



Transport
Roads & Maritime
Services

Master IT Services Agreement

Dated 29 August, 2013

Roads and Maritime Services
(ABN 76 236 371 088) ("RMS")

[Faint, illegible text]

Itree Pty Ltd
(ABN 82 072 883 124) ("Supplier")

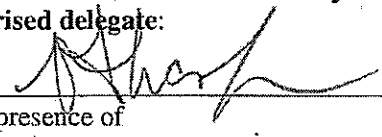
Contract Reference Number 12.2152.2104

Parties	RMS and Supplier	
RMS	Name	Roads and Maritime Services
	ABN/ACN/ARBN	76 236 371 088
	Address	101 Miller St North Sydney, New South Wales, Australia
Supplier	Name	Itree Pty Ltd
	ABN/ACN/ARBN	82 072 883 124
	Address	Level 14, 309 Kent Street, Sydney, NSW 2000

Date of agreement 29 AUGUST, 2013

EXECUTED as an agreement.

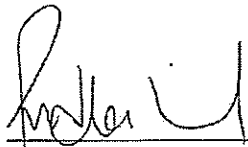
SIGNED for and on behalf of **ROADS AND MARITIME SERVICES** by its authorised delegate:



 in the presence of

VICKI SHARP

 Name of witness (print)



 Signature of delegate

Paul Hesford

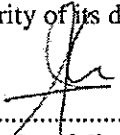
 Position/Title
Director Corporate

 Name

29/8/13

 Date

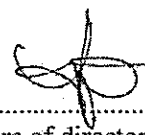
EXECUTED by **ITREE PTY LTD** in)
 accordance with section 127(1) of the)
 Corporations Act 2001 (Cwlth) by)
 authority of its directors:)



 Signature of director

HENGH WIDJAJA

 Name of director (block letters)



 Signature of director/company secretary*
 *delete whichever is not applicable.

MARK FERGUSON

 Name of director/company secretary*
 (block letters)
 *delete whichever is not applicable

19/8/13

 Date

Master IT Services Agreement

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Master IT Services Agreement

Contract Details

**Commencement
Date (Clause 2)**

Contract Period 2 years, subject to extension by RMS for up to two further 1 year terms in accordance with clause 2.1 (Term of Agreement)

**RMS Policies
(Clauses 6.2, 12.8)**

- Compliance to ICT Policies
Document Source: ICT POLICIES
Reference No: PN 255 **Date:** 01 Jun 2012 **Version:** 1.0
Author: IMIT Branch **Contact:** Philippe Etienne
- 3rd Party Remote Access to the RMS Computer Network
Document Source: ICT POLICIES
Reference No: PN 104 **Date:** 30 Oct 2012 **Version:** 1.1
Author: IMIT Branch **Contact:** Philippe Etienne
- Access and Appropriate Use of RMS ICT Systems and/or ICT Infrastructure
Document Source: ICT POLICIES
Reference No: PN 254 **Date:** 01 Jun 2012 **Version:** 1.0
Author: IMIT Branch **Contact:** Philippe Etienne
- Data Management
Document Source: ICT POLICIES
Reference No: PN 256 **Date:** 01 Jun 2012 **Version:** 1.0
Author: IMIT Branch **Contact:** Philippe Etienne
- Management of ICT Assets
Document Source: ICT POLICIES
Reference No: PN 257 **Date:** 01 Jun 2012 **Version:** 1.0
Author: IMIT Branch **Contact:** Philippe Etienne
- RMS Security Surveillance Information - Access and Release Policy
Document Source: ICT POLICIES
Reference No: PN 054 **Date:** 01 Nov 2012 **Version:** 1.1
Author: IMIT Branch **Contact:** Philippe Etienne
- Secure Disposal of Computer Storage Media
Document Source: IM AND IT POLICIES
Reference No: IMIT43 **Date:** 07 Mar 2003 **Version:** 1.0
Author: IT CUSTOMER SERVICES **Contact:** Michael Roylance
- Security Incident Management
Document Source: ICT POLICIES
Reference No: PN 100 **Date:** 01 Jun 2012 **Version:** 3.1
Author: IMIT Branch **Contact:** Philippe Etienne
- System Intrusion Detection
Document Source: ICT POLICIES
Reference No: PN 099 **Date:** 01 Jun 2012 **Version:** 1.4
Author: IMIT Branch **Contact:** Philippe Etienne
- 01PR0400 Requests For Change to Outsourced Service Providers

- 01PR3010 Control of Access to Source Code
- 01PR3040 Management of Cryptographic Keys
- 01PR6000 Critical Incident Management Process
- 01PR7000 Problem Management Process
- 06PR6013 Cooperative Fault Management in a Multi Service Provider Environment

Time and Materials Rates (Clauses 16.6, 19.7, 31.1)

Service/Personnel	Rates (Exclude GST)	Rates (Include GST)
Project Manager / Solution Architect	Daily: \$ [REDACTED] Hourly: \$ [REDACTED]	Daily: \$ [REDACTED] Hourly: \$ [REDACTED]
Senior BA / Senior Programmer	Daily: \$ [REDACTED] Hourly: \$ [REDACTED]	Daily: \$ [REDACTED] Hourly: \$ [REDACTED]
Business Analyst / DBA / Analyst Programmer	Daily: \$ [REDACTED] Hourly: \$ [REDACTED]	Daily: \$ [REDACTED] Hourly: \$ [REDACTED]
All support services, including: support engineers, training, N/W specialists, release co-ordinator	Daily: \$ [REDACTED] Hourly: \$ [REDACTED]	Daily: \$ [REDACTED] Hourly: \$ [REDACTED]
Admin assistant	Daily: \$ [REDACTED] Hourly: \$ [REDACTED]	Daily: \$ [REDACTED] Hourly: \$ [REDACTED]

Materials
Cost (inc GST) +10% admin

“After hours Time and Materials Rates” are the Time and Materials Rates above multiplied by [REDACTED] (and subject to a minimum of [REDACTED] hours chargeable)

**Insurance Policies
(Clause 27.1)**

TYPES OF INSURANCES	MINIMUM SUM INSURED	TICK IF REQUIRED
Broadform Public and Products Liability	\$10 million for any single occurrence and unlimited in the aggregate as to the number of occurrences The total aggregate liability during any one period of insurance for all claims arising out of the Supplier's Products shall not exceed \$20 million	✓
Motor Vehicle Comprehensive or Third Party Property Damage	\$20 million for any single occurrence and unlimited in the aggregate as to the number of occurrences	✓
Workers Compensation	As required by the laws of each relevant State and Territory	✓
Personal Accident & Illness	Minimum of 104 weeks but only required if the Supplier is a sole trader	
Professional Indemnity	\$10 million per occurrence	✓
Fire and Extraneous Perils including Accidental Damage, Burglary, Theft and Transit Insurance (or similar Industrial Special Risks Insurance) whilst in the care, custody and control of the Supplier	\$250,000 for any single occurrence and at least \$500,000 in the aggregate as to the number of occurrences A loss sub-limit of \$250,000 on any single occurrence of burglary or theft	✓

For details of requirements for each policy see Attachment D.

**Notices
(Clause 33.2)**

1. If to RMS:

Attention: Joe Attanasio
 Position: RMS CIO, IM & IT
 Address: Level 10, 101 Miller Street
NORTH SYDNEY
NSW 2060
 Facsimile: 02 8588 4104
 Email: Joe.Attanasio@rms.nsw.gov.au

(for notices under clause 33.2 only) The Chief Information Officer
 101 Miller Street
 North Sydney
 New South Wales

2. If to the Supplier:

Attention: Mark Ferguson
Position: Operations Director
Address: iTree Pty Ltd
Level 14, 309 Kent Street
Sydney NSW 2000
Facsimile: +61 2 4253 5455
Email: mferguson@itree.com.au

Note: Under clause 33.2 important contractual notices are not permitted to be sent by facsimile or email.

Master IT Services Agreement

General Terms

1 Contract structure

1.1 Overview

This agreement consists of the following parts:

- (a) these General Terms - the clauses of these General Terms set out the contractual framework under which the Supplier will perform the Services;
- (b) the Contract Details - the details set out the key commercial variables applicable to this agreement;
- (c) Project Orders - sets out the detailed provisions relating to Services for each Project;
- (d) the Scope of Works - forms part of a Project Order and sets out the detailed provisions relating to the supply of Services including specifications (or how they will be developed), project timetable and resourcing requirements;
- (e) the other Attachments - sets out forms and other material relevant to this agreement.

1.2 Master Agreement

This agreement sets out the terms on which the Supplier will provide services to RMS from time to time. The details of the specific services for each Project will be set out in a Project Order entered into pursuant to this agreement.

1.3 Project Orders

Each Project Order is incorporated into this agreement when executed by both parties. RMS makes no representation that it will:

- (a) enter into any Project Orders under this agreement; or
- (b) obtain a certain value of Services.

1.4 Addition of new Project Orders

RMS may from time to time request the Supplier to provide services under this agreement ("Project Request").

1.5 Project Proposal

On receiving a Project Request, the Supplier must:

- (a) prepare and submit a proposal to RMS for the Requested Services ("**Project Proposal**") within the time frame agreed with RMS (or failing agreement as soon as reasonably practicable);
- (b) if the Supplier is unable to provide the Requested Services, give written notification to RMS, including reasons, that it cannot provide the Requested Services; or
- (c) where the fees for any Project Order are based on time and materials the Project Proposal must be based on the Time and Materials Rates.

1.6 Changes to Project Proposal

Where RMS requests changes to a Project Proposal, the Supplier must prepare and submit a revised Project Proposal to RMS incorporating all changes reasonably requested by RMS.

1.7 Execution of Project Order

If RMS accepts a Project Proposal, the parties agree to execute a Project Order based on the detail in the Project Proposal.

1.8 Priority

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

1.9 Definitions and interpretation

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

1.10 Non Exclusivity

There is no express or implied obligation on the part of RMS to obtain any deliverables or services exclusively from the Supplier.

2 Term

2.1 Term of Agreement

- (a) Subject to clause 2.1(b), this agreement commences on the Commencement Date and continues until the second anniversary of the Commencement Date (**Expiry Date**), unless extended under clause 2.1(b) or earlier terminated under its terms.
- (b) RMS may extend this agreement on the same terms (subject to clause 16.6 (Review of Time and Materials Rates)) as follows:
 - (i) at least one month before the Expiry Date, RMS may notify the Supplier of its intention to elect to renew this agreement on the Expiry Date for a further period of one year after the Expiry Date (**Extended Term**); and

- (ii) at least one month before the end of the Extended Term, RMS may notify the Supplier of its intention to elect to renew this agreement on the last day of the Extended Term for a further period of one year.
- (c) If, on expiry of the Contract Period, there remains one or more Project Orders which have not yet expired:
 - (i) this agreement will continue in respect of those unexpired Project Orders until the first to occur of expiry of the Project Order or termination of the Project Order in accordance with the terms of this agreement; and
 - (ii) no new Project Orders may be entered into after expiry of the Contract Period.

2.2 Term of Project Orders

Each Project Order commences on the Project Order Commencement Date and continues until the first to occur of:

- (a) the Project Order Expiry Date; or
 - (b) termination of the Project Order in accordance with this agreement,
- unless terminated earlier in accordance with this agreement.

2.3 Extension of Project Orders

For each Project Order the Project Order Expiry Date may be extended by periods of extension specified in the Project Order if RMS gives the Supplier not less than 60 days' written notice prior to the Project Order Expiry Date.

2.4 Termination of held over SSIMAs

The parties agree that, effective on the Commencement Date of this agreement, the following agreements between them will terminate:

- (a) the Enforcement & Technology Development, Maintenance and Support Agreement dated 1 August 2006 (Contract Reference 0606ETS074); and
- (b) the Lotus Notes Workflow Applications, Maintenance, Support and Enhancement Agreement dated 22 September 2006 (Contract Reference 0511VRW071).

3 Scope

3.1 Scope

The Supplier must:

- (a) supply the Deliverables; and
- (b) supply the Warranty Support Services (if any) for each Maintained Item; and

- (c) carry out the Services,

as required by this agreement in a diligent and competent manner with all reasonable skill and care and in compliance with all applicable laws.

3.2 Co operation with third parties

The Supplier must reasonably co-operate with other RMS suppliers, contractors and consultants including:

- (a) complying with any RMS direction to provide them with access to or use of a Deliverable;
- (b) complying with any reasonable direction of RMS; and
- (c) not interfering with, disrupting or hindering the work being carried out by them.

4 Services

4.1 General

The Supplier must provide the Services to RMS:

- (a) in accordance with each Project Order;
- (b) in a manner so that it meets or exceeds the Service Levels; and
- (c) on the terms and conditions of this agreement.

4.2 Documentation

- (a) In respect of each Project Order, on completion of the relevant Services or provision of Deliverables or Maintained Items, or on request of RMS, the Supplier must provide two copies of the Documentation (in both hardcopy and electronic form) to RMS at no additional cost.
- (b) During each Project Term, the Supplier must:
 - (i) maintain and update any Documentation for the relevant Project to take into account any change or modification to the Services, Deliverables or Maintained Items to which the Documentation relates; and
 - (ii) if requested by RMS, provide two copies of the updated Documentation (in both hardcopy and electronic form) to RMS at no additional cost.
- (c) If RMS requests any Documentation for a Project in addition to that required to be provided under paragraphs (a) or (b), the Supplier must provide additional copies of the then current Documentation for that Project at a reasonable charge on a cost recovery basis only.

4.3 Incidental services

- (a) The Supplier must provide any incidental services not specifically described in a Project Order which are ordinarily required for RMS to benefit from the Services or use the Deliverables and Maintained Items.
- (b) The Supplier must provide these incidental services at no additional charge unless it is required to engage resources additional to the resources already utilised by the Supplier in the provision of the Services. In that case, the Supplier:
 - (i) will notify RMS, setting out the reasonable incremental cost to the Supplier of providing the relevant incidental service;
 - (ii) will not perform the relevant incidental service until RMS has approved the Supplier's incremental costs; and
 - (iii) will invoice RMS for the approved costs, and RMS will pay those costs, in accordance with clause 17 (Invoices and payments).

