

Volume 2 of 3

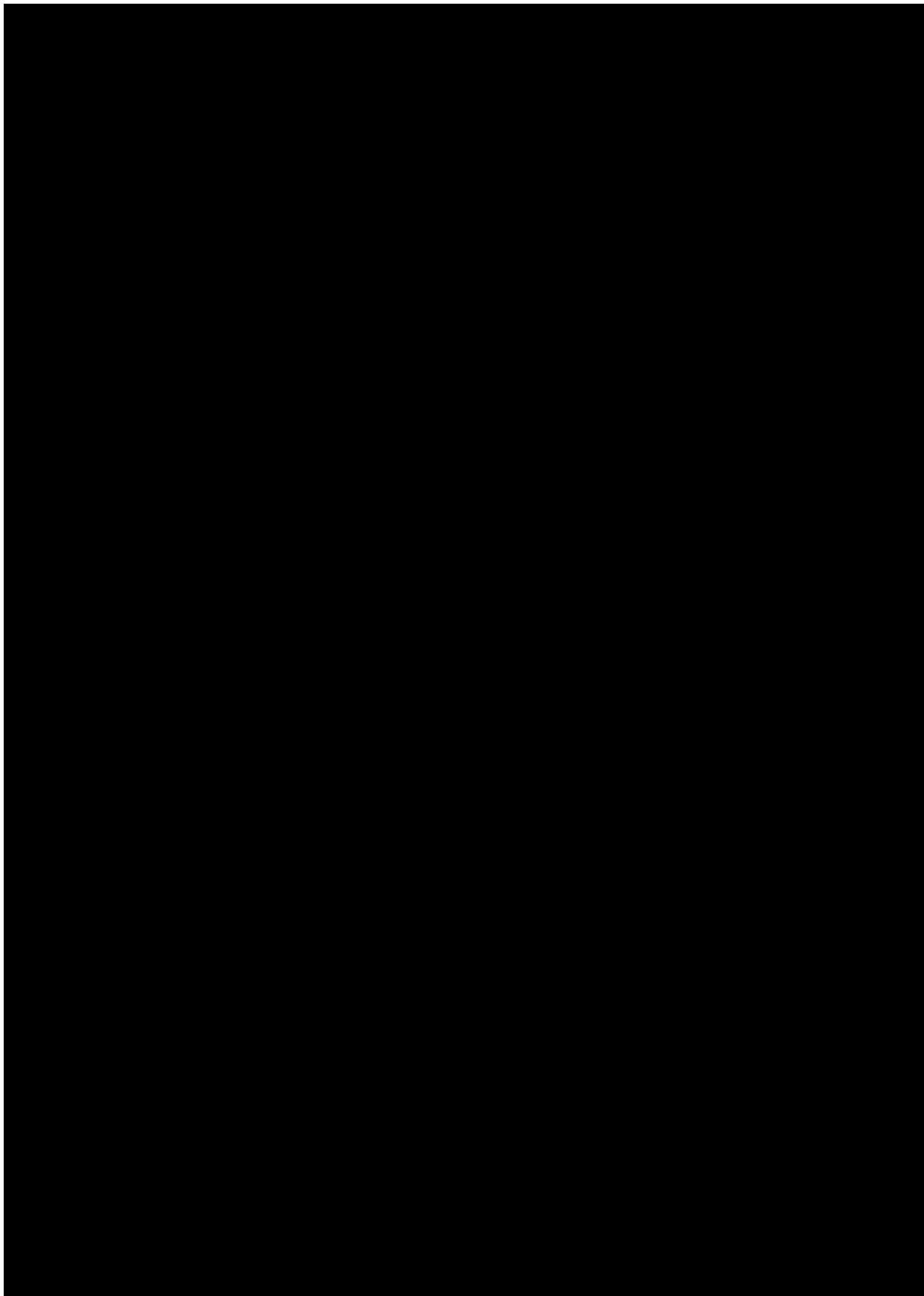
Stewardship Maintenance Contract Sydney South Zone

Schedules 8 to 24
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SCHEDULE 8
REFERENCE PRICING SCHEDULE



SCHEDULE 9
BRIEF FOR TRANSITION SERVICES

Stewardship Maintenance Contracts (SMCs) – Sydney

Schedule 9 – Brief for Transition Services

17 July 2013

Contents

1	Introduction	6
1.1	Overview of the transition	6
1.2	Purpose of this document.....	6
1.3	Road Maintenance Transitional Agreement.....	6
1.4	Interpretation	6
1.5	Structure of this Brief	6
2	Scope of the Transition Services	7
2.1	Scope Overview	7
3	Timing of the Transition Services	8
3.1	Staging of the Transition Services	8
3.2	Milestones and duration of the Start-up Stage.....	9
3.3	Transition Readiness Assessment.....	9
3.4	Mobilisation Completion	9
3.5	Completion of the Transition Services	9
4	Management of the transition	11
4.1	General	11
4.2	Requirements for the Transition Management Plan.....	11
4.3	Requirements for the Transition Management Team.....	11
5	Development of Systems, Processes and Accreditation	14
5.1	Integrated Contract Management System	14
5.2	Business systems.....	14
5.3	Prequalification.....	14
6	Establishment of personnel	15
6.1	Management of Industrial Relations	15
6.2	RMS Wages Staff Transfer.....	15
6.3	RMS Other Employees Transfer.....	16
6.4	Entitlements for RMS Staff Transferring	18
7	Transfer of RMS plant and equipment	19
7.1	General	19
7.2	Process for Sale of Plant and Equipment	19
7.3	Sale for plant and equipment.....	20
7.4	Sale price of plant and equipment	20
7.5	Conditions of sale of plant and equipment.....	20
7.6	Payment for the plant and equipment transferred	20
8	Establishment of depots	21
8.1	Background	21
8.2	Depot Management Plan.....	21
8.3	RMS depots	22
8.4	Process for transfer of RMS depots.....	22
8.5	Conditions for licence of RMS Depot.....	22
8.6	Depot facility costs	22
9	Existing RMS legacy contracts	23
9.1	General	23
9.2	Alternative proposals for delivery of legacy contract services	23

10	Knowledge transfer	24
10.1	General	24
10.2	Knowledge transfer strategy.....	24
11	Finalisation of the Initial Forward Works Program	25
11.1	General	25

Appendices

Appendix 1	Depot Information	26
Appendix 2	Items for Sale	36

List of Abbreviations

DAS	Driver Aid Services
FWP	Forward Works Program
IFWP	Initial Forward Works Program
ITS	Intelligent Transport Systems
MIW	Minor Improvement Works
PSMC	Performance Specified Maintenance Contract (currently in place for Sydney North Zone)
RFS	Road and Fleet Services (a branch of RMS)
RMCR Program	Road Maintenance Contestability Reform Program
RMS	Roads and Maritime Services
SHB	Sydney Harbour Bridge
SMC	Stewardship Maintenance Contract
SPP	Special Project Proposal
SSR	SMC Services Requirements
TEPS	Traffic Emergency Patrol Services
TfNSW	Transport for New South Wales
TMC	Transport Management Centre

Glossary

Salaried Staff	RMS Affected staff employed under the Crown Employees (RMS – Salaried Staff) Award or the Professional Engineers (RMS – Salaries) Award
Transfer Package	Transfer package is the package agreed by NSW Treasury and TfNSW through which RMS staff will transfer to the Service Provider(s)
Transitional Agreement	Road Maintenance Transitional Agreement between Roads and Maritime Services, the [Service Provider XX name to be inserted] and The Director-General of the Department of Transport for and on behalf of Transport for NSW dated [XXX insert date].
RMS Retained Entitlements	RMS Retained Entitlements are those entitlements for which RMS is responsible under the Transition Agreement, and will be funded directly by RMS.

