Fixed Digital Speed Camera Site Maintenance school zone	\$1M - \$1.5M \$0.5M - \$0.8M
17804	Red Light Speed Cameras	Compliance Operations Redlight - Safety Cameras Maintenance (recurrent)	\$0.5M - \$1M
17805	Point to Point Speed Cameras	Compliance Operations Camera Systems for Point to Point Maintenance (recurrent)	0.1M - \$0.2M
27207	Strategic Bus Operations	Compliance Operations Bus Priority Enforcement Systems BPES Maintenance (recurrent)	\$0.03M - \$0.05M
26XXX	All program codes starting with 26	Projects related to Road Safety	\$ 3.5M - \$ 4.5M

3.3 Likely Special Projects Proposals (SPP) - Program Positions

- 3.3.1 Special project proposals (SPPs) under ITS MC may include but are not limited to work covered under program positions identified in Table 6 below, since it is unlikely that these works will be sufficiently defined in time for their inclusion in the Initial FWP.
- 3.3.2 As requested by RMS from time to time, the ITS Contractors will be required to prepare priced proposals (SPPs) for projects such as new TCS/ITS installations under RMS' road/rail upgrade projects under the Pinch Point Program, NW Rail Link etc.
- 3.3.3 Indicative allocations shown in the table below are based on works currently being carried out by RMS Sydney for Sydney Metropolitan, Northern and Southern regions.

Table 6: Likely SPP Program Positions

PROGRAM CODE	PROGRAM POSITION	DESCRIPTION	INDICATIVE ALLOCATION FY2014/15 \$M
27XXX	All program codes starting with 27 (except 27108 & 27207)	Projects related to Traffic Efficiency	\$ 3.0M - \$ 5.0M
17802	New Enforcement System	Compliance Operations Fixed Digital Speed Camera upgrade (capital)	\$0.3M – 0.5M
22802	Information Management	WIM, Traffic Counters & Classifiers upgrade	\$1M - \$1.5M

4 Indicative FWP 2015/17

4.1.1 An indicative forecast of funding available for FY2015/16 and FY2016/17 is given in Table 7 below. The dollar values are indicative only and at this stage there is no funding approval.

Table 7: Indicative Funding Allocation for FY2015/16 and FY2016/17

PROGRAM CODE	PROGRAM POSITION	DESCRIPTION	INDICATIVE ANNUAL FUNDS 2015/16	INDICATIVE ANNUAL FUNDS 2016/17
22503	Traffic Control Devices	Includes asset inspections, planned maintenance, reactive maintenance and MIW for TCS, other ITS devices and graffiti removal.	\$13.0M	\$13.5M
22505	Traffic Facilities Asset Upgrades	Includes upgrade of TCS and other ITS devices	\$5.0M	\$5.0M
22802	Information Management	WIM Maintenance	\$0.15M	\$0.15M
22802	Information Management	Traffic Counters	\$1.3M	\$1.3M
26XXX	All program codes starting with 26	Projects related to Road Safety	\$4.0M	\$4.0M
27108	Pinch Point program	Design, Install, Commission and hand over VMSs Design, install, commission and handover CCTVs Additional funding for CCTVs and VMS Design, install, commission and hand over TCSs Minor TFS Upgrades	\$2M – VMSs \$1M-CCTVs	\$2M – VMSs \$1M- CCTVs
27XXX	All program codes starting with 27 (except 27108 & 27207)	Projects related to traffic efficiency	\$3.0M	\$3.0M
14205	Heavy Vehicle Checking Stations (HVCS)	Over-Height Detection System Over-Length Detection System Smoke Enforcement (VEES) Noise Enforcement	\$1.5M	\$1.5M

ITS Maintenance Contracts (ITS MC) – Initial Forward Works Program Brief

PROGRAM CODE	PROGRAM POSITION	DESCRIPTION	INDICATIVE ANNUAL FUNDS 2015/16	INDICATIVE ANNUAL FUNDS 2016/17
17801	Fixed Digital Speed Cameras	Compliance Operations Fixed Digital Speed Camera Site Maintenance School zone	\$1.5M	\$1.5M
17804	Red Light Speed Cameras	Compliance Operations Redlight - Safety cameras (maintenance)	\$1.0M	\$1.0M
17805	Point to Point Speed Cameras	Compliance Operations Maintenance of camera systems for Point to Point (recurrent)	\$0.15M	\$0.15M
27207	Strategic Bus Operations	Compliance Operations Bus Priority Enforcement Systems BPES Maintenance (recurrent)	\$0.035M	\$0.035M

5 Indicative Timeline

5.1 Indicative Planning Timeline for Initial FWP

5.1.1 The indicative RMS planning timelines that the ITS Contractor will be working within leading up to and during the Initial Works Period are shown in Figure 1 and Figure 2 below. The ITS Contractor is expected to lead work with RMS, bringing forward the planning phase over the ensuing Works Periods.