5 Service Levels and Service Rebates

5.1 Service Level failures

Where the Supplier fails to meet any Service Level, the Supplier must at no additional cost to RMS promptly:

- (a) at RMS's option, pay to (as required by clause 17.4 (Amounts due to RMS)) or credit RMS, the applicable Service Rebates;
- (b) if requested by RMS, in the case of Services re-perform those Services which gave rise to the failure to meet the Service Level;
- (c) use all reasonable endeavours to correct the issue which caused the failure to meet the Service Level;
- (d) arrange all additional resources reasonably necessary to deliver the Deliverables or perform the Services in accordance with the Service Levels as soon as practicable; and
- (e) if requested by RMS, provide at no charge to RMS a detailed report on the steps taken by the Supplier to prevent similar future non-compliance with the Service Levels.

5.2 Service Rebate Cap

The Service Rebates will be calculated on a cumulative basis with the maximum aggregate Service Rebate under a Project Order in any month being limited to the Service Rebate Cap under that Project Order.

5.3 Service Level Reporting

Subject to any alternative reporting obligations set out in a Project Order, for each Project Order, within five Business Days of the end of each month during the Project Term, the Supplier must provide to RMS a written report setting out

all information reasonably required by RMS including details of the Supplier's performance against Service Levels and the amount of applicable Service Rebates for that Project Order.

5.4 Other Remedies

The remedies in clause 5.1 (Service Level failures) do not:

- (a) prejudice any of RMS's rights or remedies under this agreement or arising at law (including the right to seek common law damages if clause 5.1(a) is held to be unenforceable, void, invalid or otherwise inoperative); or
- (b) relieve the Supplier of any other liability under this agreement.

5.5 No penalty

If a Service Rebate applies, then the parties agree that the payment of a Service Rebate is not a penalty but is a genuine pre-estimate of the loss RMS is likely to suffer as a result of the failure by the Supplier to meet the relevant Service Level.

6 Other Supplier Obligations

6.1 Standard of performance

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

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

6.2 Comply with requirements

- (a) Without limiting the Supplier's obligations under this agreement, the Supplier must comply, and must ensure that the Supplier Personnel comply, with:
 - (i) the RMS Policies;
 - (ii) all other reasonable requirements and directions of RMS in relation to the Deliverables, Maintained Items and the Services; and
 - (iii) the Supplier's own internal standards and policies (other than any which are inconsistent with this agreement).

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

- (b) If the Supplier's compliance with clause 6.2(a)(ii) requires it to engage resources additional to the resources already utilised by the Supplier in the provision of the Services, it will:
 - (i) notify RMS, setting out the reasonable incremental cost to the Supplier of performing the relevant action;
 - (ii) not perform the relevant action until RMS has approved the Supplier's incremental cost; and
 - (iii) invoice RMS for the approved costs following performance of the action, and RMS will pay those costs, in accordance with clause 17 (Invoices and payments).

7 Deliverables

7.1 General

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

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

7.2 Specifications

The Supplier must ensure that the Deliverables comply with the Specifications.

7.3 Assistance

The Supplier must provide RMS with all reasonable assistance (including installation and testing) to ensure the Deliverables are fully functioning and comply with the Specifications. If the Supplier's compliance with this clause 7.3 requires it to engage resources additional to the resources already utilised by the Supplier in the provision of the Services, it will:

- (a) notify RMS, setting out the reasonable incremental cost to the Supplier of performing the relevant action;
- (b) not perform the relevant action until RMS has approved the Supplier's incremental cost; and
- (c) invoice RMS for the approved costs following performance of the action, and RMS will pay those costs, in accordance with clause 17 (Invoices and payments).

8 Testing and Acceptance of Deliverables

8.1 Acceptance Testing

The parties agree that:

- (a) the Deliverables will be subject to Acceptance Tests in accordance with this clause 8 (Testing and Acceptance of Deliverables) and the Project Order; and

- (b) the Supplier has primary responsibility for undertaking Acceptance Tests except as otherwise set out in this clause.

8.2 Responsibility for Acceptance Tests

The Supplier must:

- (a) develop the Testing Plans for the Acceptance Tests for approval by RMS;
- (b) subject to clause 8.3 (Testing by RMS):
 - (i) undertake Acceptance Tests in accordance with the Testing Plans approved by RMS; and
 - (ii) permit RMS to observe the conduct of Acceptance Tests; and
- (c) provide RMS with the test results for the Acceptance Tests.

8.3 Testing by RMS

RMS will undertake any User Acceptance Testing component of the Acceptance Tests. The Supplier must provide all reasonable assistance requested by RMS in respect of the User Acceptance Testing. RMS will permit relevant Supplier Personnel to observe the User Acceptance Tests.

8.4 RMS's Notice of Acceptance

If the Acceptance Tests (including the User Acceptance Tests) reasonably demonstrate that the Deliverables are free from Defects, then within 10 Business Days of the successful completion of the Acceptance Tests, RMS will issue a notice to the Supplier confirming Acceptance of the Deliverables.

8.5 Acceptance Test failure

A Deliverable will fail the Acceptance Tests if the Acceptance Tests demonstrate that it contains Defects or if the Acceptance Tests are unable to be completed within the Acceptance Test Period due to the fault of the Supplier. If a Deliverable fails the Acceptance Tests, then within 10 Business Day of completion of the Acceptance Tests or expiry of the Acceptance Test Period RMS will give the Supplier a notice either:

- (a) notifying the Supplier of the reasons for the failure and a further date on which the Supplier must resubmit the corrected Deliverable to RMS for a repeat of the of Acceptance Tests; or
- (b) notifying the Supplier that RMS Accepts the Deliverable "as is", notwithstanding the failure, subject to:
 - (i) in respect of Defects other than Third Party Defects, the Supplier completing, at its own cost, a set of procedures (eg work-around) required by RMS to remove those Defects or their impact; and
 - (ii) in respect of Third Party Defects, the Supplier providing all assistance and information reasonably requested by RMS to

identify and engage the relevant third party provider (if any) to correct the Third Party Defect.

If any Deliverable is Accepted under paragraph (b) and the Supplier fails to complete the set of procedures as required by the Notice of Acceptance, RMS may notify the Supplier that its Acceptance of that Deliverable is withdrawn, in which case RMS may exercise its rights under clause 8.5(a).

8.6 Correction and restart of Acceptance Tests

On receipt of a Notice of Failure, the Supplier must:

- (a) correct, at its own cost, all Defects in the relevant Deliverable other than Third Party Defects; and
- (b) in respect of Third Party Defects, provide all assistance and information reasonably requested by RMS to identify and engage the relevant third party provider (if any) to correct the Third Party Defect.

The Supplier must resubmit the corrected Deliverable for a repeat of the Acceptance Tests by the date set out in the Notice of Failure. All of the Acceptance Tests undertaken prior to the issue of a Notice of Failure will be repeated and the whole Acceptance Test Period will recommence.

8.7 Further failure of Acceptance Tests

If a Deliverable fails the Acceptance Tests carried out under clause 8.6 (Correction and restart of Acceptance Tests), RMS may at its option do any of the following:

- (a) issue a Notice of Failure under clause 8.5(a) (Acceptance Test failure) in which case clause 8.6 (Correction and restart of Acceptance Tests) and this clause 8.7 (Further failure of Acceptance Tests) will apply to a further round of correction and testing;
- (b) accept the Deliverable or parts of the Deliverable by notice to the Supplier, notwithstanding the failure, for a reduction of the relevant Project Order Fees agreed by the parties;
- (c) accept the Deliverable "as is" by notice to the Supplier, subject to:
 - (i) in respect of Defects other than Third Party Defects, the Supplier completing, at its own cost, a set of procedures (eg work-around) required by RMS to remove those Defects or their impact; and
 - (ii) in respect of Third Party Defects, the Supplier providing all assistance and information reasonably requested by RMS to identify and engage the relevant third party provider (if any) to remove the Third Party Defects or their impact; or
- (d) reject the Deliverable and may, unless the Defect is a Third Party Defect, immediately terminate the relevant Project Order for breach by the Supplier under clause 29.1 (Termination by RMS for cause).

If any Deliverable is Accepted under paragraph (c) and the Supplier fails to complete the set of procedures as required by the Notice of Acceptance, RMS

may notify the Supplier that its Acceptance of that Deliverable is withdrawn, in which case RMS may exercise its rights under clause 8.7(a),(b) or (d).

8.8 Liquidated damages

If any Deliverable has not been Accepted by the applicable Due Date for Acceptance, the Supplier must pay to RMS the applicable Liquidated Damages for the period commencing on the day after the Due Date for Acceptance and ending on the earlier of:

- (a) the Acceptance Date under the relevant Project Orders; or
- (b) the date of termination of the relevant Project Orders by RMS.

The parties agree that an execution of a Project Order is an acknowledgment that the applicable Liquidated Damages under that Project Order have been discussed and negotiated between the parties and represent a genuine pre-estimate of the loss that RMS is likely to suffer as a result of the Supplier failing to meet the applicable Due Date for Acceptance.

8.9 No deemed acceptance

For the avoidance of doubt, none of the following will give rise to any deemed acceptance of any Deliverables, nor waive any rights RMS has under clause 8 (Testing and Acceptance of Deliverables) or otherwise:

- (a) RMS's failure to issue a Notice of Failure; or
- (b) RMS's failure to complete the User Acceptance Testing during the Acceptance Test Period; or
- (c) use of the Deliverables outside the testing environment.

8.10 Purpose of Acceptance Testing

The parties acknowledge that:

- (a) Acceptance Tests are not capable of testing for every possible Defect;
- (b) the sole purpose of the Acceptance Tests under clause 8 (Testing and Acceptance of Deliverables) is to provide RMS with the remedies set out or referenced in this clause; and
- (c) Acceptance does not affect the Supplier's obligation to correct Defects.

9 Warranty Support Services for Maintained Items

9.1 Warranty Support Services

If a Project Order specifies a Warranty Period, then, subject to clause 9.2 (Exclusions), during the Warranty Period for that Project Order, the Supplier must:

- (a) notify RMS as soon as reasonably practicable of all Defects in the relevant Maintained Items which it becomes aware of or it reasonably suspects; and

- (b) correct any Defect in the relevant Maintained Items notified by RMS in a timely and professional manner and as required by the applicable Service Levels.

9.2 Exclusions

The Warranty Support Services do not include the services described in clause 9.1 (Warranty Support Services) to the extent they are required as a result of any of the following and provided that the Supplier promptly notifies RMS:

- (a) improper installation of equipment or software which was not installed by or on behalf of, or as directed by, the Supplier;
- (b) modifications or alterations to or work carried out on the Maintained Items not effected or authorised by or on behalf of the Supplier or reasonably incidental to work so effected or authorised;
- (c) RMS's failure to observe the specifications of the Supplier or the relevant manufacturer or licensor regarding use, operating or environmental conditions for the Maintained Item, provided those specifications have been provided to RMS and are consistent with the Project Orders; or
- (d) misuse, abuse, accidental damage (excluding fair wear and tear) or negligent use or operation of the Maintained Items by RMS.

Where the Supplier has properly given notice under this clause and RMS consents in writing to the Supplier proceeding to provide the services, the Supplier must perform the services and may invoice RMS for them at the Time and Materials Rates.

9.3 Warranty Period

For each Project Order the Warranty Period commences on the applicable Acceptance Date and continues for the period specified in the Project Order.

9.4 Warranty repairs

If a Deliverable is or becomes defective in any way during the Warranty Period, then, at RMS's absolute discretion:

- (a) the Supplier must immediately replace or repair the Deliverable at the Supplier's cost; or
- (b) RMS may return the Deliverable to the Supplier and the Supplier must fully refund any amounts paid for the Deliverables that RMS does not retain.

9.5 Warranty support free of additional charge

The Supplier must provide the Warranty Support Services for each Project free of additional charge during the Warranty Period for that Project.

10 Project management

10.1 Project management services

The Supplier has primary responsibility for project managing each Project except to the extent the relevant Project Order specifies otherwise. Project management includes:

- (a) ensuring that the Project Timetable is followed and that delays are notified and addressed as required by clause 11 (Project Timetable and delays);
- (b) identifying who will perform the Services, when each item is required, and how the Services will be executed and validated;
- (c) co-ordinating the activities under each Project Order and the functional outputs of all involved groups including sub-contractors but excluding those activities which are identified in the Project Timetable or Scope of Works as being allocated to RMS or other RMS contractors;
- (d) preparing for and participating in scheduled quality assurance and audit check points and procedures; and
- (e) managing Change under clause 19 (Change control).

10.2 Progress reports

The Supplier must keep RMS Representative reasonably informed of the progress of each Project and, at the end of each Reporting Period during the relevant Project Term, must provide to RMS Representative a written report on that progress. Each such report must include for each Project:

- (a) a narrative summary of the progress of the Project including Services performed and Milestones reached;
- (b) detail any failure or anticipated failure to achieve any Milestones as required by the Project Timetable and matters that could affect the timely achievement of Milestones or increase in the Charges; and
- (c) recommendations for avoiding or minimising failures to achieve Milestones as required by the Project Timetable.

Nothing in a progress report varies the Project Timetable or any of the Supplier's responsibilities under a Project Order or this agreement. To the extent a progress report identifies an actual or possible delay, the Supplier must comply with clause 11 (Project Timetable and delays).

11 Project Timetable and delays

11.1 Contents of the Project Timetable

The Supplier must ensure that Project Timetable for each Project Order contains:

- (a) the name of the Key Personnel assigned to each task;
- (b) the role of the named Supplier Personnel; and

- (c) the effort required by that Supplier Personnel to complete the task (as measured in days and hours).

For example, if the Project Order specifies "Develop first draft of operations manual", the Project Order will list for that task:

- *John Smith (named Supplier Personnel);*
- *Technical Specialist (role); and*
- *2 days at 8.5 hours per day (effort).*

11.2 Compliance with Project Timetable

Subject to this clause 11 (Project Timetable and delays), the Supplier must comply with the dates and times set out in each Project Timetable.

11.3 Notification of delay

If any event or circumstance occurs which the Supplier considers may render it unable to achieve any Milestone as required by a Project Timetable, it must immediately notify the RMS Representative and may request an extension of time by providing a draft updated Project Timetable with revised dates for achievement of Milestones.

11.4 Supplier delays

If the Supplier notifies RMS under clause 11.3 (Notification of delay) that it may fail to achieve a Milestone as required by a Project Timetable, then RMS may, but except as required by clause 11.5 (Extension for RMS's delay or event outside Supplier control), is not obliged to, grant an extension of time for the achievement of that Milestone.