I Introduction

I.1 Overview of the transition

- I.1.1 RMS currently delivers services for road maintenance, minor improvement works (MIW) and other projects in Sydney. These services are developed and managed internally. The delivery is largely carried out by an in-house delivery service provider – Road and Fleet Services (RFS).
- I.1.2 The Service Provider will be responsible for the management of the transition of the services in the Zone from the in-house providers to the Service Provider, in close consultation with RMS.
- I.1.3 RMS will be responsible for the delivery of the services during the Mobilisation Stage as defined in section 3.
- I.1.4 RMS requires the Service Provider to develop a Transition Management Plan to ensure that delivery of the services continues throughout the process.
- I.1.5 The Service Provider and RMS will be required to work collaboratively during the transition to ensure the success of the transfer. RMS intends that the culture of the Transition Management Team be developed with a focus on collaboration and teamwork between the parties.

I.2 Purpose of this document

- I.2.1 The purpose of this document is to define the scope and minimum requirements of the Transition Services to be delivered under the Stewardship Maintenance Contract (SMC).
- I.2.2 RMS requires a seamless transition of services to ensure that the Sydney road network continues to operate throughout the transition process. To ensure a seamless transfer, the Service Provider will need to develop procedures, processes and systems that address the transfer of staff, plant, equipment and depot transition in a considered and efficient manner whilst maintaining customer service.
- I.2.3 This Brief provides the requirements for the Transition Stage, being the Mobilisation Stage and Start-up Stage. The Brief for Transition Services supplements the SMC Services Requirements during the Transition Stage.

I.3 Road Maintenance Transitional Agreement

- I.3.1 This Brief must be read in conjunction with the Road Maintenance Transitional Agreement (Transitional Agreement).

I.4 Interpretation

- I.4.1 Unless otherwise defined in this Brief, terms which have a defined meaning in the SMC or Transitional Agreement have the same meaning in this Brief.

I.5 Structure of this Brief

- I.5.1 This Brief is structured as follows:
 - a) Section 2 provides the scope of the Transition Services to be delivered by the Service Provider;
 - b) Section 3 provides the overall timing and staging for the delivery of the Transition Services; and
 - c) Section 4 onwards provides the specific requirements for the delivery of the Transition Services.

2 Scope of the Transition Services

2.1 Scope Overview

2.1.1 The scope of the Transition Services includes all tasks and things necessary to:

- a) Manage the transition including:
 - (i) Submission of the Transition Management Plan;
 - (ii) Establishment of the Transition Management Team; and
 - (iii) Implementation of the Transition Services and Transition Management Plan.
- b) Develop business systems including:
 - (i) Preparation of Service Plans in accordance with the SMC Services Requirements and achieve Not Rejected status for all Service Plans;
 - (ii) Development of business processes and procedures required to deliver services for the SMC in accordance with the SMC Services Requirements;
- c) Establish staff required for the SMC including:
 - (i) Mobilise staff required to deliver all Services for the SMC;
 - (ii) Make offers and transfer RMS Wages Staff that accept an offer; and
 - (iii) Make offers and transfer RMS Salaried Staff selected by the Service Provider.
- d) Establish plant and equipment required to deliver the Services;
- e) Establish facilities and depots required to deliver the Services, including establishment on RMS depots if required;
- f) Establish protocols for the coordination of the Services with other service providers engaged by RMS under "legacy" maintenance contracts ;
- g) Transfer key knowledge of the road network from RMS to the Service Provider, develop in-house capabilities through training;
- h) Establish subcontractor and supply arrangements to deliver the Services;
- i) Engage with key stakeholders and establish interface protocols;
- j) Finalise the Initial Forward Works Program;
- k) Manage the start-up; and
- l) Deliver any other services needed for the performance of the Services.

2.1.2 For the avoidance of doubt the scope of the transition will include all tasks and things necessary to transfer the services from RMS to the Service Provider, ensuring continuity of the Services at all times.

2.1.3 Without limitation the Transition Services must be delivered in accordance with the minimum requirements defined in this Brief.

3 Timing of the Transition Services

3.1 Staging of the Transition Services

3.1.1 Following the Mobilisation Stage, the Start-up Stage will involve the transfer of the services from RMS to the Service Provider. Notwithstanding the transfer of services, the Service Provider will be responsible for the delivery of the services during the Start-up Stage. RMS may provide some support during this stage, subject to the availability of suitable resources.

3.1.2 The transition will be staged as follows:

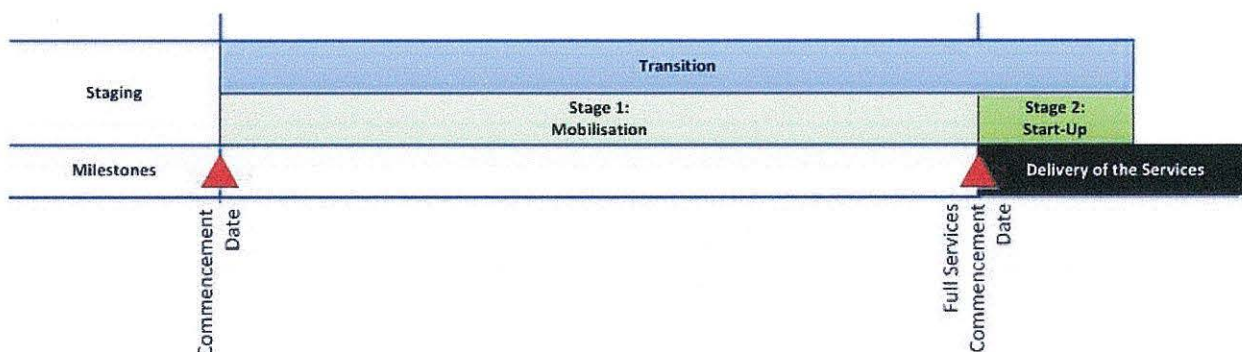


Figure 1: Transition Services Stages

3.1.3 The key activities that will occur during the Transition Stage are as follows:

Stage	Key activities
Stage 1: Mobilisation	<ul style="list-style-type: none"> • Finalisation of the Service Provider’s Transition Management Plan confirming processes and procedures for the Transition. • Set up joint RMS & Service Provider transition review meeting. • Undertake due diligence and selection processes for salaried staff, RMS equipment, RMS depots and facilities. • Facilitate Wages Staff offer and acceptance for the transfer. • Establish business systems and processes for management of the SMC. • Finalise Initial Forward Works Program with RMS. • Establish initial Special Projects. • Transfer key knowledge from RMS to the Service Provider. • Establish plan, processes and systems required to the deliver the services.
Stage 2: Start-up	<ul style="list-style-type: none"> • Transfer staff, RMS equipment, RMS depots and facilities. • Commence delivery of all other Services.