Figure 1: A typical RMS program planning cycle for Traffic Facilities Asset Upgrades Program

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Program finalised and work commences												
Monitor program expenditure												
Adjust program allocation				LOW RISK			MEDIUM RISK				HIGH RISK	
Commence program plan for next year												
Draft program plan												
Approved program plan												

Figure 2: A typical RMS program planning cycle for Traffic Efficiency and Improvements Program

	Jan	Feb	Mar	Apr	May	Jun
All regions submit project briefs						
Project briefs reviewed						
Projects approved						
Commence Program Plan for next year						
Draft Program Plan						
Approved Program Plan						

5.1.2 Project delivery timelines for new installation and renewal/replacement projects will vary depending on the type of asset and the agreed scope of works. Given below in Figure 3 is an indicative VMS installation timeline example.

Figure 3: A Typical VMS Project Development and Implementation Timeline

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Project development commences																		
Concept design																		
Detailed design																		
Procurement																		
Implementation																		
Testing and commissioning																		
Project handover																		

RMS - Client	RMS - Internal Service Provider	ITS Contractor
---------------------	----------------------------------------	-----------------------

5.2 Indicative Planning Timeline for Special Project Proposals

5.2.1 The planning and delivery timeline for projects delivered as SPP's will be similar to that for projects delivered under the Initial FWP. RMS may need to adjust or reallocate funding during the Initial Works Period and this may result in some projects being placed on hold in order to reallocate funds to deliver other high priority projects. In this situation, RMS may request the ITS Contractor to prepare SPP's for such projects. RMS recognises that funding allocation changes late in the FWP period may involve higher risk than changes made early in the FWP period (refer Figure 1).

6 Exclusions

6.1 Overview

- 6.1.1 Exclusions to the ITS MC scope of Services are described in Schedule 2 – ITS MC Services Requirements - part 3. The ITS Contractor is not required to perform the excluded works but will be required to coordinate with other Service Providers operating in the ITS Contractor's Zone.
- 6.1.2 The ITS Contractor will not be required to undertake major works under any of the significant transport programs being delivered by the NSW Government during the Initial Works Period. This includes the North West Rail Link, South West Rail Link, the Northern Sydney Freight Corridor program, and Westconnex, Managed Motorways and others. However, ITS Contractor may be required to deliver parts of ITS works included under significant transport programs as Special Projects Proposals.

Appendix I Detailed Scope of Works - VMS

Appendix 1: Detailed Scope of Works - VMS - An Example

Stage 1 - Site Selection & Design	
Major Phase Sub Phase	Elements
Initiation & Concept Design	
Site Identification	'Desktop' Site Survey Site Inspections Site Selection
Location & Placement Selection	Select Placement Location
General Site Layout	GSL Drawing
Minor Works REF	Minor Works REF Report
Council Consultation	Notification, Council Feedback
Community Consultation	Letterbox drop, Community Feedback
Development Ensite Plan	Ensite Workshop/Plan Risk Management Plan
Utilities Report	Dial-Before-You-Dig Reports Utilities Location Report
Road Safety Feasibility & Risk Assessment	Road Safety Feasibility Report Risk Assessment Report
Communications Connection	Communications Connection Quote
Power Connection	Power Connection Quote
Property Survey	Property Boundary Report (1m accuracy)
Footing Recommendation	Geotech Report
Structural Design	General Arrangement Drawing (GA) Utility Adjustment Plan Alignment Plan
Concept Design	Approved Concept Design
Estimate Installation Costs	
Detailed Design	
Detailed Property Investigation	
Visual Impact Assessment	
Finalise Minor Works REF	
Finalise Community Consultation	
Design Review	
Finalise Design	Design Documents (GSL, Structure, Alignment, Communications & Power Connection Plans)
Notify Council & Community	

Stage 2 - Procurement, Installation & Commissioning	
Pre-Construction	
Order VMS, Structure & Footing	Procurement Tender Management Sign Face (Type B) Controller Structure (Type B) Communications Connection
Site Works	
Footing Installation	Alignment Surveying Geotechnical Support Mechanical Engineering Support Footing Installation Crew & Plant Traffic Control Concrete Testing
Maintenance Platform	Concrete Platform (4.5m x 8m)
Structure Installation	
Install support Structure & VMS	Mechanical Engineering Support Structure Installation Crew & Plant Traffic Control
Install & Connect Power and Communications Road Safety Audit (RSA)	
Final Inspection	
Review Test Documentation	
Site Acceptance Test & Inspection	
Submit Drawings to Plan Room	
Update Drawings to 'As-Built'	GSL WAE DBYD Plans
Handover	
VMS Commissioned to Test Bed RDP	
VMS Commissioned to CMCS Production RDP	
Resolve & Close Out NCR's	
Project Documentation Pack	
VMS handover	

Note: It is likely that the Site Selection & Design phase of projects to be completed during the Initial Work Period will be carried out by RMS with SPP requests to the ITS Contractor being for the Procurement, Installation & Commissioning phase only. Projects to be completed in subsequent Work Periods will include Detailed Design and Initiation & Concept Design activities in the ITS Contractor's scope (except for Site Identification which will be by RMS).

Appendix 2 Detailed Scope of Works – Traffic Control Signals

(Refer to Information Document – Installation of Traffic Control Signals)

Note: The workflow in this document describes project activities and sequence before the introduction of ITS Contestability. Specific scopes of work and responsibilities for TCS projects included in the initial FWP or as SPP's will need be agreed between the ITS Contractor and RMS on a project by project basis.