If RMS refuses to grant an extension, then:

- (a) the applicable Project Timetable remains unchanged; and
- (b) the Supplier must:
 - (i) do, at no additional cost to RMS, all things reasonably necessary to overcome the actual or possible delay, including increasing numbers or average skill or experience level of Supplier Personnel (or both); and
 - (ii) inform RMS of all solutions and strategies to overcome, manage or minimise the delay or failure.

11.5 Extension for RMS's delay or event outside Supplier control

Subject to clause 11.6 (Option to require additional resources), the Supplier will be entitled to claim, and RMS is required to grant, a reasonable extension of time under a Project Timetable for the Due Date for Acceptance and any other affected Milestones if:

- (a) the Supplier notifies RMS of a possible or actual delay under clause 11.3 (Notification of delay);

- (b) the Supplier gives the notice promptly after becoming aware of the relevant event and gives RMS all details reasonably necessary to enable RMS to determine the cause of the delay and the likely effect on timetable;
- (c) the delay cannot be made up so that the Due Date for Acceptance is still met without varying or increasing resources used on the relevant Project by the Supplier; and
- (d) the delay is caused by one or more of the following events:
 - (i) a failure by RMS, or another RMS contractor or supplier who is not managed by the Supplier, to carry out any tasks or requirements assigned to it or them in the relevant Scope of Works as required by the timetable (but not including any such failures which result from a prior failure of the Supplier to meet its obligations);
 - (ii) a Force Majeure Event; or
 - (iii) a direction or delay by a Government Agency (except to the extent this results from a wrongful act or omission of, or a breach of this agreement by, the Supplier or any person for whom the Supplier is responsible).

11.6 Option to require additional resources

Where the requirements of clause 11.5 (Extension for RMS's delay or event outside Supplier control) are met, but the Due Date for Acceptance can still be met by the Supplier if it increases numbers or average skill set or experience level of Supplier Personnel (or both) used on the relevant Project, RMS may elect:

- (a) to grant a reasonable extension of time under the relevant Project Timetable; or
- (b) to require the Supplier to increase or vary the Supplier Personnel accordingly, in which case RMS must pay reasonable additional fees to compensate the Supplier for its additional costs and the relevant Project Timetable remains unchanged.

11.7 Delay caused partly by the Supplier

Where a delay results partly from one or more events referred to in clause 11.5(d) and partly from a failure by the Supplier, RMS is only obliged to give an extension which is reasonable having regard to the extent to which the event or events referred to in clause 11.5(d) have increased, or are likely to increase, the delay.

11.8 Unrequested extension of time

RMS may extend the Due Date for Acceptance and any other Milestones for any reason at any time on notice to the Supplier, whether or not the Supplier is entitled to or has requested such an extension.

11.9 Failure to notify

If the Supplier does not notify RMS of a potential delay as required by clause 11.3 (Notification of delay), then:

- (a) no extension of time will be made (unless by RMS under clause 11.8 (Unrequested extension of time));
- (b) the Supplier must perform its obligations as required by the relevant Project Timetable; and
- (c) any principle of law or equity which might otherwise make the date for achievement of an obligation uncertain and payment of Liquidated Damages unenforceable, does not apply.

12 Supplier Representative and Supplier Personnel

12.1 Supplier Representative

The Supplier must appoint a senior representative approved by RMS to act as the Supplier's principal point of contact for each Project Order. The Supplier must ensure that the Supplier Representative for each Project Order:

- (a) has appropriate project management skills to undertake the role;
- (b) takes responsibility for prompt and efficient project management of the Project; and
- (c) supervises the Supplier Personnel and the performance of the work that the Supplier Personnel are required to perform under the applicable Project Order.

12.2 Replacement of the Supplier Representative

If the Supplier wishes to replace a Supplier Representative it must:

- (a) give RMS at least 10 Business Days' notice and must ensure that any replacement meets the requirements of clause 12.1 (Supplier Representative); and
- (b) give RMS the opportunity to meet and approve the replacement prior to his or her appointment.

12.3 RMS approval of Supplier Personnel

If specified in a Project Order, the Supplier must obtain RMS's prior approval to each member of Supplier Personnel who will undertake Services in connection with that Project Order (or those parts of the Services specified in the Project Order).

12.4 Withdrawal of approval

RMS may at any time on reasonable grounds (which need not be proven) and without liability withdraw, limit or suspend its approval of a Supplier Representative or a member of Supplier Personnel given under clause 12.3 (RMS approval of Supplier Personnel) by notifying the Supplier and giving reasons. If

required by RMS, the Supplier must propose another person for approval within a reasonable time of receiving the notice. The Supplier must ensure that the replacement of Supplier Personnel under this clause is made without inconvenience or cost to RMS and without impact on the relevant Project Timetable or delivery of the Services.

12.5 Key Personnel

Where a Project Order specifies Key Personnel, the Supplier must ensure that all Key Personnel are available and assigned to providing the Services and performing the role identified for that person (if any) in that Project Order. Where no specific person is specified but a Key Personnel position and role is specified in the relevant Project Order, the Supplier must ensure that appropriately qualified Supplier Personnel are available and assigned to providing the Services and performing the role identified for that position in the Project Order.

12.6 Change to Key Personnel

The Supplier must not change any Key Personnel's involvement in the provision of the Services and performance of this agreement unless:

- (a) they are incapacitated or unable to perform their role for any reason, or leave the Supplier's employment;
- (b) the Services which they were performing are complete; or
- (c) RMS gives prior written consent to the change.

12.7 Notice of change to Key Personnel

The Supplier must replace Key Personnel who cease to be involved in providing the Services under clause 12.6(a) or 12.6(c) (Change to Key Personnel) with a person of equivalent skills and experience and who has been approved by RMS.

12.8 Compliance with RMS's policies

- (a) The Supplier will ensure that the Supplier Personnel, when on RMS's premises and when accessing RMS's facilities, computer systems and information, comply with the RMS Policies and all other requirements and directions of RMS in regard to conduct, behaviour, protection of privacy, use of systems, safety and security (including submitting to security checks as required and complying with any obligation imposed on any person by law).
- (b) Where requested by RMS, the Supplier must ensure that the Supplier Personnel execute a deed of confidentiality in the form required by RMS.

12.9 Denial of access

- (a) If a member of Supplier Personnel breaches the requirements under this agreement including RMS Policies, RMS may, at any time and for any period, refuse the person access to RMS premises.
- (b) If it is appropriate and practicable to do so RMS will give the Supplier prior written notice of the refusal of access under clause 12.9(a) (Denial

of access) to allow the relevant member of Supplier Personnel to vacate the premises.

- (c) The Supplier must replace any member of Supplier Personnel refused access under clause 12.9(a) (Denial of access) without inconvenience or cost to RMS and without impact on the relevant Project Timetable or delivery of the Services.

12.10 No solicitation

- (a) Subject to clause 12.10(b), for each Project Order, during the period from the Project Order Commencement Date until 12 months after the earlier of:

- (i) the Acceptance Date under that Project Order; or
- (ii) the date of termination of that Project Order,

neither party may solicit for employment, or independent contract for the provision of services, any employee of the other party who is involved in the performance of that party's obligations under that Project Order.

- (b) The restriction in clause 12.10(a), will not apply to a party employing or engaging as an independent contractor (or offering to employ or engage) any person who has responded to a general recruitment advertisement by that party.

12.11 Information about Supplier Personnel

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

- (a) accurate information about the identity, qualifications, job history and character of each of the Supplier Personnel; and
- (b) a list of any of the Supplier Personnel with actual or proposed access to RMS Data.

12.12 Criminal record search and investigation

In relation to all Supplier Personnel who may have access to Sensitive RMS Data under this agreement:

- (a) prior to, but no earlier than three weeks before the Supplier grants that person access to the Sensitive RMS Data under this agreement, the Supplier must:
 - (i) for Supplier Personnel who are ordinarily resident in Australia, perform or procure a criminal record search of that person from the NSW Criminal History Unit (or such other branch or office of the Australian Federal Police or law enforcement agency performing the functions of the NSW Criminal History Unit from time to time) and must provide the results to RMS;
 - (ii) for Supplier Personnel who are ordinarily resident outside Australia, use reasonable endeavours to perform or procure a criminal record search of that person from the relevant police

force of the jurisdiction where the Supplier Personnel resides and must provide the results to RMS;

- (b) RMS may, but is not required to, carry out the search referred to in clause 12.12(a) itself;
- (c) the Supplier must conduct such other investigations at the Supplier's expense as RMS may reasonably request and must provide the results of those investigations to RMS; and
- (d) RMS may conduct such other investigations at RMS's expense as RMS considers appropriate and the Supplier must provide all such assistance as RMS may reasonably request.

The Supplier acknowledges that any search or investigation by RMS in accordance with this clause 12.12 will not constitute a breach of this agreement nor affect the Supplier's obligations under this agreement.

The Supplier will be responsible for the costs of performing or procuring the first criminal record search required under clause 12.12(a) in respect of each of the relevant Supplier Personnel. RMS may request that the Supplier carries out further rounds of criminal record searches in relation to Supplier Personnel, but RMS will pay all reasonable external costs directly and necessarily incurred by the Supplier in conducting those searches. The Supplier must supply all necessary documentation and evidence to support its claim for any external costs incurred by it in conducting those searches at the time it invoices RMS for those costs.

12.13 Consent from Supplier Personnel

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

- (a) the Supplier and RMS to conduct the searches or investigations under and within the timeframes specified in clause 12.12 (Criminal record search and investigation); and
- (b) the Supplier to provide the results of its searches or investigations to RMS in accordance with clause 12.12 (Criminal record search and investigation).

12.14 Inability to obtain consent

If the Supplier is unable to obtain a consent required under clause 12.13 (Consent from Supplier Personnel) from a person, then, unless RMS agrees otherwise in writing, the Supplier must not give that person access to the Sensitive RMS Data and the Supplier must provide a replacement for that person who is acceptable to RMS within a reasonable time of RMS's request to do so and without inconvenience or cost to RMS.

12.15 No access where there has been a Relevant Offence

The Supplier must not allow a member of the Supplier Personnel to have access to the Sensitive RMS Data without the written consent of RMS if:

- (a) a search conducted under clause 12.12 (Criminal record search and investigation) shows that the person has been convicted of an offence which is or could be a Relevant Offence;
- (b) the Supplier has reliable evidence that the person has a criminal conviction or has served a custodial sentence and that conviction occurred, or any part of that sentence was served, in the previous 10 years anywhere in the world; or
- (c) the Supplier has reliable information indicating that a trial is currently underway against the person which could result in a conviction of that person for an offence which is or could be a Relevant Offence.

12.16 Supplier becomes aware of information

If, after the Supplier has granted a person access to the Sensitive RMS Data, the Supplier becomes aware of information of the type referred to in clause 12.15 (No access where there has been a Relevant Offence), then the Supplier must immediately notify RMS and the Supplier must take such reasonable action as RMS requests in relation to the person including, without limitation, replacing that person with a person who is acceptable to RMS within a reasonable time of RMS's request to do so and without inconvenience or cost to RMS.

12.17 Removal of unsuitable Supplier Personnel

If, as a result of any investigation under clause 12.12 (Criminal record search and investigation) or any breach of the security or privacy obligations contained in this agreement, RMS is of the reasonable opinion that any of the Supplier Personnel is unsuitable to undertake work in respect of this agreement, then RMS may request the Supplier to remove that person from the performance of this agreement. If RMS makes such a request, then the Supplier will provide replacement personnel reasonably acceptable to RMS within a reasonable time of RMS's request and without inconvenience or cost to RMS.

12.18 Certification

Within five Business Days of each anniversary of the Commencement Date or otherwise on request by RMS, the Supplier must certify that, as at the relevant date, the Supplier has and is complying with clauses 12.12 (Criminal record search and investigation) to 12.17 (Removal of unsuitable Supplier Personnel).

12.19 Obligations subject to law

Neither party is required to comply with clauses 12.12 (Criminal record search and investigation) to 12.17 (Removal of unsuitable Supplier Personnel) to the extent that compliance would result in a contravention of any legal requirement with which the party is required to comply.

13 Business continuity and disaster recovery

13.1 Develop plan

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

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

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

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

13.2 Update plan

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

13.3 Test plan

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

13.4 Disaster Recovery Event

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

14 Sub-contracting

14.1 No sub-contracting without approval

The Supplier must:

- (a) not sub-contract any of its obligations under this agreement without the prior written approval of RMS. RMS may give or withhold its approval in its absolute discretion and may impose conditions on its approval;
- (b) on request of RMS provide to RMS a copy of any sub-contract between the Supplier and a sub-contractor approved under clause 14.1(a) provided that Supplier may (if requested by the sub-contractor remove or conceal any confidential pricing information and require the RMS to treat any such sub-contract as Supplier Confidential Information); and
- (c) unless otherwise approved under clause 14.1(a) not enter into sub-contract for the performance of the Services from outside Australia.

14.2 Withdrawal of approval

RMS may at any time on reasonable grounds and without liability withdraw, limit or suspend its approval of a sub-contractor by notifying the Supplier and

giving reasons. If required by RMS, the Supplier must propose another sub-contractor for approval within a reasonable time of receiving the notice. The Supplier must ensure that the replacement of a sub-contractor under this clause is made without inconvenience or cost to RMS and without impact on the relevant Project Timetable or delivery of the Services.

14.3 Responsibility for sub-contractors

The Supplier must ensure that each sub-contractor:

- (a) has the skills, resources and experience to carry out the work sub-contracted to it; and
- (b) complies with all relevant terms of this agreement.

The Supplier is responsible for all acts and omissions of its sub-contractors as if they were those of the Supplier.

14.4 Terms and conditions of sub-contract

- (a) The Supplier must enter into a written sub-contract with each sub-contractor.
- (b) The Supplier must ensure that the terms and conditions of each sub-contract are consistent with, and no less onerous than, the terms and conditions of this agreement.
- (c) The Supplier must ensure that the sub-contractor maintains insurance to the same extent required of the Supplier under this agreement except noting the interests of the Supplier instead of RMS.
- (d) Without limiting clause 14.4(b) above, each sub-contract must contain terms that:
 - (i) each sub-contractor consents to a novation of the sub-contract from the Supplier to RMS (at no additional cost to RMS or the sub-contractor) if:
 - (A) this agreement is terminated in whole or in respect of the part related to that sub-contract; and
 - (B) it is required by RMS; and
 - (ii) the sub-contractor must not further sub-contract its obligations under its sub-contract.