Table 1: Transition Services Stages

3.2 Milestones and duration of the Start-up Stage

- 3.2.1 The Initial Transition Management Plan will detail the milestones within the Mobilisation Stage and duration of the Start-up Stage.
- 3.2.2 The minimum duration of the Start-up Stage must be one week.

3.3 Transition Readiness Assessment

- 3.3.1 The Service Provider must undertake a Transition Readiness Assessment no later than 30 Business Days prior to the Full Services Commencement Date.
- 3.3.2 The Transition Readiness Assessment will involve:
 - a) A workshop involving representatives of RMS and the Service Provider; and
 - b) A report detailing the outcomes of the workshop.
- 3.3.3 The Transition Readiness Assessment workshop and report must include consideration of the following:
 - a) Appointment of key positions within the establishment;
 - b) Readiness for the transfer of personnel from RMS to the Service Provider;
 - c) Development of business systems;
 - d) Establishment of depots, facilities, plant and equipment;
 - e) Preparation of work plans and task allocation;
 - f) Transfer of key knowledge of the Zone road network;
 - g) Risks to the operation of the Sydney road network;
 - h) Readiness to transfer projects and scope of work to the Service Provider;
 - i) Any other key items that may be a risk to a seamless transition; and
 - j) Action Plan to address any key matters that are outstanding.
- 3.3.4 The workshop and report must clearly set out the activities remaining to be performed and the program for such activities.
- 3.3.5 RMS will within 5 Business Days of receipt of the Transition Readiness Assessment report advise the Service Provider of those other matters that RMS considers that the Service Provider must address in order to be ready to undertake the Services.

3.4 Mobilisation Completion

- 3.4.1 The Service Provider must notify RMS in writing no later than 8 Business Days prior to the Full Services Commencement Date of any matters notified by RMS under section 3.3.5 or recently arising, that will not be completed prior to the Full Services Commencement Date, and whether these will impact the transfer of Services at the time of commencement of full Services.
- 3.4.2 The Service Provider must issue a Mobilisation Completion Certificate no later than 3 Business Days prior to the Full Services Commencement Date:
 - a) certifying that the Service Provider is ready to commence the Services;
 - b) listing any matters remaining to be completed as part of the Transition Services, including any matters notified by RMS in accordance with section 3.3.5 above; and
 - c) attaching a program showing when such matters will be completed during the Start-up Stage.

3.5 Completion of the Transition Services

- 3.5.1 The Service Provider must submit to RMS the Transition Services Report as a condition precedent to completion of the Transition Services.

3.5.2 The Transition Services Report must:

- a) specify each of the Transition Services activities required to be undertaken by the Service Provider under the Transition Management Plan and this Transition Services Brief; and
- b) confirm that each has been completed, including the date of completion.

3.5.3 RMS will respond to the Transition Services Report within 5 Business Days and determine as follows:

- a) the Transition Services have been completed; or
- b) the Transition Services have not been completed and detailing the outstanding activities that are required to be undertaken.

3.5.4 Where RMS determines that the Transition Services have not been completed, the Service Provider must undertake those outstanding activities identified and then resubmit the Transition Services Report to RMS.

4 Management of the transition

4.1 General

- 4.1.1 The Service Provider is responsible for the collaborative management of the transition including facilitation of all activities to be undertaken by RMS.
- 4.1.2 To support the collaborative process, RMS will make available a person to work within the Service Provider's Transition Management Team for the duration of the Mobilisation Stage if requested by the Service Provider.

4.2 Requirements for the Transition Management Plan

- 4.2.1 The Service Provider submitted the Initial Transition Management Plan during the RFP stage.
- 4.2.2 The Transition Management Plan must:
 - a) be submitted within 10 Business Days after the Commencement Date;
 - b) address the requirements specified in this Brief; and
 - c) be substantively based on and consistent with the Initial Transition Management Plan.
- 4.2.3 The Transition Management Plan must address this Brief and, as a minimum, include the following:
 - a) Organisation of the Transition Management Team including an organisation chart and details of all staffing required;
 - b) The method for interaction with RMS and the RMS transition team, including the process and method to ensure that interactions are collaborative, effective and efficient;
 - c) The deliverables to be provided for the Transition Services, and demonstrate conformance with the minimum requirements in this Transition Services Brief;
 - d) A transition program and key milestones for both the Mobilisation and Start-up Stages;
 - e) Detail the required RMS resources and information requirements to be provided in the transition;
 - f) Detail the key interfaces and stakeholders that will be managed in the Transition Services;
 - g) Detail the processes for mobilisation of the Service Provider's personnel, depots, facilities, plant and equipment to undertake the Services;
 - h) Detail the processes for transfer of RMS staff, depots, facilities, plant and equipment where relevant;
 - i) Development of the Depot Management Plan in accordance with section 8.2 of this Transition Services Brief;
 - j) Detail the knowledge transfer strategy in accordance with section 10 of this Transition Services Brief;
 - k) Detail a risk management process that addresses all operational and business continuity risks that may affect the Service Provider and RMS in the transition; and
 - l) Provide details of the process for assessing readiness for the transfer of the Services and personnel.
- 4.2.4 RMS will review the Transition Management Plan in accordance with the requirements of the SMC, however, the Service Provider must comply with the Transition Management Plan submitted unless otherwise notified by RMS that the Transition Management Plan is rejected.

4.3 Requirements for the Transition Management Team

- 4.3.1 The minimum requirements of the Transition Management Team will be as follows:

Stewardship Maintenance Contracts (SMCs) – Sydney – Brief for Transition Services

- a) Within 5 Business Days of the Commencement Date, commencement of the Transition Manager and approximately 50% strength of other members of the Transition Management Team.
 - b) Within 20 Business Days of the Commencement Date all of the nominated Transition Management Team must have commenced.
- 4.3.2 The Proponent must provide a Transition Management Team structured to manage the Transition Services.
- 4.3.3 The Transition Management Team as a minimum, must include the following positions. Such positions may be combined with other duties within the Service Provider's delivery team or may be part time head office support as determined by the Service Provider, however, responsibility for such positions must be nominated.