14.5 Project Timetable and sub-contractor obligations

The Supplier must ensure that the Project Timetable:

- (a) sets out the information required pursuant to clause 11.1 (Contents of the Project Timetable) as it applies to each sub-contractor; and
- (b) separately identifies the tasks and timeframe for the delivery of Services or Deliverables or any other obligations to be performed by the sub-contractor.

14.6 Meeting with sub-contractor

- (a) If requested by RMS, the Supplier must procure a meeting between RMS and any sub-contractor approved under clause 14.1(a)
- (b) Without limiting clause 14.6(a), the Supplier must ensure that:
 - (i) the Supplier Representative; and
 - (ii) each sub-contractor representative,attend a progress meeting on a monthly basis with RMS and any other person requested by RMS.

14.7 Contractors

The restrictions in this clause 14 do not apply to individuals engaged by the Supplier as contract workers.

15 Access

15.1 Access to the Sites

RMS will provide the Supplier, the Sub-contractors and Supplier Personnel with access to the Sites as is reasonably necessary for the performance of the Services.

15.2 Provision of names

Where requested by RMS, the Supplier must provide a list of the names of all its Sub-contractors and Supplier Personnel who are expected to require regular and frequent access to any of the Sites, specifying the capacities in which they require that access and giving such other particulars as RMS may reasonably require.

15.3 Non-admittance or removal / denial of access

- (a) If a member of Supplier Personnel breaches the requirements under this agreement, or in the reasonable opinion of RMS that member of the Supplier Personnel is not a fit and proper person to be at the Sites, RMS may, at any time and for any period, refuse the person access to or order their removal from any or all Sites or other RMS premises.
- (b) If it is appropriate and practicable to do so RMS will give the Supplier prior written notice of the refusal of access or removal under subclause (a) to allow the relevant member of Supplier Personnel to vacate the Site or premises.
- (c) The Supplier must replace any member of Supplier Personnel refused access under subclause (a) without inconvenience or cost to RMS and without impact on the Project Timetable, delivery of the Services or performance by the Supplier of its obligations under the agreement.

16 Project Order Fees

16.1 Project Order Fees

- (a) The Project Order Fees for each Project Order is the full amount payable by RMS for the supply of the Deliverables and Services, incorporating the Project Price, Recurring Fees, Ad Hoc Fees and charges permitted by clause 9.2 (Exclusions) under that Project Order. The Supplier is not entitled to recover any expenses additional to the Project Order Fees.
- (b) If the Project Price, or a component of the Project Price, is to be calculated based on Time and Materials Rates:
 - (i) the Supplier must provide weekly reports to RMS setting out the actual Project Price against the estimated Project Price in the relevant Project Order;
 - (ii) the Supplier must not exceed the Project Price Cap set out in the relevant Project Order without the prior written approval of RMS; and
 - (iii) RMS will not be required to pay for any portion of the Project Price which exceeds the Project Price Cap unless the amount exceeded was approved by RMS in writing.

16.2 Invoicing of Project Price

The Supplier may invoice RMS for the Project Price at the times set out in the relevant Project Price Payment Terms.

16.3 Invoicing of Recurring Fees

The Supplier may invoice Recurring Fees for each Project Order (less any accrued Service Rebate) at the frequency and timing set out in the relevant Recurring Fees Payment Terms.

16.4 Invoicing of Ad Hoc Fees

The Supplier may invoice Ad Hoc Fees arising under a Project Order at the times set out in the Ad Hoc Fees Payment Terms set out in the relevant CSR Order.

16.5 Review of Recurring Fees

Subject to any fixed period for Recurring Fees set out in the Project Order the Supplier may review the Recurring Fees for a Project Order on the anniversary of each Project Order Commencement Date and thereafter on each subsequent anniversary during the term of that Project Order by providing to RMS not less than three months' notice provided that:

- (a) during any 12 month period, the Recurring Fees must not increase by more than the increase in CPI (all groups, Australia) during the most recent 12 month period for which figures are published and available; and
- (b) where Recurring Fees are payable in advance, the Supplier will not be entitled to any increase in respect of a period for which an invoice has already been issued when the fees are adjusted.

16.6 Review of Time and Materials Rates

- (a) Subject to clause 16.6(b), the Supplier may review the Time and Materials Rates on the anniversary of the Commencement Date and thereafter on each subsequent anniversary of the Commencement Date provided that, during any 12 month period, the Time and Materials Rates must not increase by more than the increase in CPI (all groups, Australia) during the most recent 12 month period for which figures are published and available.
- (b) An increase in the Time and Materials Rates under clause 16.5(b) (Review of Time and Materials Rates) will:
 - (i) not be effective unless the Supplier has given RMS at least three months' prior notice of the proposed increase; and
 - (ii) only apply to new Project Orders entered into under this agreement after the date on which the increase becomes effective.

17 Invoices and payments

17.1 Payment of invoices

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

17.2 Correctly rendered invoice

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

- (a) the invoice is a Tax Invoice;
- (b) the amount claimed in the invoice is due for payment;
- (c) the amount claimed in the invoice is correctly calculated under this agreement;
- (d) the invoice includes a unique reference number and is set out in a manner that identifies the Project Order, the Services, Deliverables and/or Maintained Items which the invoice covers and itemises each amount claimed to a level of detail satisfactory to RMS acting reasonably (and in any event, complies with any specific requirements in the relevant Scope of Works);
- (e) the invoice is accompanied by documents that adequately demonstrate to RMS the Services that were performed, Deliverables supplied and the basis on which the amounts are claimed;
- (f) the invoice is addressed to "Roads and Maritime Services" with attention to the RMS Representative and identifies this agreement and the relevant Project Order; and

- (g) the invoice is accompanied by a completed Contractor Statement in the form set out in Attachment C in respect of the period to which the invoice relates.

17.3 Disputed invoices

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

17.4 Amounts due to RMS

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

17.5 Payment by RMS of amounts due to third parties

RMS may (but is not obliged to) pay an amount owing by the Supplier to a third party who has supplied services or goods to the Supplier in connection with this agreement where:

- (a) the time for payment has passed;
- (b) RMS reasonably considers that supply to RMS of goods or services may be adversely affected by the non-payment; and
- (c) RMS has first given the Supplier not less than 5 Business Days' notice that it intends to make the payment.

If RMS makes such a payment, then the Supplier must credit or pay the amount to RMS as required by clause 17.4 (Amounts due to RMS), at RMS's option.

17.6 Payment of amounts due to or in respect of employees

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

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

If RMS makes such a payment, then, without limiting any rights RMS may have under section 127 of the *Industrial Relations Act 1996* (NSW), the Supplier must credit or pay the amount to RMS as required by clause 17.4 (Amounts due to RMS) at RMS's option.

17.7 Set off rights

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

17.8 Payment does not affect other rights or obligations

Payment of money under clause 17.1 (Payment of invoices) is not evidence:

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

18 Taxes and GST

18.1 Taxes

The Supplier is responsible for all Taxes arising from or relating to this agreement and must pay Taxes which are imposed on the Supplier, directly to the relevant Government Agency on or before the latest date that the Tax is due for payment without incurring any penalty or additional tax for late payment.

18.2 Indemnity

The Supplier indemnifies RMS against any costs or expenses that RMS suffers or incurs as a result of the Supplier failing to meet its obligations under clause 18.1 (Taxes).

18.3 GST

The parties agree that:

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

any amount for GST for which the party is entitled to an Input Tax Credit.

18.4 Withholding tax

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

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

19 Change control

19.1 Out of scope work

The Supplier is not required to carry out, and RMS is not required to pay any amount in respect of, services or goods outside the scope of this agreement unless and until a Change Notice has been executed by the parties as required by this clause 19 (Change control).

19.2 Change request

Either party may request a change to:

- (a) the scope or description of any Deliverables or Services;
- (b) requirement of any Scope of Works or Specifications;
- (c) any of the Service Levels,

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

19.3 Supplier to identify relevant Changes

If the Supplier becomes aware of any circumstances which indicate that a Change is required in order for RMS to achieve its objectives as identified in a Project Order or otherwise known to the Supplier, the Supplier must promptly notify RMS of those circumstances, in which case RMS may issue a request for a Change.

19.4 Change request by RMS

If a Change is requested by RMS (whether or not as a consequence of a notice from the Supplier under clause 19.3 (Supplier to identify relevant Changes)), the Supplier must provide to RMS within 10 Business Days of receiving the notice of request, or such other period as the parties may agree, a Change Proposal which complies with clause 19.7 (Requirements for Change Proposal).

19.5 Change request by Supplier

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

19.6 Assistance from RMS

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

19.7 Requirements for Change Proposal

Each Change Proposal must:

- (a) set out a full description of the Change;
- (b) specify all changes to the relevant Project Price or Recurring Fees (as applicable), the relevant Project Timetable and any other conditions which the Supplier reasonably requires in order to perform the Change and must detail reasons for those changes; and
- (c) provide a detailed impact analysis of the Change on timetable and cost sufficient for RMS to properly consider timetable and cost impact of the Change Proposal.

Any adjustment to a Project Price or Recurring Fees (as applicable) must:

- (d) be based on the change to the Supplier's actual direct costs as a result of the Change, including a reasonable profit allowance; or
- (e) the Time and Materials Rates.

19.8 Acceptance or rejection of a Change Proposal

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

20 Audit

20.1 Compliance Audits

Where requested by RMS from time to time, RMS may conduct itself or agree to appoint a mutually acceptable third party (or, failing agreement, RMS's external auditors) to conduct Compliance Audits.

20.2 Frequency of Compliance Audit

The Compliance Audits may be conducted on dates nominated by RMS, not more than once during each year from the Commencement Date.

20.3 Costs of Compliance Audit

The auditors' costs incurred by RMS in the Compliance Audit will be paid by RMS, otherwise each party will bear its own costs. However, without limiting RMS's other remedies, where RMS or the auditor objectively identifies that the Supplier has:

- (a) overcharged RMS 2% or more of the fees payable under a Project Order in any month; or
- (b) committed any other material breach of this agreement,

all the reasonable costs of RMS (or, if a third party auditor has been engaged, the auditor's reasonable fees) in respect of that Compliance Audit will be paid by the Supplier.

20.4 Reports from Compliance Audits

RMS will ensure draft reports resulting from the Compliance Audits will be provided to the RMS Representative and Supplier Representative. If the Supplier wishes to raise an issue in relation to any of the matters contained in the auditor's draft report, the Supplier Representative will do so in writing to RMS Representative. RMS will ensure final reports resulting from the Compliance Audits will be provided to RMS Representative and the Supplier Representative.

20.5 Remedy performance

If the auditor's report arising out of a Compliance Audit identifies any areas as falling below the Service Levels, the parties must work together in good faith to reach a mutually acceptable resolution within 1 month from the date of the Compliance Audit. If the parties fail to reach an acceptable resolution the matter will be immediately escalated for resolution under clause 28 (Disputes). Nothing in this clause 20.5 (Remedy performance) affects RMS's other rights and remedies under this agreement.

20.6 Costs

Unless expressly provided otherwise in this clause 20 (Audit), RMS and the Supplier will each pay their own costs and expenses in connection with this clause.

20.7 Provision of assistance, information and documents

The Supplier must promptly provide RMS (or its nominee) with any assistance, information and documents RMS reasonably requires, including but not limited to the Supplier's internal quality audit reports in relation to the performance of the Services and provision of Deliverables.

21 Title and risk

21.1 Title and risk in Deliverables which are hardware

Title to and risk in each Deliverable which is hardware passes to RMS on the earlier of:

- (a) the date on which RMS makes final payment for the item; or
- (b) the relevant Acceptance Date for that Deliverable.

21.2 Title in reports and other items

Title and risk in reports, documentation and other physical items (other than Deliverables specified in clause 21.1) supplied by the Supplier to RMS passes to RMS on delivery to RMS.

21.3 Removal of packaging

Unless RMS requests otherwise, the Supplier must at its own cost remove and dispose of all packaging material and other by-products associated with the supply or installation of any Deliverables promptly after delivery to RMS.

22 Intellectual Property Rights

22.1 Pre-existing Intellectual Property Rights

All Intellectual Property Rights of the parties existing before the Commencement Date will be retained by the relevant party.

22.2 Modifications to RMS IP

The Supplier assigns, or will procure the assignment to RMS, on creation Intellectual Property Rights in all modifications made to RMS IP by the Supplier or its Sub-contractors.

22.3 Licence to Supplier IP

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

- (a) to Use the Supplier IP to the extent necessary to receive the full use and benefit of the Deliverables, Maintained Items and Services; and
- (b) permit any person to assist RMS to do any of the things referred to in clause 22.3(a);
- (c) to sub-licence any of the rights granted under clause 22.3(a) to any person, but only in relation to the use or benefit of the Deliverables, Maintained Items or Services.

22.4 RMS Licence

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

22.5 Confidentiality

Nothing in clause 22.3 (Licence to Supplier IP) and 22.4 (RMS Licence) removes or limits the obligations of confidentiality under clause 23 (Confidentiality, privacy and contract disclosure).

22.6 Know-how use

Subject to clause 23 (Confidentiality, privacy and contract disclosure) and clause 22.1 (Pre-existing Intellectual Property Rights), each of RMS, the Supplier and any Sub-contractor will be free to use its general knowledge, skills and experience and any ideas, concepts, know-how, methodologies and techniques related to the scope of the Deliverables, Maintained Items, Services or this agreement.

22.7 Intellectual Property Rights in Deliverables

- (a) Except in respect of any Supplier Retained Material permitted to be included in a Deliverable under clause 22.7(c):
 - (i) any Intellectual Property Rights in the Deliverables will be owned by RMS;
 - (ii) the Supplier assigns all Intellectual Property Rights in the Deliverables to RMS; and
 - (iii) the Supplier also agrees to ensure that its Supplier Personnel execute all documents and do all other things necessary to give effect to this clause 22.7 (Intellectual Property Rights in Deliverables).
- (b) If the Supplier intends to include any Supplier Retained Material in a Deliverable:
 - (i) it will notify RMS in writing prior to the provision of that Deliverable for Acceptance Tests; and
 - (ii) RMS may permit or refuse to permit, at its option, the Supplier to include that Supplier Retained Material in the Deliverable.
- (c) If RMS permits the Supplier to include the Supplier Retained Material in the Deliverable:
 - (i) the Intellectual Property Rights in the Supplier Retained Material will not be owned by RMS; and
 - (ii) the Supplier will grant to RMS, or procure the grant of, a perpetual, non-exclusive, irrevocable, royalty-free licence:
 - (A) to Use, reproduce, modify and communicate to the public any of the Supplier Retained Material in any manner, anywhere in the world, for any purpose;
 - (B) to permit any person to assist RMS to do any of the things referred to in clause (c)(ii)(A); and
 - (C) to sub-licence any of the rights granted under clause (c)(ii)(A) and (c)(ii)(B) to any person,as part of the use or exploitation of the Deliverables or relevant Maintained Items.

- (d) RMS grants to the Supplier a non-transferable, non-exclusive, royalty-free licence for the Term to use RMS IP in the Deliverables solely for the purpose of the Supplier meeting its obligations to provide the Services to RMS under this agreement.

22.8 IP Indemnity

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

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

22.9 Other remedies

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

- (a) promptly procure for RMS the right to use the Deliverables, Services or component parts (as applicable) on reasonable commercial terms as contemplated under this agreement free of any claim or liability for infringement;
- (b) promptly procure for RMS replacement equipment or software that complies with the relevant Scope of Works and Specifications; or
- (c) promptly modify the relevant Deliverable or component parts (as applicable) so that it ceases to infringe those rights (while still complying with the relevant Scope of Works and Specifications).

22.10 Return of Deliverables

Without limiting any other rights RMS may have, if the Supplier has not complied with clause 22.9 (Other remedies) within 10 Business Days after prevention of use of a Deliverable or component parts (as applicable) or such longer period as the parties may agree, the Supplier must, at RMS's option:

- (a) accept return of the relevant Deliverable and any other material acquired under this agreement the use of which is detrimentally affected by any return of anything under this clause; and
- (b) return to RMS the relevant Project Price and any other moneys paid by RMS which relates to the items returned under clause 22.10(a) (Return of Deliverables); and

- (c) pay the difference between the relevant Project Price and the reasonable extra expenses incurred or losses suffered by RMS in procuring from other sources hardware, software and services substantially similar to the relevant Services or the Deliverable (as applicable) and anything returned by RMS under clause 22.10(a) (Return of Deliverables).

23 Confidentiality, privacy and contract disclosure

23.1 Obligation of confidentiality

Each party acknowledges that:

- (a) any misuse of or disclosure of Confidential Information of the other party may be detrimental to the interests of the other party and may cause the other party loss; and
- (b) damages may not be adequate compensation for breach of this clause 23 (Confidentiality, privacy and contract disclosure) and the other party may seek to restrain by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this clause 23 (Confidentiality, privacy and contract disclosure).

23.2 Disclosure of Confidential Information

A party (**Recipient**) must not disclose the other party's (**Discloser's**) Confidential Information to any person except:

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

23.3 Permitted disclosures

- (a) If the Recipient discloses the Discloser's Confidential Information under clause 23.2(a) or 23.2(b) (Disclosure of Confidential Information) then:
 - (i) it must use its best endeavours to ensure that persons receiving the Confidential Information from it keep the Confidential Information confidential and do not disclose the information except in the circumstances permitted in clause 23.1 (Obligation of confidentiality);
 - (ii) the Discloser may at any time require the persons receiving the Confidential Information to give written undertakings in favour of the Discloser relating to the non-disclosure of the Confidential Information and the Recipient must arrange for all such undertakings to be given promptly;

- (iii) the Recipient must reserve the right to demand immediate delivery of all documents or other materials in its possession, power or control or in the possession, power or control of the third party who has received Confidential Information from it containing or referring to that Confidential Information
- (b) If the Recipient is required to disclose the Discloser's Confidential Information under clause 23.2(c) (Disclosure of Confidential Information), then it must promptly notify the Discloser (unless such notification is prohibited by law) so that the Discloser may take lawful steps to protect the Confidential Information from disclosure. Where the Discloser is not successful in preventing such disclosure, the Recipient must only disclose so much of the Confidential Information as is legally required.

23.4 Use of Confidential Information

- (a) The Recipient must not use the Discloser's Confidential Information except for the purpose of exercising the Recipient's rights or performing its obligations under this agreement or any other agreement between the parties.
- (b) The Recipient must notify the Discloser in writing immediately on becoming aware of any potential, suspected or actual unauthorised use, copying or disclosure of the Discloser's Confidential Information in breach of this clause 23 (Confidentiality, privacy and contract disclosure).

23.5 Return of Confidential Information

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

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

23.6 No disclosure of the terms of this agreement

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

23.7 Disclosure of details of RMS contracts with the private sector

The Supplier acknowledges that RMS may be required to publish certain information concerning this agreement in accordance with ss 27 – 35 of GIPAA. If the Supplier reasonably believes that any part of this agreement contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, then the Supplier should immediately advise

RMS in writing, identifying the provisions and providing reasons so that RMS may consider seeking to exempt those provisions from publication.

23.8 Publicity

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

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

23.9 Compliance with privacy requirements

The Supplier must:

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

23.10 Provide information

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

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

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

23.11 GIPAA Access to Information

It is an essential term of this agreement that, if under this agreement the Supplier is required to provide goods or services to the public on behalf of RMS then within three days of receiving a written request by RMS the Supplier must provide RMS with immediate access to information referred to in s.121(1) of GIPAA (but excluding information referred to in s.121(2)) contained in records held by the Supplier at the Supplier's expense and in such medium as RMS may reasonably require. RMS will consult with the Supplier before releasing any information obtained from the Supplier as required by s.54 of GIPAA.

24 Force Majeure Event

24.1 No breach for Force Majeure Event

A party does not breach this agreement and is not liable to the other party for a delay or failure to perform an obligation to the extent it results from a Force Majeure Event.

24.2 Obligations of affected party

The party affected by the Force Majeure Event must notify the other party of the Force Majeure Event as soon as reasonably practicable and must take all reasonable steps to limit the effects of Force Majeure Event.

24.3 Delays and termination for Force Majeure Event

The parties will address any delay caused by a Force Majeure Event as required by clause 11.5 (Extension for RMS's delay or event outside Supplier control). RMS may terminate this agreement or a Project Order for a Force Majeure Event under clause 29.4).

25 Warranties and representations

25.1 Supplier awareness

The Supplier warrants and represents that:

- (a) for each Project Order, it has evaluated all technical aspects of the relevant Project Timetable, Specifications and Scope of Work and has the technical expertise to supply the Deliverables and/or perform the Services;
- (b) for each Project Order, all technical information supplied by RMS is for explanatory purposes only and does not relieve the Supplier of its obligations to supply the Deliverables and/or perform the Services; and
- (c) it has obtained all consents and approvals required in order to meet its obligations under this agreement.

25.2 Supplier's general representations and warranties

The Supplier represents and warrants on the Commencement Date and at all time during the Term, that:

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

25.3 Representations and warranties in respect of Deliverables, Maintained Items and Services

The Supplier warrants and represents that:

- (a) the Maintained Items and Deliverables:
 - (i) will meet the Specifications and all other applicable requirements under the Scope of Works and this agreement;
 - (ii) be of good quality, and free from defects and omissions in material, design or workmanship;
 - (iii) is free from any charge or encumbrance; and
 - (iv) will comply with all laws, regulations and industry standards that are related in any way to the Maintained Items or Deliverables;

but the Supplier will not be liable to RMS for a breach of any of these warranties in this clause (a) to the extent that breach is caused by RMS, RMS's suppliers (excluding Supplier and Sub-contractors) or RMS-sourced Material.

- (b) the Services will be performed with due care and skill and in accordance with industry best practice;
- (c) in providing the Services, it will meet or exceed the Service Levels;
- (d) the Documentation provided under clause 4.2 is sufficient to enable RMS to receive the benefit of the Maintained Items, Deliverables and/or Services;
- (e) the Supplier and the Supplier Personnel will not infringe the Intellectual Property Rights or Moral Rights of any person in providing the Services or otherwise performing this agreement;
- (f) the Deliverables, Maintained Items or Services and their use or provision will not:
 - (i) result in a breach of any law or mandatory code of conduct;

- (ii) infringe any person's rights (including Intellectual Property Rights and Moral Rights);
- (iii) constitute a misuse of any person's confidential information; or
- (iv) result in the Supplier or any Related Bodies Corporate of the Supplier breaching any obligation that it owes to any person.

25.4 Notification of non-compliance

As soon as practicable after becoming aware of any matter which is likely to impact upon its ability to comply with a warranty or representation in this clause 25 (Warranties and representations), the Supplier must give written notice to RMS detailing that matter and its likely impact on the Supplier's ability to comply with this clause 25 (Warranties and representations).

25.5 Assignment of warranties

For each Project, if RMS requests the Supplier to do so, the Supplier must assign to RMS without the need for further consideration, the benefit of all manufacturers' warranties and/or service warranties granted to the Supplier by suppliers and licensors of the relevant Deliverable, Warranty Support Services and any other Services under that Project Order.

26 Liability

26.1 Data loss

The Supplier must at all times when performing this agreement use appropriate procedures and care to avoid loss or corruption of data.

26.2 RMS's liability

Subject to clause 26.6 (No limitation):

- (a) the aggregate liability of RMS to the Supplier under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action for each event or series of related events is limited to \$50,000.00 or such other amount as is specified in the Project Order which is connected to the event giving rise to the liability; and
- (b) RMS will not be liable to the Supplier under or in respect of this agreement or any Project Order whether in contract, tort (including negligence), statute or any other cause of action for Consequential Loss.

26.3 Supplier's liability

Subject to clauses 26.4 and 26.6 (No limitation):

- (a) the liability of the Supplier to RMS under or in respect of this agreement whether in contract, tort (including negligence), statute or any other cause of action for an event or series of related events (the *Relevant Event*) is limited to an amount equal to:

- (i) the aggregate of the Supplier Liability Caps for all Project Orders which are connected to the Relevant Event, as calculated at the date the cause of action accrued,
- (ii) less the aggregate amount already paid by the Supplier to RMS in respect of claims arising from any other events connected to those Project Orders, as calculated at the date any liability in respect of the Relevant Event is to be paid;

by way of an example only:

- (A) the Supplier commits a breach of this agreement on 1 January 2014 that causes RMS loss that it is entitled to recover under the agreement (the Relevant Event in this example);
 - (B) the event relates to two Project Orders; at 1 January 2014, Project Order 1 has a Supplier Liability Cap of \$1m; and Project Order 2 has a Supplier Liability Cap of \$2m;
 - (C) the aggregate of the Supplier Liability Caps for the Project Orders connected to the Relevant Event is \$3m;
 - (D) at the date that the Supplier is set to pay a liability payment (e.g. by court order) to RMS in respect of the Relevant Event, the Supplier has already made liability payments of \$900,000 and \$300,000 for other breaches relating to Project Order 1 and Project Order 2 (\$1.2m in total); and
 - (E) the cap on the Supplier's liability in respect of the Relevant Event will be \$1.8m; and
- (b) the Supplier will not be liable to RMS under or in respect of this agreement or any Project Order whether in contract, tort (including negligence), statute or any other cause of action for Consequential Loss.

26.4 Liquidated damages not covered by Supplier's liability caps

Clause 26.3 (Supplier's liability) does not apply to any event or series of related events that entitle RMS to recover Service Rebates or Liquidated Damages, and any Service Rebates or Liquidated Damages paid by the Supplier will not be deducted from the Supplier Liability Caps when calculating the extent of the Supplier's liability in respect of a Relevant Event under clause 26.3 (Supplier's liability).

26.5 Indemnity

- (a) The Supplier indemnifies RMS from and against any cost, loss, damages, expense or third party claims (including any reasonable costs, charges, legal fees and expenses) arising directly or indirectly from, and incurred in connection with:
 - (i) any breach of this agreement by the Supplier (subject to clause 26.5(c));

- (ii) any negligent act or omission of the Supplier in the performance or non-performance of any of its obligations under this agreement (subject to clause 26.5(c));
 - (iii) any wilful default of the Supplier in the performance or non-performance of any of its obligations under this agreement;
 - (iv) any death or injury to persons, and any loss or damage to the real or personal property of RMS, arising out of any act or omission of the Supplier; or
 - (v) the Supplier's liability in respect of a breach by the Supplier of clause 23 (Confidentiality, privacy and contract disclosure).
- (b) The Supplier will not be liable to RMS under this clause 26.5 to the extent that RMS's losses would have been reduced by RMS using reasonable endeavours to mitigate its losses.
 - (c) The Supplier's liability under the indemnities at clauses (a)(i) and (a)(ii) is subject to the limitations in clause 26.3 (Supplier's liability).

26.6 No limitation

Nothing in this agreement operates to limit or exclude:

- (a) liability that cannot by law be limited or excluded;
- (b) liability of either party in respect of personal injury (including sickness and death) or real or tangible property loss or damage;
- (c) liability of a party in respect of a breach of clause 23 (Confidentiality, privacy and contract disclosure);
- (d) liability for wilful default;
- (e) the Supplier's liability under clause 22.8 (IP Indemnity);
- (f) liability of either party for acts or conduct that are illegal or otherwise prohibited by law; or
- (g) RMS's liability to pay such of the Project Order Fees as are due and payable.

26.7 Consequential Loss Definition

- (a) Subject to (b) Consequential Loss
 - (i) means any loss, not arising naturally, that is according to the usual course of things, from the relevant breach act or omission, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties, at the time they entered the agreement, as the probable result of the relevant breach; and
 - (ii) includes loss of profit or loss of anticipated savings.
- (b) Consequential Loss does not include:

- (i) additional internal administrative and management costs and expenses;
- (ii) expenditure or fees rendered unnecessary;
- (iii) costs of procuring replacement Services and Deliverables;
- (iv) additional costs to maintain the Maintained Items;
- (v) legal fees on a full indemnity basis.

26.8 Civil Liability Act

The parties agree that:

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

27 Insurance

27.1 Insurance

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

27.2 Evidence of insurance

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

27.3 Supplier notification

The Supplier must notify RMS within two Business Days of any event which affects or may affect the Supplier's compliance with this clause 27 (Insurance), including any cancellation of a policy or reduction of limit of coverage below that required by this agreement.