<p>Transition Manager</p>	<p>Responsibilities:</p> <ul style="list-style-type: none"> • Overall responsibility for the delivery of the transition. • Ensuring seamless transfer of the maintenance and MIW from RMS to the Service Provider. • Ensuring that the transition of RMS staff occurs and that all the requirements to establish their employment with the Service Provider are in place. • Leadership and management of the Service Provider's transition team. <p>Minimum Requirements:</p> <ul style="list-style-type: none"> • Strong leadership and negotiation skills and proven ability to work collaboratively with business partners. • Demonstrated experience in managing personnel transition or business change process. • Knowledge and experience of managing industrial relations matters, including exposure to negotiations with unions.
<p>Human Resources Manager</p>	<p>Responsibilities:</p> <ul style="list-style-type: none"> • Management of the employment arrangements for the RMS staff transferring to the Service Provider and the Service Provider's own staff. • Establishment of management processes for employment conditions and entitlements. • Establishment of HR systems and processes for the personnel transferring to the Service Provider. <p>Minimum Requirements:</p> <ul style="list-style-type: none"> • Demonstrated experience in managing human resources change in a business involving greater than 200 persons. • Experience in developing and establishing human resources systems and processes. • Proven ability to work collaboratively within a business environment.
<p>Industrial Relations Advisor</p>	<p>Responsibilities:</p> <ul style="list-style-type: none"> • Responsibility to ensure the establishment of appropriate instruments and arrangements for the transfer and employment

	<p>of RMS staff.</p> <ul style="list-style-type: none"> • Liaison with RMS and other bodies nominated by RMS to inform them regarding the progress of the transfer of staff. • Provide industrial relations advice to the Transition Management Team. <p>Minimum Requirements:</p> <ul style="list-style-type: none"> • Demonstrated experience in managing industrial relations matters involving outsourcing of services. • Knowledge of industrial relations in Australia including a demonstrated understanding of all relevant law, regulations and other instruments. • Experience of leading industrial relations matters, including exposure as lead in negotiations with unions.
<p>Equipment, plant and Facilities Transition Manager</p>	<p>Responsibilities:</p> <ul style="list-style-type: none"> • Management of the establishment of all equipment, plant and facilities required to undertake the SMC.
<p>Other positions</p>	<p>Other positions as specified by the Service Provider in the Initial Transition Management Plan.</p>

5 Development of Systems, Processes and Accreditation

5.1 Integrated Contract Management System

- 5.1.1 The Service Provider must develop the Integrated Contract Management System in accordance with the SMC.
- 5.1.2 The Integrated Contract Management System must be audited by an independent auditor during the Mobilisation Stage to demonstrate readiness for implementation.

5.2 Business systems

- 5.2.1 During the Mobilisation Stage the Service Provider must develop and implement any other business systems required to undertake the SMC and manage its business.

5.3 Prequalification

- 5.3.1 The Service Provider must achieve and maintain appropriate prequalification levels as required by RMS. RMS will be the sole determiner of the prequalification requirements in terms of categories required and associated levels and these may vary during the term of the SMC.

6 Establishment of personnel

6.1 Management of Industrial Relations

- 6.1.1 The Service Provider must manage all aspects of industrial relations in the transfer of RMS staff to the Service Provider. Such management must include consultation and coordination with RMS.
- 6.1.2 The Service Provider must establish all required instruments for the employment of the RMS staff including enterprise bargaining agreement, collective agreements and individual agreements.
- 6.1.3 The Service Provider must ensure that the terms and conditions of all agreements between RMS and representative bodies of RMS staff are incorporated in the instruments established for the employment of RMS staff.
- 6.1.4 The Service Provider must comply with the NSW Government's Industrial Relations Management Guidelines.

6.2 RMS Wages Staff Transfer

Overview

- 6.2.1 The Service Provider must employ RMS Permanent Wages Award Employees in accordance with the Transitional Agreement.
- 6.2.2 Following the transfer, RMS Permanent Wages Award Employees may be employed on any activity being undertaken by the Service Provider, provided it meets the conditions of the Transitional Agreement and Wages Award.

Allocation and Transfer of RMS Wages Staff

- 6.2.3 The Service Provider must engage in a collaborative process with RMS to allocate RMS Permanent Wages Award Employees for employment by the Service Provider.
- 6.2.4 The outline process for allocation and transfer of RMS Permanent Wages Award Employees is as follows:

Stage	Description	Responsibility	Approximate Timing
1	The Service Provider will be given an opportunity to meet and undertake presentations to RMS Permanent Wages Award Employees.	RMS Service Provider	On or around the Commencement Date
2	RMS will issue a letter to RMS Permanent Wages Award Employees to explain the transfer to the Service Provider and alternative options. The letter will include a response form to allow the RMS Permanent Wages Award Employees to nominate a preference for a transfer and for a Zone.	RMS	2 to 3 weeks after the Commencement Date
3	RMS Permanent Wages Award Employees provide response to the letter and <u>nominate preference</u> for a Zone. Staff will be advised that it may not be possible to accommodate the preference.	RMS	4 weeks after the Commencement Date
4	RMS consults with the Service Provider to allocate	RMS	4 to 6 weeks

Stage	Description	Responsibility	Approximate Timing
	RMS Permanent Wages Award Employees to the Service Provider.	Service Provider	after the Commencement Date
5	Service Provider provides an offer of transfer and employment to each RMS Permanent Wages Award Employees allocated to the Zone.	RMS Service Provider	6 weeks after Commencement Date
6	RMS Permanent Wages Award Employees accept or decline the offers of transfer and employment.	RMS	8 weeks after Commencement Date
7	RMS will provide the Service Provider with full employment details and history of the RMS Permanent Wages Award Employees transferring to the Service Provider.	RMS	3 weeks prior to the Full Services Commencement Date
8	RMS Permanent Wages Award Employees transfer to Service Provider.	Service Provider	At or around the Full Services Commencement Date

- 6.2.5 This outline process for the allocation and transfer of RMS Permanent Wages Award Employees must be allowed for in the Initial Transition Management Plan.
- 6.2.6 RMS intends to use a collaborative approach to undertake the allocation of RMS Permanent Wages Award Employees to the Service Provider, however RMS retains absolute discretion to determine the allocation of RMS Permanent Wages Award Employees to the Service Provider.
- 6.2.7 In determining the allocation of RMS Permanent Wages Award Employees to the Service Provider, RMS will take into consideration the following:
- a) Mix of trades, experience and staff numbers between Zones;
 - b) Current work location of the Permanent Wages Award Employees; and
 - c) Permanent Wages Award Employees' nominated preferences.

6.3 RMS Other Employees Transfer

Overview

- 6.3.1 The Service Provider may at its discretion offer employment to RMS Salaried Staff (Other Employees) through the RMS Salaried Staff selection and transfer process.
- 6.3.2 The Service Provider must employ RMS Other Employees that transfer, in accordance with the Transitional Agreement.