27.4 Failure to provide evidence of insurance

If the Supplier does not comply with clause 27.1 (Insurance) or 27.2 (Evidence of insurance), RMS may, but is not obliged to, effect the relevant insurances and may:

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

28 Disputes

28.1 Reasonable endeavours to settle

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

28.2 Dispute notice

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

28.3 Negotiation

If a Dispute is notified under clause 28.2 (Dispute notice) each party must nominate a senior representative with appropriate authority to negotiate on behalf of the party to settle the Dispute. The representatives must endeavour to resolve the Dispute within 10 Business Days of the notice under clause 28.2 (Dispute notice).

28.4 Further resolution process

If the Dispute is not resolved within the period referred to in clause 28.3 (Negotiation), the parties' representatives will within a further 5 Business Days seek to agree on:

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

28.5 Court proceedings

If the representatives are unable to agree on a process for resolving the dispute in the period referred to in clause 28.4 (Further resolution process) or the dispute has not been resolved within 10 Business Days (or such other period as the parties may agree) of the parties agreeing such a process, either party will be free to commence court proceedings relating to the Dispute.

28.6 Right to terminate

This clause 28 (Disputes) does not affect either party's rights to terminate this agreement under clause 29 (Termination) or pursuant to any other rights of termination contained in this agreement.

28.7 Interlocutory relief

This clause 28 (Disputes) does not affect either party's right to commence court proceedings seeking interlocutory relief.

28.8 Parties to continue to perform

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

29 Termination

29.1 Termination by RMS for cause

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

- (a) **Breach of agreement** - the Supplier breaches this agreement and:
 - (i) the breach is not capable of remedy; or
 - (ii) the breach is capable of remedy and the Supplier fails to remedy the breach within 10 Business Days, or such longer time as RMS states, of receiving notice from RMS requiring the breach to be remedied;
- (b) **Insolvency** - the Supplier becomes Insolvent;
- (c) **Wrongful assignment** - the Supplier assigns or purports to assign its rights otherwise than as permitted by this agreement;
- (d) **Change of Control** - the Supplier undergoes a Change of Control; or
- (e) **Other right to terminate** - RMS is exercising its right to terminate under clause 8.7(Further failure of Acceptance Tests); or
- (f) **Probity Event** - the Supplier fails to address the adverse impact of a Probity Event in accordance with clause 32.6 (RMS may direct remedial action).

29.2 Termination by Supplier for cause

The Supplier may only terminate a Project Order if RMS has failed to pay an amount due in respect of that Project Order to the Supplier which is not the subject of a bona fide dispute within 40 Business Days of receiving a correct notice claiming that the amount is overdue and stating that the Supplier proposes to exercise its rights under this clause 29.2 (Termination by Supplier for cause) if payment is not made.

29.3 Termination by RMS without cause

- (a) RMS may terminate this agreement in full or as it relates to any particular Project Order, Service or Deliverable by giving not less than 60 days' written notice to the Supplier.
- (b) If RMS terminates a Project Order prior to Acceptance of the Deliverables (if any) under that Project Order, then RMS must pay the Supplier the Early Termination Fee (if any) for that Project Order, within 30 days of receiving a correctly rendered invoice.
- (c) If RMS elects to terminate under this clause 29.3, the Supplier will refund RMS on a pro-rata basis for any Recurring Fees under the relevant Project Orders paid in advance for the period following the date of termination.

29.4 Force Majeure

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

29.5 Continuation

Where RMS exercises its rights under this clause 29 (Termination) only in relation to one or more Project Orders, Services or Maintained Items, the Supplier must continue to perform this agreement in respect of any other Project Orders, Services or Maintained Items which have not been terminated.

30 Disengagement assistance

30.1 Disengagement planning

Six months before the end of a Project Term, or on notice of termination being given by either party, the Supplier must develop a detailed plan ("Disengagement Plan"), in consultation with RMS, for the transition of the terminated Services to RMS or its nominee.

30.2 Disengagement assistance

The Supplier must provide disengagement assistance to RMS as set out in Schedule 2 (Disengagement assistance) upon any termination or expiry of this agreement (in whole or in part) during the Disengagement Assistance Period to facilitate a smooth and orderly transition of the Services to RMS or any Replacement Service Supplier.

31 Events following termination or expiry

31.1 Obligations on expiry or termination

On expiry or termination of this agreement for any reason, then without limiting any other rights RMS may have the Supplier must pay RMS:

- (a) the amount of any prepaid Recurring Fees relating to the proportion of the Project Term remaining after termination (calculated on a pro-rata basis);
- (b) any fees paid by RMS to the Supplier in advance for services not yet supplied or for a licence that has not yet been utilised; and
- (c) any Service Rebates accrued up to the date of termination.

31.2 Obligations on expiry or termination of a Project Order

On expiry or termination of a Project Order for any reason clause 31.1 (Obligations on expiry or termination) applies to the extent that it relates to that expired or terminated Project Order.

31.3 Remedies

If this agreement is terminated by RMS under clause 29.1 (Termination by RMS for cause), then without limiting any other rights RMS may have:

- (a) RMS may, by notice in writing to the Supplier, elect to retain access to and use of some or all of the Deliverables provided that if RMS exercises this right it must pay the Supplier (subject to any rights of set off and any reduction agreed by the parties) any outstanding part of the Project Price for those retained Deliverables;
- (b) the Supplier must refund to RMS all amounts of the Project Price paid by RMS other than for items retained under clause 31.3(a) (Remedies);
- (c) the Supplier must remove at its costs all Deliverables not retained by RMS under clause 31.3(a) (Remedies);
- (d) the Supplier must reimburse RMS for all amounts paid by RMS to third parties for services, software and other items which RMS, acting reasonably, notifies the Supplier it is unable to use as a result of termination; and
- (e) the Supplier is liable for the reasonable extra expenses incurred by RMS in procuring from other sources hardware, software and services substantially similar to those required to be provided by the Supplier under this agreement (but excluding those retained by RMS under clause 31.3(a) (Remedies)).

31.4 Remedies on termination of a Project Order

If a Project Order is terminated under clause 29.1 (Termination by RMS for cause) and there remain other Projects Orders not yet expired or terminated, clause 31.3 (Remedies) applies to the extent that it relates to that terminated Project Order.

31.5 Survival

Clauses 12.10 (No solicitation), 17 (Invoices and payments), 18 (Taxes and GST), 22 (Intellectual Property Rights), 23 (Confidentiality, privacy and contract disclosure), 25 (Warranties and representations), 26 (Liability), 27 (Insurance), 28 (Disputes), 30 (Disengagement assistance), 31 (Events following termination)

or expiry), and 35 (General) survive the termination or expiry of this agreement, as do any rights and remedies accrued before termination or expiry.

32 Probity Events

32.1 Probity Event Notice by Supplier

The Supplier must give notice to RMS as soon as it becomes aware that a Probity Event has occurred or is likely to occur.

32.2 Probity Event Notice by RMS

RMS may give notice to the Supplier if RMS becomes aware that a Probity Event has occurred or is likely to occur.

32.3 Content of Notice

The Probity Event Notice must describe the nature of the Probity Event and the circumstances giving rise to it or likely to give rise to it.

32.4 Probity Investigations

Following the issue of a Probity Event Notice, the Supplier must promptly comply with any reasonable request from RMS for access to the Supplier Personnel for the purpose of undertaking any investigations that RMS may wish to carry out in relation to the actual or likely occurrence of the Probity Event. The Supplier must use reasonable endeavours to ensure that the Supplier Personnel (and where relevant any Related Body Corporate and its personnel) co-operate with RMS and comply with any reasonable requests for information that RMS may make in the course of its investigations.

32.5 Remedial Action

Upon the issue of a Probity Event Notice the parties must meet at a time nominated or agreed by RMS to discuss the occurrence of the actual or likely Probity Event. During any such meeting, the parties must use reasonable endeavours to agree on the actions to be taken by the Supplier to ensure that the Probity Event does not occur or its impact is minimised.

32.6 RMS may direct Remedial Action

If the parties are unable to agree on appropriate actions within 5 Business Days of such meeting (or any longer period RMS may agree) or Supplier fails to implement any actions agreed under clause 32.5 (Remedial Action) RMS may give notice to the Supplier setting out the action it must take to address the adverse effect of the Probity Event, and the Supplier must comply with any such notice as soon as possible and in any event within 5 Business Days of receiving the notice.

33 Notices

33.1 Form

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

33.2 Important contractual notices

A notice under clause 29.1 (Termination by RMS for cause), clause 34.1 (Assignment or novation by RMS), clause 29.4 (Force Majeure) or clause 28 (Disputes) or any other notice claiming or relating to a breach, repudiation, purported termination or variation of this agreement must be:

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

33.3 Other notices and communications

A notice, consent, request or any other communication under this agreement other than one referred to in clause 33.2 (Important contractual notices) must be:

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

33.4 Time of receipt

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

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

34 Assignment and novation

34.1 Assignment or novation by RMS

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

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

The Supplier must execute all documents necessary to give effect to any novation or assignment permitted under this clause 34.1 (Assignment or novation by).

34.2 Assignment or novation by the Supplier

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

35 General

35.1 Discretion in exercising rights

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

35.2 Partial exercising of rights

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

35.3 No liability for loss

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

35.4 Remedies cumulative

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

35.5 Variation and waiver

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

35.6 Indemnities

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

35.7 Construction

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

35.8 Costs

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

35.9 Counterparts

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

35.10 Governing law and jurisdiction

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

35.11 Severability

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

35.12 Entire agreement

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

36 Local Jobs First – SMEPP Compliance & Reporting

36.1 RMS Reliance

The Supplier acknowledges that RMS relied on the Supplier's SMEPP when entering this agreement. The Supplier agrees to comply with the requirements and commitments provided for in its SMEPP when providing the Services.

36.2 Reporting

RMS may establish mechanisms to monitor compliance by the Supplier with its commitments under the SMEPP and the Supplier agrees to take all steps required on its part to assist in the monitoring of compliance by the Supplier with the SMEPP.

36.3 Essential Term

Any material non-compliance by the Supplier with its SMEPP commitments is a breach of an essential term of this agreement.

36.4 Failure May Be Considered In Other Assessments

RMS may take into consideration any non-compliance by the Supplier with its SMEPP when evaluating subsequent tenders submitted by the Supplier and may report any non-compliance to other government agencies.

36.5 Definitions

SMEPP means the ANZ Small & Medium Enterprise Participation Plan provided by the Supplier to RMS under LJFP.

LJFP means the Local Jobs First Plan published by NSW Procurement (a division of the NSW Department of Services, Technology and Administration).

Schedule 1 - Dictionary

1 Definitions

1.1 Definitions

Acceptance means acceptance of a Deliverable by RMS under clause 8.4 (RMS's Notice of Acceptance) or clause 8.5(b) (Acceptance Test failure), or clause 8.7(b) or 8.7(c) (Further failure of Acceptance Tests). **Accepted** has a corresponding meaning.

Acceptance Date means, in respect of a Deliverable, the date on which RMS issues a Notice of Acceptance.

Acceptance Test Period means the period specified in the applicable Project Timetable for conduct of Acceptance Tests, or as otherwise agreed by the parties.

Acceptance Tests means such tests as RMS considers appropriate to determine if the Deliverable contains any Defects.

Ad Hoc Fee means the fee set out in a CSR Order.

Ad Hoc Payment Terms for each CSR Order means the timing for invoicing of the Ad Hoc Fee set out in that CSR Order.

Amount of the Consideration means:

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

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

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

Change is defined in clause 19.2 (Change request).

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

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

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

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

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

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

Compliance Audits means regular audits or one-off audits of the Supplier's performance of its obligations under this agreement, conducted pursuant to clause 20.1 (Compliance Audits).

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

Consequential Loss has the meaning given in clause 26.7 (Consequential Loss Definition).

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

Contract Period means the contract period set out in the Contract Details.

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

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

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

Controller has the meaning it has in the Corporations Act.

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

CSR Order means a consultancy service request order executed by the parties in substantially similar form as the order in Attachment B, which will form part of the Project Order to which it relates.

Date of Agreement means the date on which the last party executes this agreement.

Defect means, in respect of a Deliverable or Maintained Item, a failure of the Deliverable or Maintained Item to:

- (a) comply with the Specifications and any other requirement in the Scope of Works or this agreement; or
- (b) comply with a representation or warranty specified in clauses 25.3 (Representations and warranties in respect of Deliverables, Maintained Items and Services).

Deliverable means each item required to be produced by the Supplier and provided to RMS under a Project Order or this agreement.

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

Discloser is defined in clause 23.1 (Obligation of confidentiality).

Disengagement Assistance Period means, in relation to termination, the period of six months commencing on the date of termination of this agreement (in whole or in part) and, in relation to expiry, the period of 12 months commencing six months prior to expiry of this agreement (in whole or in part), as may be shortened by RMS in its discretion by notice to Supplier.

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

Documentation means user manuals, operating manuals and technical manuals, flow charts, logic diagrams and listings, whether in electronic form or otherwise, and any other document which is necessary or useful for obtaining the benefit of the Services or the effective installation, operation, use and maintenance of a Deliverable.

Due Date for Acceptance means the date in the applicable Project Timetable by which a Deliverable is to be Accepted, or as otherwise agreed by the parties.

Early Termination Fee means the applicable early termination fee for early termination of a Project Order set out in or calculated in the manner detailed in that Project Order and if not specified, the reasonable costs payable by the Supplier to third parties which are not recoverable as a result of the early termination.

Excluded Information means Information which:

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

Expiry Date is defined in clause 2.1 (Term of Agreement).

Extended Term is defined in clause 2.1 (Term of Agreement).

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

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

General Terms means the general terms set out in clauses 1 to 36 of this agreement.

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

GIPAA means the *Government Information (Public Access) Act 2009 (NSW)*, as amended from time to time.

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

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

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

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

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

Infringement Claim means any Claim which would, if true, involve a breach of a warranty under clauses 25.3(e) and 25.3(f) (Representations and warranties in respect of Deliverables, Maintained Items and Services).

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

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or

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

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

Key Personnel for each Project Order means the persons (if any) identified in that Project Order as Key Personnel, as replaced from time to time under clause 12.6 (Change to Key Personnel).

Liquidated Damages for each Project Order means liquidated damages calculated as set out in that Project Order.

Maintained Item means each item identified in a Project Order for which the Supplier will provide support services under the Project Order (and which may for the avoidance of doubt include some or all of the Deliverables).

Milestone means:

- (a) the date for delivery of a Deliverable; and
- (b) any particular stage or event in the Project,

identified in the relevant Project Timetable.

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

(*Cwlth*) or any other law of the Commonwealth of Australia), that exist or that may come to exist, anywhere in the world.

Notice of Acceptance for each Deliverable means a notice issued by RMS under clause 8.4 (RMS's Notice of Acceptance) or clause 8.5(b) (Acceptance Test failure), clause 8.7(b) or clause 8.7(c) (Further failure of Acceptance Tests).

Notice of Failure for each Deliverable means a notice issued by RMS under clause 8.5(a) (Acceptance Test failure).

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

- (a) has a material adverse effect upon the character, honesty or integrity of the Supplier, a Related Body Corporate, or any of the Supplier Personnel;
- (b) relates to the Supplier, a Related Body Corporate or the Supplier Personnel and has a material adverse effect upon the public interest (having regard to the policy objectives of RMS) or the reputation of or public confidence in RMS or the New South Wales Government; or
- (c) involves a material failure by the Supplier to achieve or maintain:
 - (i) reasonable standards of ethical behaviour; or
 - (ii) the avoidance of conflicts of interest that may have (or may give the public the appearance of having) a material adverse effect on the ability of the Supplier to impartially perform and observe its obligations under this Agreement; or
 - (iii) standards of behaviour expected of a party engaged on a Government Agency project.

Probity Event Notice means a notice under clause 32.1 (Probity Event Notice by Supplier) or 32.2 (Probity Event Notice by RMS).

Project means a project to supply Services and/or Deliverables.

Project Order means a service order executed by the parties in substantially similar form as the service order in Attachment A (and any CSR Orders executed in connection with that Project Order).

Project Order Cap means for a Project Order the cap set out in the applicable Project Order for the Project Price, based on Time and Materials Rates.

Project Order Commencement Date for each Project Order means the date specified in the applicable Project Order.

Project Order Expiry Date for each Project Order means the date specified in the applicable Project Order, as may be extended in accordance with clause 2.3 (Extension of Project Orders).

Project Order Fees is defined in clause 16.1(a) (Project Price).

Project Price for each Project Order means the contract price set out in that Project Order, as varied from time to time under clause 19 (Change control).

Project Price Payment Terms for each Project Order means the timing for invoicing of the Project Price set out in that Project Order.

Project Request means a request by RMS made in accordance with clause 1.4 (Addition of new Project Orders).

Project Term for each Project Order means the period from the Project Order Commencement Date until the date of termination or expiry under clause 2.2 (Term of Project Orders).

Project Timetable for each Project Order means the project timetable set out in the applicable Scope of Works, as varied from time to time under clause 11 (Project Timetable and delays) or clause 19 (Change control).

Project Proposal means a proposal or quotation for the Requested Services prepared and submitted in accordance with clause 1.5 (Project Proposal).

Recipient is defined in clause 23.1 (Obligation of confidentiality).

Recurring Fees for each Project Order means the Recurring Fees specified in that Project Order, as varied from time to time under clause 16.5 (Review of Recurring Fees).

Recurring Fees Payment Terms for each Project Order means the timing and frequency for invoicing of Recurring Fees set out in that Project Order.

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

Relevant Offence means any offence which:

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

Replacement Services means any services which are substantially similar to the Services and which RMS procures in substitution for the Services following the termination or expiry of this agreement, whether those services are provided by RMS internally and/or by any Replacement Service Supplier.

Replacement Service Supplier means any third party service supplier of Replacement Services appointed by RMS from time to time on termination of this agreement.

Reporting Period for each Project Order means the period specified in that Project Order as the Reporting Period.

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

Requested Deliverables and Services means the Deliverables and services described in a Project Request.

Respond or Response means to have a suitably qualified person engaged in repairing the Defect.

Restore or Restoration means restore a Deliverable so that it operates without any Defects.

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

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

but excludes the Excluded Information.

RMS Data means all data, information, text, drawings or other materials embodied in any electronic or tangible medium and which:

- (a) are supplied by RMS to the Supplier under this agreement; or
- (b) may be accessed by the Supplier in the course of performing the Services.

RMS IP means Intellectual Property Rights owned by, or licensed by a third party to, RMS and made available to the Supplier or a Sub-contractor for the purposes of the performance by the Supplier of its obligations under this agreement, including RMS-sourced Material.

RMS Policies means the policies listed in the Contract Details.

RMS Representative means the person identified in the relevant Project Order as RMS Representative for a Project as varied by notice to the Supplier from time to time.

RMS-sourced Material means material (including software) owned by RMS or licensed by a third party to RMS that is neither supported nor developed by the Supplier and is made available by RMS to the Supplier for incorporation into a Deliverable.

Scope of Works for each Project Order means the scope of works set out in that Project Order as modified from time to time under clause 19 (Change control).

Sensitive RMS Data for each Project Order means RMS Data specified as sensitive RMS Data in that Project Order.

Service Levels means the service levels set out in the Project Orders.

Service Rebate for each Project Order means the service rebates specified and calculated as set out in that Project Order in respect of the failure by the Supplier to meet one or more Service Levels.

Service Rebate Cap for each Project Order means a maximum limit on the Service Rebate payable or to be credited by the Supplier per month set out in that Project Order.

Services means all services required to be provided by the Supplier under this agreement, including those set out in each Project Order.

Site for each Project Order means a site specified in the applicable Scope of Works, as varied or updated from time to time by notice from RMS to the Supplier.

Specifications for each Project Order means the functional and technical specifications for the Deliverables, Maintained Items and/or Services as set out in, or developed and approved by RMS as required by, the applicable Scope of Works.

Sub-contractor means sub-contractors of the Supplier.

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

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

but excludes the Excluded Information.

Supplier IP means Intellectual Property Rights owned by, or licensed by a third party to, the Supplier or a Sub-contractor and incorporated into (in accordance with clause 22.7(b)) or used for the provision of Deliverables, Maintained Items and Services to RMS.

Supplier Liability Cap for each Project Order means the Supplier Liability Cap set out in that Project Order.

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

Supplier Representative means the representative appointed under clause 12.1 (Supplier Representative) for each Project and identified in the relevant Project Order, as replaced from time to time under clause 12.2 (Replacement of the Supplier Representative).

Supplier Retained Material means material (including software) that has been developed by the Supplier or a Sub-contractor or a third party independently of this agreement or the Terminating Agreements and is not otherwise owned by RMS.

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

Taxes means taxes, levies, imposts, charges and duties (including, stamp and transaction duties) imposed by any Government Agency, together with any related interest, penalties, fines and expenses in connection with them except if imposed on, or calculated having regard to, the overall net income of RMS, but excluding GST.

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

Terminating Agreements means the agreements referred to in clause 2.4.

Testing Plans means the test strategy and test plans (including test cases and test scripts) in respect of the Acceptance Tests.

Third Party Defect means a Defect in a Deliverable identified during the Acceptance Tests which is caused by RMS or RMS's suppliers (excluding Supplier and Sub-contractors) , or RMS-sourced Material that RMS has permitted to be included in that Deliverable (other than a Defect relating to the interface between code provided or licensed by the Supplier or a Sub-contractor and the relevant RMS-sourced Material).

Time and Materials Rates means the Time and Materials Rates specified in the Contract Details, as varied from time to time under clause 16.6 (Review of Time and Materials Rates).

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

User Acceptance Testing or **User Acceptance Tests** means mean the user acceptance tests as specified in the Testing Materials, Scope of Works or otherwise under this agreement.

Warranty Period for each Project Order means the period defined in that Project Order.

Warranty Support Services means the services described in clause 9.1 (Warranty Support Services) in respect of the restoration of Defects in Maintained Items subject to the exclusions in clause 9.2 (Exclusions).

1.2 References to certain general terms

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

- (a) **(variation or replacement)** a document (including this agreement) includes any variation or replacement of it;

- (b) **(clauses, annexures and schedules)** a clause, Schedule, Annexure, Attachment or Exhibit is a reference to a clause in, or a Schedule, Annexure, Attachment or Exhibit to, this agreement;
- (c) **(references to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person’s executors, administrators, successors and substitutes (including, persons taking by novation) and assigns;
- (h) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) **(dollars)** an amount of money is a reference to the lawful currency of Australia;
- (j) **(calculation of time)** a period of time that dates from a given day or the day of an act or event is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to a calendar day and is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind;
- (m) **(next day)** if an act under this agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day; and
- (n) **(time of day)** time is a reference to Sydney time.

1.3 Headings

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

Master IT Services Agreement

Schedule 2 - Disengagement assistance

- 1 During the Disengagement Assistance Period, the Supplier will if requested in writing by RMS:
 - (a) continue to provide the Services (in whole or, to the extent that the Services are separable, in part, as requested by RMS) on the terms of the Agreement (including in relation to Contract Price); and
 - (b) (at the Time and Materials Rates) do all things reasonably requested in writing by RMS to assist RMS in making a smooth transition to a Replacement Service Supplier (or RMS, should RMS so elect) in relation to the terminated Services including (at RMS's written request):
 - (i) complying with any reasonable written directions of RMS for the provision of information in respect of any third parties with whom the Supplier had dealings in relation to the Supplier's obligations under this agreement and the nature of such dealings;
 - (ii) providing to RMS and/or a Replacement Service Supplier, a copy of any documentation developed by or on behalf of Supplier and any other information describing, explaining or which would otherwise assist in performing the Services, or for the purpose of RMS inviting third party service providers to supply the Replacement Services and negotiating an arrangement with those third parties or for any tender;
 - (iii) providing up-to-date copies of source code, object code and documentation for the Maintained Items, including all enhancements, modifications and exits;
 - (iv) providing or making available to RMS and its Replacement Service Supplier:
 - (A) sufficient training to enable RMS to make full use of the Maintained Items and the relevant Deliverables;
 - (B) all information and any other information, data, records or documentation in relation to the relevant Maintained Items and otherwise necessary:
 - (aa) to enable the smooth transfer of the Maintained Items and the Services to RMS or its Replacement Service Supplier;
 - (ab) to enable RMS or its Replacement Service Supplier to perform services similar to the terminated Services; and
 - (ac) for the achievement of an effective transition to the Replacement Supplier;

- (C) access to the Supplier's premises where the terminated Services are being carried out to inspect RMS's operating and development environments;
 - (D) all necessary information about RMS's operating and development environments and access to the Supplier Personnel (including technicians and specialists) for provision of reasonable assistance in relation to an effective transition of the terminated Services to RMS or a Replacement Supplier;
 - (E) asset listings of all equipment and other assets used by the Supplier to supply the Services; and
 - (F) computer listings of all software used by the Supplier to supply the Services; and
- (v) providing assistance to RMS or its Replacement Service Supplier in procuring all necessary licences for third party software used in supplying the Services.

- 2 Any provision of information under paragraph 1 above will be made subject to confidentiality obligations agreed between RMS and the relevant third party.
- 3 The Supplier must supply all necessary documentation and evidence to support its claim for any fees incurred by it in complying with this Schedule 2.

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Attachment A - Project Order Template

PROJECT ORDER

This Project Order is entered into pursuant to the provisions of the Master IT Services Agreement dated *[insert date]* between:

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

ITREE PTY LTD, ABN 82 072 883 124, of Level 14, 309 Kent Street, Sydney, NSW 2000 (Supplier).

Contract Reference No. 12.2152.2104

1 Project Order Details

Project Request/ Proposal Number (Clause 1.4, 1.5)	<i>[Insert]</i>
---	-----------------

Project Order Commencement Date (Clause 2)	<i>[Insert]</i>
---	-----------------

Project Order Expiry Date (Clause 2)	<i>[Insert]</i>	Period by which Project Term can be extended	<i>[Insert]</i>
---	-----------------	--	-----------------

[If the Project Order is intended to terminate at the same time as the MITSA, insert "If the agreement is terminated for any reason, then this Project Order will also terminate."]

RMS Representative	<i>[Insert]</i>
-------------------------------	-----------------

Supplier Representative	<i>[Insert]</i>
------------------------------------	-----------------

Approval of Personnel (Clause 12.3)	Approval of Supplier Personnel required: Yes No If yes, approval applies to the following: <i>[Insert]</i>
--	--

[Specify "All Services" or nominate which services can only be carried out by supplier personnel who have been approved by RMS.]

Criminal record search and investigation	Criminal record search and investigation of Supplier Personnel who may have access to certain RMS Data required?
---	--

(Clause 12.12)

Yes

No

If yes, the criminal record search and investigation applies to the all Supplier Personnel who have access to the following RMS Data:

- [Insert]

("Sensitive RMS Data")

[Consider whether the Supplier's Personnel will have access to sensitive RMS Data such as DRIVES. If not, specify "No". If yes, then specify which Supplier Personnel will be subject to a criminal record search having regard to the kind of RMS Data they will have access to eg "RMS's DRIVES database"]

Key Personnel
(Clause 12.5)

Position, Role or Name		

[These are the supplier personnel who should not be replaced in their role on the project without consent. Consider inserting "roles" as well as names because once a named individual is replaced, unless you've also nominated the role the restriction will not apply to that person's replacement.]

Warranty Period
(Clause 9.3)

[X*] consecutive months

Project Price
(Clause 16)

Maintained Items/Services	Price (AUD) (Inc GST) (Nominated price is a single amount unless periodic is specified)
Total	\$

[Do not include Recurring Fees (e.g. for maintenance) – these are covered separately.]

Project Price
Payment Terms
(Clause 16)

Fixed Component of Project Price

[Identify any fixed price component and nominate milestones which can be objectively assessed as completed. These milestones must be specified in and be consistent with the Project Timetable which is to be attached to the Scope of Works.]

Milestone	Payment	Invoice Amount - % of Project Price
	\$	[10%]
	\$	[40%]

	\$	[30%]
Acceptance	\$	[20%]
Total	\$	[100%]

Variable Component of Project Price

[Identify any variable component of the Project Price which is to be paid on a periodic basis, the period of payment and when payment is to commence. Do not include Recurring Fees (e.g. for maintenance) – these are covered separately.]

Component of Project Price	Period of Payment Monthly/Annually	Date of 1st payment

Time and Materials Component of Project Price

[Identify any variable component of the Project Price which is to be paid based on the Time and Materials Rates and the applicable rates from the Contract Details.]

**Project Price Cap
(Clause 16)**

[Insert]

[Insert maximum amount payable by RMS for Time and Materials components in the Project Order]

**Deliverables
(Clause 8)**

[Insert]

[Insert details of all Deliverables which the Supplier is required to supply]

**Services
(Clause 4)**

[Insert]

[List details of all Services which the Supplier is required to provide. Further details will be set out in the Scope of Works]

Maintained Items

[Insert]

[If the Supplier is to provide maintenance for Deliverables that it is required to deliver then either list them or state "All Deliverables".]