Selection and Transfer of RMS Salaried Staff

- 6.3.3 The Service Provider must engage in a collaborative process with RMS to manage the selection and transfer of RMS Other Employees to the Service Provider.
- 6.3.4 An outline of the RMS Salaried Staff (Other Employees) selection and transfer process is as follows:

Stage	Description	Responsibility	Approximate Timing
1	RMS will undertake an Expression of Interest (EOI) process to identify RMS Salaried Staff that would like to be considered for transfer to the Service Provider(s). RMS Salaried Staff that are interested in a transfer will respond with the requested details.	RMS	Prior to the Commencement Date
2	RMS will provide details of RMS Salaried Staff that responded to the EOI to the Service Provider. The details that are provided are anticipated to include CVs and supporting documentation.	RMS	2 weeks after the Commencement Date
3	The Service Provider will identify any RMS Salaried Staff that they would like to consider for employment. The Service Provider will carry out a selection process. During this stage the Service Provider(s) may present to RMS salaried staff or provide details of the Service Providers organisation.	Service Provider	1-4 weeks after the Commencement Date
4	Service Provider will nominate the personnel that they would like to offer employment under the transfer process (First Round).	Service Provider	4-6 weeks after the after the Commencement Date
5	The RMS Transition Team will forward the offers of transfer to the RMS Salaried Staff for consideration. Where RMS Salaried Staff have received offers from more than one Service Provider, they will be required to make their selection within the above period.	RMS	4-6 weeks after the Commencement Date
6	RMS will forward acceptances through to the Service Provider (First Round).	RMS	6-8 weeks after the Commencement Date
7	The Service Provider will identify any additional RMS Salaried Staff that they would like to consider for employment following the outcome of the first round acceptances (Second Round). RMS and the Service Provider will facilitate a similar process to the first round for the selection and engagement of staff.	SP	6 weeks prior to the Full Services Commencement Date
8	RMS Salaried Staff will transfer to the Service Provider.	RMS / SP	At the timing agreed between the Service

Stage	Description	Responsibility	Approximate Timing
			Provider and RMS.

- 6.3.5 The timing for transfer from RMS to the Service Provider will be agreed jointly between RMS, the Service Provider and the staff member, taking into account the business continuity needs for RMS in the transition and the Service Provider’s mobilisation needs.

6.4 Entitlements for RMS Staff Transferring

Responsibilities for Entitlements

- 6.4.1 The responsibility for entitlements of RMS transferring employees is detailed in the Transition Agreement.
- 6.4.2 RMS Permanent Wages Award Employees and Other Employees transferring to the Service Provider will be given an option to have all or part of the accrued annual leave and long-service leave paid as part of the Transfer Package.
- 6.4.3 RMS will provide a full account of the RMS Retained Entitlements for RMS Permanent Wages Award Employees and Other Employees that transfer to the Service Provider.

7 Transfer of RMS plant and equipment

7.1 General

- 7.1.1 RMS currently owns plant and equipment that is used to undertake work for delivery of maintenance services in the Sydney West and South Zones. The plant and equipment owned by RMS will be excess to requirements on appointment of a Service Provider(s) to undertake the work.
- 7.1.2 RMS intends to make this plant and equipment available for sale to the Service Provider. The Service Provider may, at its discretion, purchase any RMS plant and equipment.
- 7.1.3 The plant and equipment will be employed by RMS during the Mobilisation Stage and will be transferred at an agreed date during the Start-up Stage.

7.2 Process for Sale of Plant and Equipment

- 7.2.1 An outline of the process for the sale of RMS plant and equipment is as follows:

Stage	Description	Approximate Timing
1	A list of major plant and equipment available for purchase by the Service Provider is included at Appendix 2. Although the plant is currently assigned to the West or South Zone it may be purchased by a Service Provider from another Zone. The Service Provider will have an opportunity to identify other minor plant and equipment after the Commencement Date.	Prior to the Commencement Date
2	The Service Provider will be given an opportunity to inspect plant and equipment whilst continuing to undertake operations in the field.	1 to 3 weeks after the Commencement Date
3	The Service Provider will identify the list of plant and equipment which it is interested in purchasing from RMS.	2 to 4 weeks after the Commencement Date
4	The Service Provider(s) will undertake due diligence on the plant and equipment. The Service Provider will make an offer at its discretion for the plant and equipment that it would like to purchase from RMS on the basis of 'as is where is'.	4 to 8 weeks after the Commencement Date
5	RMS will accept or reject the offer.	8 to 12 weeks after the Commencement Date
6	The plant and equipment will continue in service of RMS until the date it is transferred to the Service Provider.	
7	The Plant and equipment will transfer to the Service Provider at an agreed date between RMS and the Service Provider.	At the timing agreed between the Service Provider and RMS.

- 7.2.2 Where the Service Provider has committed to the purchase of plant and equipment, the timing for the transfer must be agreed jointly between RMS and the Service Provider taking into account the business continuity needs of RMS in the transition.

7.3 Sale for plant and equipment

- 7.3.1 The agreement for sale of the plant and equipment is set out in Schedule 23.
- 7.3.2 The Service Provider must enter into this form of agreement for sale for any plant and equipment that it would like to purchase from RMS.

7.4 Sale price of plant and equipment

- 7.4.1 The sale price for the plant and equipment will be determined at the time of offer based on an “as is, where is” basis (within Metropolitan Sydney) to take effect on an agreed date.

7.5 Conditions of sale of plant and equipment

- 7.5.1 The plant and equipment will be transferred on an ‘as is where is’ basis.
- 7.5.2 The Service Provider is not required to utilise RMS plant and equipment in the delivery of the Services.
- 7.5.3 Ownership of the plant and equipment will transfer to the Service Provider on the date agreed for the transfer. After the transfer of the plant and equipment RMS will have no obligation or liability in relation to the performance of the plant and equipment.
- 7.5.4 Stamp duty on sale and any other associated charges will be met by the Service Provider(s).

7.6 Payment for the plant and equipment transferred

- 7.6.1 The price for the plant and equipment transferred to the Service Provider may be deducted from payments due to the Service Provider following the Full Services Commencement Date.

8 Establishment of depots

8.1 Background

- 8.1.1 The Service Provider must establish depot facilities to support the delivery of services under the SMC. The Service Provider may establish its own depots or use existing available RMS depot facilities.
- 8.1.2 RMS currently delivers road maintenance, minor improvement works, traffic services and other operations from a number of depots owned by RMS across Sydney.
- 8.1.3 RMS will make available existing RMS depot facilities to the Service Provider, through consolidation of RMS's remaining activities. RMS will provide to the Service Provider control and exclusive access of the RMS depots for use on the SMC, except to the extent of the remaining RMS facilities noted in section 8.3 below.
- 8.1.4 The Service Provider will be offered a licence to use the available depot facilities within its Zone to deliver the works under the SMC. The Service Provider at its discretion may choose whether to utilise none, part or all of the available RMS depots for delivery of the SMC.

8.2 Depot Management Plan

- 8.2.1 The Service Provider must develop the Depot Management Plan to detail its strategy and plan for depot facilities to deliver the Services.
- 8.2.2 The Depot Management Plan must:
 - a) be submitted within 20 Business Days after the Commencement Date;
 - b) contain the contents specified in this Brief for Transition Services; and
 - c) be substantively based and consistent with the Initial Depot Management Plan provided at the RFP Stage.
- 8.2.3 The Depot Management Plan must include the following:
 - a) Location of depot facilities for delivery of services under the SMC.
 - b) Layout of the proposed depot(s) including any proposed improvements.
 - c) Organisation of the services workforce and management to be established between the depot(s).
 - d) Management process for any improvement proposal:
 - e) WHS requirements and strategy for the depot
 - f) Fire and life safety assessment for the depot.
 - g) Timeframe for establishment of the depot and development of any improvements, including the transfer of RMS depots to the Service Provider.
 - h) Plan to establish services in relation to the depot locations and any plan to base services at another temporary depot location.

8.3 RMS depots

8.3.1 The RMS depots to be available for the Service Provider are detailed as follows:

Zone	Depot	Address	Available Area for Service Provider	Remaining Facilities
West Zone	St Marys	Lot 1 Mamre Road, St Marys	19,120 m ²	Sub-lease area to Penrith Council
	Windsor	68 Mileham Street, South Windsor	16,000m ²	Maritime Shed and access facility. RFS fleet ferries and workshop
South Zone	Rockdale	422 West Botany Street, Rockdale	32,000m ²	TEPS and driver aid compound and access.
	Enfield	Cosgrove Road, Strathfield South	2,738m ²	None

[Note to proponents: this table currently represents the availability of the depots and will be replaced by the response to the RFP for each Service Provider detailing the planned use for each depot.]

- 8.3.2 The RMS Depots have various existing temporary and permanent improvements. The existing improvements will be available for the Service Provider to use, except for the remaining RMS facilities above.
- 8.3.3 The Service Provider must allow for the remaining RMS facilities to be maintained at the RMS depots. The Service Provider must allow adequate access to the remaining RMS facilities to allow RMS to undertake the intended function of the facilities. The Service Provider shall ensure there is clear demarcation between RMS remaining facilities and those of the Service Provider.

8.4 Process for transfer of RMS depots

- 8.4.1 The Service Provider and RMS will undertake a collaborative process to develop a process to transfer control and responsibility for the RMS depots to be transferred to the Service Provider where the Service Provider wishes to use the RMS depots. The process will identify the date for the transfer of control of the RMS depots.
- 8.4.2 RMS will retain control of the RMS depot facilities during the Mobilisation Stage. Control of the RMS Depots will be transferred to the Service Provider at a date agreed during the Start-Up Stage.
- 8.4.3 The Service Provider must prepare a condition survey before the date of transfer of control of the RMS depot.
- 8.4.4 RMS must confirm in writing acceptance that the condition survey provided by the Service Provider represents an accurate condition of the depot prior to the transfer of control of the RMS depots.
- 8.4.5 The transfer of the RMS depots will be on an as is basis at the date of the transfer.

8.5 Conditions for licence of RMS Depot

- 8.5.1 RMS and the Service Provider must execute a licence within 6 weeks of the Commencement Date in the form provided in Schedule 24
- 8.5.2 RMS will continue to provide property management services at the depots in accordance with the licence agreement.

8.6 Depot facility costs

- 8.6.1 The Service Provider must provide a detailed breakdown of all depot facility costs within the Initial Forward Works Program and Forward Works Program.

9 Existing RMS legacy contracts

9.1 General

- 9.1.1 RMS has in place a number of legacy maintenance contracts with varying expiry dates as indicated in the SMC Services Requirements.
- 9.1.2 The Service Provider's responsibilities in respect of the assets maintained under these contracts are as outlined in the SMC Services Requirements.
- 9.1.3 During the Transition Stage, the Service Provider must develop interface protocols governing the interface between the different service providers. RMS will assist the Service Provider including by arranging meetings and workshops with the respective service providers to discuss the arrangements and developing or modifying its own procedures to suit the new arrangements.

9.2 Alternative proposals for delivery of legacy contract services

- 9.2.1 RMS will provide further details of the legacy maintenance contracts to the Service Provider after the Commencement Date. The information provided may be subject to confidentiality arrangements or contain information that it is commercially sensitive.
- 9.2.2 The Service Provider may propose alternative arrangements for delivery of maintenance to any Assets being maintained by other service providers (e.g. longitudinal linemarking and signage). This may include novating, renegotiating or amending the scope of the legacy contract. RMS will reasonably consider any such proposal but is not obliged to accept it. In considering any such proposal, RMS will consider:
 - a) Whether the proposal represents value-for-money;
 - b) The impact of the proposal on the incumbent service provider, and the service provider's views;
 - c) Commercial and contractual risk associated with the proposal; and
 - d) Any other matters that RMS considers relevant.
- 9.2.3 In providing a proposal, the Service Provider must address the above matters and set out what actions are required of RMS to execute the proposed alternative arrangements.
- 9.2.4 If RMS accepts any such proposal, the acceptance may be conditional.

10 Knowledge transfer

10.1 General

- 10.1.1 RMS staff have developed a considerable level of knowledge and experience of the Sydney road network through the provision of maintenance and other services.
- 10.1.2 RMS has conducted its own process to map the key knowledge and experience of RMS staff.
- 10.1.3 RMS will share with the Service Provider the details of the RMS staff with specialist knowledge and experience relevant to the Zone.
- 10.1.4 The Service Provider must develop and implement its strategy for knowledge transfer in the Transition Stage. The knowledge transfer strategy may include:
 - a) Direct employment of the relevant staff;
 - b) Conducting collaborative workshops to facilitate knowledge transfer;
 - c) Training of staff;
 - d) Formalisation of knowledge in the Service Provider's systems and processes.

10.2 Knowledge transfer strategy

- 10.2.1 The Service Provider must develop a knowledge transfer strategy as part of the Transition Management Plan. The knowledge transfer strategy must detail the following:
 - a) The process and methodology for the Service Provider to capture key knowledge to deliver the SMC efficiently and effectively;
 - b) Key issues and risks that need to be addressed through the development of adequate knowledge sources;
 - c) Sources of knowledge from RMS or RMS personnel that need to be captured in the knowledge transfer strategy;
 - d) Systems required to capture the knowledge and make it available for personnel working on the SMC with the Service Provider; and
 - e) The time commitment of RMS personnel required to support the delivery of the knowledge transfer strategy.
- 10.2.2 RMS will assist the Service Provider to make available its personnel, systems and support where reasonably possible to support the delivery of the Service Provider's knowledge transfer strategy.
- 10.2.3 RMS at its discretion will not make available to the Service Provider any knowledge that is deemed commercially confidential or sensitive.
- 10.2.4 The Service Provider must identify any training requirements needed as part of the knowledge transfer strategy. This may include reasonable use of RMS staff and resources as a mechanism to transfer critical knowledge of the Sydney Road network.