[If the Supplier is required to maintain items which are not Deliverables (eg items already owned or licensed by RMS) then you must list these too]

**Payment of
Invoices (Clause
17.1)**

30 days after receipt of correctly rendered invoice

**Liquidated
Damages for delay**

For delay in meeting the Due Date for Acceptance

[X*]% of the Project Price per calendar day (to a maximum of

in Acceptance of Deliverables (Clause 8.8)	10% of the Project Price)
Recurring Fees (Clause 16)	\$ _____ per [month/quarter*] (incl GST)
Recurring Fees Payment Terms (Clause 16)	The Supplier must render its tax invoices to RMS [monthly/quarterly*] in [advance/arrears*]
Recurring Fee fixed period (Clause 16.5)	[Insert] <i>[Insert number of years for which Recurring Fees are fixed and may not be subject to any increase.]</i>

Service Levels

Service Component	Minimum Level (measured over each calendar month)
Response times	[X%] of all support requests Responded to within [X] hours of the support request from RMS
On-site attendance (if relevant to nature of work)	[X%] of all request for attendance on site by Supplier met within [X] hours of request
Restoration - Defect	[X%] of all Defects Restored within [X] hours of the support request from RMS

[Note: For services with an expected low number of faults per month, eg. software systems, use the following simpler approach:]

Service Component	Minimum Level (measured over each calendar month)
Response times	All support requests Responded to within [X] hours of the support request from RMS
Restoration - Defect	All Defects Restored within [X] hours of the support request from RMS

For definitions see Schedule 1 (Dictionary).

Service Rebates and Service Rebate Cap (Clause 5)

Service Component	Minimum Level (measured over each calendar month)	Service Rebate
Response times	[X%] of all support requests Responded to within [X] hours of the support request from RMS	[Z%] of the monthly Recurring Fee* for each [Y%] that the Supplier fails to meet the Minimum Level
On-site attendance (if relevant to nature of work)	[X%] of all request for attendance on site by Supplier met within [X] hours of request	[Z%] of the monthly Recurring Fee* for each [Y%] that the Supplier fails to meet the Minimum Level
Restoration - Defect	[X%] of all Defects Restored within [X]	[Z%] of the monthly Recurring Fee* for each

	hours of the support request from RMS	[Y%] that the Supplier fails to meet the Minimum Level
--	---------------------------------------	--

[Note: For services with an expected low number of faults per month, eg. software systems, use the following simpler approach:]

Service Component	Minimum Level (measured over each calendar month)	Service Rebate
Response times	All support requests Responded to within [X] hours of the support request from RMS	[Z%] of the monthly Recurring Fee*
Restoration - Defect	All Defects Restored within [X] hours of the support request from RMS	[Z%] of the monthly Recurring Fee*

* If Recurring Fees are paid quarterly, the monthly equivalent of those quarterly Recurring Fees.

For definitions see Schedule 1 (Dictionary).

Service Rebate Cap: [\$X] per month

Reporting Period (Clause 10.2)	Weekly
RMS Liability Cap (Clause 26.2(a))	As per clause 26.2(a).
Supplier Liability Cap (Clause 26.3(a))	The greater of: <ul style="list-style-type: none"> (a) [\$X]; and (b) 1.5 times the Project Order Fees paid and payable for the Project Term.
Early Termination Fee (Clause 29.3(b))	<i>[insert]</i>

2 Scope of Works

Ensure your Scope of Works includes the following details:

Services

- *Insert a description of the Services*

Deliverables

- *Project Management Deliverables (list all project management deliverables here including the Project Plan, Risk Register, Issue Log, Status Reports, etc...)*
- *Business Analysis Deliverables (list all business requirements deliverables here including the Business Requirements Document, etc...)*
- *Construction (list all 'build' deliverables here including unit test plan, unit test scripts, etc...)*
- *Implementation (list all implementation deliverables here including implementation plans, releases notes, etc...)*

Design Requirements

- *Business System Design (list all architectural/design deliverables here)*
- *Technical Design (list all technical deliverables here including functional specifications, interface specifications, etc...)*

Acceptance Testing

- *Testing (list all testing deliverables here including test plans, test completion certificate, demonstration, etc...)*

Project Management

- *Details of how the project will be run. The default position in the agreement is that the Supplier has primary project management responsibility. If this is not the case, the Scope of Works needs to specify this.*
- *Specific requirements for invoices eg what documentation needs to be attached.*
- *Make sure that the terminology of your Scope of Works matches the Contract terminology. A Scope of Works taken from an RFP will need to be reviewed, edited and updated before it will be suitable to attach as the RFP terminology may not match this Agreement (eg "Supplier" not "tenderer" and to ensure that any "extras" offered in the successful tender are captured.*

ANNEXURE 1 - PROJECT TIMETABLE

ANNEXURE 2 - TRANSITION-IN PLAN

Attachment B - CSR Order Template

CSR ORDER

A CSR Order will be completed for low value (less than \$10,000) projects associated with services being provided under an existing Project Order (e.g. minor development work, ad hoc reports, data analysis).

A CSR is not required for any services or deliverables that are already due from the Supplier under an existing Project Order. The CSR process is intended to ensure that CSRs are only raised for services and deliverables that are out-of-scope.

CSRs are raised and negotiated through the existing CSR management process (OIPR0175). This process will lead to the preparation and execution of a CSR Order and potentially an amendment to the relevant Project Order:

- (i) A CSR Order – this document will capture the information set out below, aggregated from the CSR, CSQ and CSS forms used in the CSR process*
- (ii) An amendment to the relevant Project Order – if the provision of a deliverable under a CSR Order leads to a change in services provided (e.g. maintenance services) and fees charged under the related Project Order, those changes will need to be documented by a variation to the Project Order.*

This CSR Order is entered into pursuant to the provisions of the Master IT Services Agreement dated *[insert date]* between:

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

ITREE PTY LTD ABN 82 072 883 124 of Level 14, 309 Kent Street, Sydney NSW 2000 (**Supplier**),

and forms part of the relevant Project Order (as listed below).

Contract Reference No. 12.2152.2104

1 CSR Order Details

Project Order description	<i>[Insert]</i> <i>[Insert details of associated Project Order]</i>
CSR Order Commencement Date and Completion Date	<i>[Insert]</i> <i>[Insert start date and finish date for the CSR Order. If the CSR Order is for delivery of hardware, this may be a single date – the delivery date]</i>
RMS	<i>[Insert]</i>

Representative	<i>[Insert RMS Representative – likely to be as per the relevant Project Order]</i>
Supplier Representative	[Insert] <i>[Insert Supplier Representative – likely to be as per the relevant Project Order]</i>
Deliverables	[Insert] <i>[Insert details of all Deliverables which the Supplier is required to supply under the CSR Order]</i> Deliverables that are Maintained Items: [#] <i>[Identify if any Deliverables are going to be added to the Maintained Items under the relevant Project Order]</i>
Milestones	[Insert] <i>[Insert details of any Milestones, e.g. delivery dates for Deliverables]</i>
Services	[Insert] <i>[List details of all Services which the Supplier is required to provide under this CSR Order. Further details will be set out in the Scope of Works]</i>
Warranty Period	[Insert] <i>[Insert warranty period if any – this is the period during which the Supplier will provide Warranty Support Services in respect of a Deliverable provided under this CSR Order]</i>
Ad Hoc Price (ex GST)	Fixed component of Ad Hoc Price: \$ _____ Times and Materials component of Ad Hoc Price: \$ _____ <i>[Insert the agreed price for the CSR. This can contain Fixed and/or Time and Materials element]</i>
Ad Hoc Price Payment Terms	The Supplier must render its tax invoices to RMS monthly in arrears.
Payment of Invoices	30 days after receipt of correctly rendered invoice

2 Scope of Works

Ensure your Scope of Works includes the following details:

Services

- *Insert a description of the Services*

Deliverables

- *Project Management Deliverables (list all project management deliverables here including the Project Plan, Risk Register, Issue Log, Status Reports, etc...)*
- *Business Analysis Deliverables (list all business requirements deliverables here including the Business Requirements Document, etc...)*
- *Construction (list all 'build' deliverables here including unit test plan, unit test scripts, etc...)*
- *Implementation (list all implementation deliverables here including implementation plans, releases notes, etc...)*

Design Requirements

- *Business System Design (list all architectural/design deliverables here)*
- *Technical Design (list all technical deliverables here including functional specifications, interface specifications, etc...)*

Acceptance Testing

- *Testing (list all testing deliverables here including test plans, test completion certificate, demonstration, etc...)*

Project Management

- *Details of how the project will be run. The default position in the agreement is that the Supplier has primary project management responsibility. If this is not the case, the Scope of Work needs to specify this.*
- *Specify requirements for invoices eg what documentation needs to be attached.*
- *Make sure that the terminology of your CSR matches the Contract terminology.*

MASTER IT SERVICES AGREEMENT SIGNATURE PAGE

SIGNED for and on behalf of THE
ROADS AND MARITIME
SERVICES by its authorised delegate:

Paul Hesford
Director Corporate
in the presence of
Cheryl JACKSON
Name of witness (print)

[Signature]
Signature of delegate 29/8/13

SIGNED by MARIL FERGUSON)
as authorised representative for ITREE)
PTY LTD in the presence of:)

[Signature])
Signature of witness)

Matthew Kitchener)
Name of witness (block letters))

[Signature] 19/8/13)
By executing this agreement the)
signatory warrants that the signatory is)
duly authorised to execute this)
agreement on behalf of Itree Pty Ltd)

Master IT Services Agreement

Attachment C - Contractor Statement

Contractor Statement

Payment of Workers, Worker's Compensation Premiums & Payroll Tax



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

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



Details

Contractor's Legal Name	<input type="text"/>	
Contractor's Trading / Business Name	<input type="text"/>	
Contractor's ABN	<input type="text"/>	Contractor's ACN <input type="text"/>
Contractor's Address	<input type="text"/>	
Name or description of Contract or Works	<input type="text"/>	
Period of Work this Statement applies to (see Note 3)	From <input type="text"/>	To <input type="text"/>
Invoice or Payment Claim Numbers this applies to	<input type="text"/>	
Invoice or Payment Claim Dates this Statement applies to	<input type="text"/>	

Statement Validity Period

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

Declaration

Tick one in each row

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

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

Signature of Authorised Person <input type="text"/>	Name of Signatory (print) <input type="text"/>
Date <input type="text"/>	Position / Job Title of Signatory (print - see Note 4) <input type="text"/>

(see Notes on page 2)



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

Notes

1. A Contractor is any person or company who carries out work under a contract of any kind for any business of RMS. References to "Subcontractor" and "Principal Contractor" in the legislation mentioned below have been changed in this Statement to "Contractor" and "RMS" respectively to avoid confusion.
2. This form is prepared for the purposes of section 127 of the *Industrial Relations Act 1996* ("IRA"), section 175B of the *Workers Compensation Act 1987* ("WCA") and Schedule 2 Part 5 of the *Payroll Tax Act 2007* ("PTA"). These provisions allow RMS to withhold payment from a Contractor without any penalty unless and until the Contractor provides to RMS a Statement declaring that:
 - a. All workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid; and
 - b. all remuneration payable to relevant employees for work under the contract has been paid; and
 - c. all payroll tax payable relating to the work undertaken has been paid.
3. Section 127 of the IRA says that the Statement must state the period to which it relates. For sequential statements ensure that the dates provide continuous coverage.
4. The person signing this declaration must be a person who is authorised by the Contractor either to sign this Statement (or to sign statements of this kind) and must be a person who is in a position to know the truth of the statements. The Contractor's principal accounting/financial officer may be appropriate. An individual project manager will normally not be appropriate. If the Contractor is a company then the person signing should be a director unless the company has delegated the power to sign such statements to another person (eg the principal accounting officer).
5. A Statement is not required where RMS is making payment to a receiver, liquidator or trustee in bankruptcy (see section 127(10) of the IRA, section 175B(12) of the WCA and Sch 2 Part 5 (20) of the PTA).
6. Section 127(6) of the IRA says that references to payments to workers means all types of remuneration to which they are entitled.
7. As of 30 June 2011, an employer is exempt from taking out workers compensation insurance if the employer pays less than \$7500 annually on wages, does not employ an apprentice or trainee and is not a member of a group for workers compensation purposes.

Generic Version of Statement

This form has been specially adapted for use specifically for Contractors working for RMS. Generic versions of this Statement for non-RMS use can be obtained at:
http://www.industrialrelations.nsw.gov.au/pdfs/subcontractor_statement_form.pdf, or
<http://www.osr.nsw.gov.au/lib/doc/forms/opt011.pdf>.

Record Retention

RMS will keep a copy of this Statement for 7 years. If the Contractor obtains a similar statement from its subcontractor then the Contractor must keep that statement for 7 years.

Offences for False Statement

Knowingly giving a false statement may be an offence under section 127(8) of the IRA, section 175B of the WCA and Sch 2 Part 5 clause 18(3) of the PTA.

Further Information

These notes are not intended as legal advice and Contractors should obtain their own professional advice if they have any questions about this Statement or these Notes.

For more information, refer to OSR Revenue Ruling PT 59 at <http://www.osr.nsw.gov.au/lib/doc/rulings/rprt59.pdf>, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or the Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Master IT Services Agreement

Attachment D - Insurance Policy Requirements

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

Special Risks Insurance) whilst in the care, custody and control of the Supplier.			
Personal Accident & Illness	Minimum of 104 weeks		Required if selected in the Contract Details

Definitions & Notes

1	<p>Approved Insurer means</p> <p>(a) An Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia;</p> <p>(b) Lloyds Underwriters;</p> <p>(c) A Treasury Managed Fund insurance scheme with the NSW State Government; or</p> <p>(d) The Comcover insurance scheme for the Australian Federal Government.</p> <p>Note that where the insurance risk is insured by a insurer not listed in Note 1(a) or 1(b) then a 'fronting' placement is acceptable from an insurer listed in Note 1(a) or 1(b).</p>
2	Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.
3	A Cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit under the policy
4	References in this Insurance Schedule to the "contractor" and the "contract" are to be interpreted to harmonise with the terminology used in the contract in which this Insurance Schedule is used (eg "Supplier" and "Agreement" or as the case may be).