11 Finalisation of the Initial Forward Works Program

11.1 General

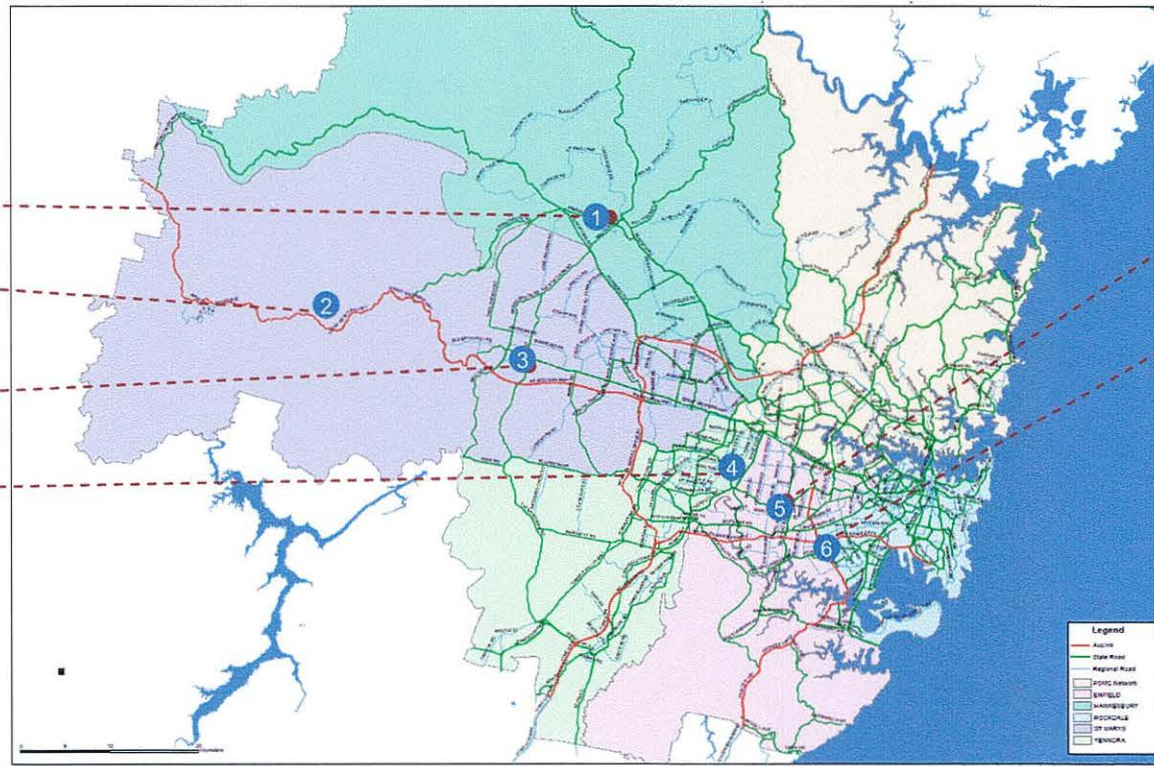
- 11.1.1 RMS and the Service Provider are to develop and agree the Initial Forward Works Program during the Mobilisation Stage.
- 11.1.2 The Initial Forward Works Program must be consistent with the Draft Initial FWP.
- 11.1.3 The Service Provider and RMS are to:
 - a) Develop project briefs and target costs for the tactical pavement provisional outputs identified in the Initial FWP Brief;
 - b) Develop and agree the program and target cost for minor repairs to bridges;
 - c) Develop and agree target costs for routine services not priced in the RFP;
 - d) Develop and agree the detailed procedures for measurement of the KPIs, where needed;
 - e) Resolve any residual issues relating to the Draft Initial FWP pricing (provided as part of the RFP). (e.g. qualifications).

Appendix I Depot Information

Depot locations are in the following Zones

- a) West Zone – Windsor and St Mary’s (Note: Yennora and Lawson are not available to the SMC)
- b) South Zone - Enfield and Rockdale

West Zone	
Depot	Services
Windsor ①	•West zone maintenance
Lawson ②	•West zone maintenance
St Mary’s ③	•West zone maintenance •Fleet services
Yennora ④	•Traffic signal workshop •West zone maintenance & MIW •Fleet workshop •Bridge services •Sydney Road Services corporate •ITS manufacturing unit



South Zone	
Depot	Services
Enfield ⑤	•South Sydney civil maintenance
Rockdale ⑥	•Bridges •South Sydney maintenance •Minor works improvement •Fleet services •Traffic facilities

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Depot Details

Zone	Depot	Owned Leased	Land Area (m ²)	Int. Floor Area (m ²)	Current Use	Future Use	Key Actions
South	Rockdale	Owned	33,305	7,800	<ul style="list-style-type: none"> ▪ RFS Civil Works ▪ RFS Bridge Services ▪ ITS Traffic Signals ▪ RFS Fleet Workshop ▪ RFS Special Event Signage ▪ ETS Survey ▪ Driver Aid Location 	<ul style="list-style-type: none"> ▪ South Zone Service Provider ▪ Driver Aid Location 	<ul style="list-style-type: none"> ▪ Move RFS remaining Fleet Workshop to Yennora. ▪ Demarcate facilities for SP & DA.
	Enfield	Owned	2,738	400	<ul style="list-style-type: none"> ▪ RFS Civil Works 	<ul style="list-style-type: none"> ▪ South Zone Service Provider 	<ul style="list-style-type: none"> ▪ None
West	St Marys	Owned	19,120	1,238	<ul style="list-style-type: none"> ▪ RFS Civil Works ▪ RFS Bridge Compound (including Bailey Bridge Equipment) ▪ ETS Survey ▪ Penrith Council (Compound) 	<ul style="list-style-type: none"> ▪ West Zone Service Provider ▪ Penrith Council (Compound) 	<ul style="list-style-type: none"> ▪ Move all storage to Yennora or Doonside. (Bailey Bridge to Doonside).
	Windsor	Owned	17,515	1,570	<ul style="list-style-type: none"> ▪ RFS Civil Works ▪ RFS Bridge Services ▪ RFS Fleet Workshop for Ferries ▪ RMS Maritime 	<ul style="list-style-type: none"> ▪ West Zone Service Provider ▪ RMS Maritime Location ▪ RFS Fleet Workshop (Ferries) 	<ul style="list-style-type: none"> ▪ Demarcate facilities for SP & RMS Maritime with separate entrances.
North	None						

Depot Details – Rockdale



Item	Description
Location	422 West Botany Street, Rockdale
Facilities	<ul style="list-style-type: none"> • Purpose built works depot (circa 1959), improvements scattered throughout the site with large area of vacant land. • Combination of low to high clearance warehouse and storage facilities, administration buildings and amenities. • Large shed including fleet workshop facilities (main Sydney Workshop). • Two entrance locations off West Botany Road and one off Bay Street. • Self-contained DAS facility facing West Botany Road.
Current uses	<ul style="list-style-type: none"> • RFS Civil Works including storage of equipment. • RFS Bridge Services, main Sydney depot and storage. • ITS Traffic Signals • RFS Fleet Workshop, main Sydney workshop. • RFS Special Event Signage • ETS Survey • Driver Aid Location, in demarcated location off West Botany Road.
Personnel	TBC
Issues	<ol style="list-style-type: none"> 1. High value location for vicinity to the city and access. 2. Large fleet workshop with 4 vehicle bays. 3. Confirmed asbestos contamination on the site. 4. Potential contamination from hydrocarbons and chemicals, including storage locations. 5. Adjacent to residential properties.



Main Workshop



Depot Details – Enfield



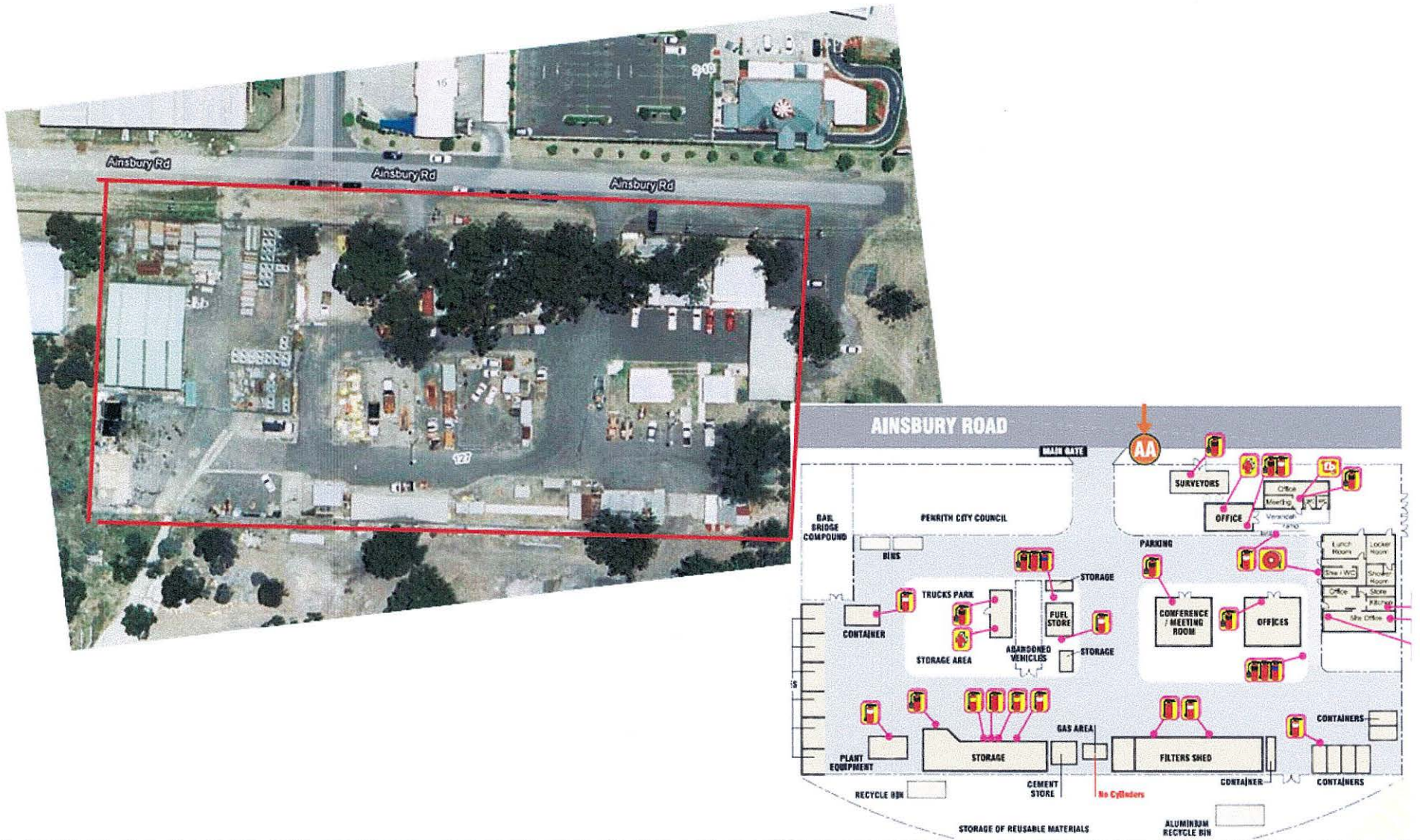
Item	Description
Location	Cosgrove Road, Enfield
Facilities	<ul style="list-style-type: none"> • RMS owned parcel with improvements. • Brick & metal roofed Office/amenities building • Metal clad fabricated amenities/meeting building • Several metal framed and clad storage sheds/awnings some of which are open ended. • Heavy vehicle parking area • Staff parking area • Entrance onto Cosgrove Road
Current uses	<ul style="list-style-type: none"> • RFS Civil Works • RFS Civil Works Storage
Personnel	TBC
Issues	<ol style="list-style-type: none"> 1. Excellent main road access location. 2. Relatively small site, with limited storage. 3. Potential need to upgrade facilities including amenities. 4. Return of adjacent leased property, requiring removal of civil storage.



Office



Depot Details – St Marys



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Item	Description
Location	Lot 1 Mamre Road, St Marys
Facilities	<ul style="list-style-type: none"> • Purpose built depot dating from approximately 1970. • Six (6) Demountable Offices labelled Office "A" to "F". • Storage Containers, and gas storage. • High clearance metal warehouse constructed approximately 4 to 5 years ago and is fenced off from Depot with its own vehicular entrance from Ainsbury Road. • Four (4) metal garages with metal roof including one double, two triple and one seven doors. • Bailey Bridge Compound (RFS Bridge Services) • Abandoned car compound – fenced • Fuel Storage – Raised metal demountable with metal roof. • Ground works include fencing, hardstand, signage, surveillance and lighting. • Main site is accessed from a single entrance on Ainsbury Road.
Current uses	<ul style="list-style-type: none"> • RFS Civil Works • RFS Bridge Compound (including Bailey Bridge Equipment) • ETS Survey • Penrith Council (Compound)
Personnel	TBC
Issues	<ol style="list-style-type: none"> 1. Good location with access to M4 & M7. 2. Current storage, including civil and bridge will need to be relocated. 3. Potential contamination from hydrocarbons and chemicals, including abandoned fuel storage facility. 4. Penrith Council Compound – demarcated and could be retained. 5. No female amenities – requires further investment.



Garage Triple



Warehouse

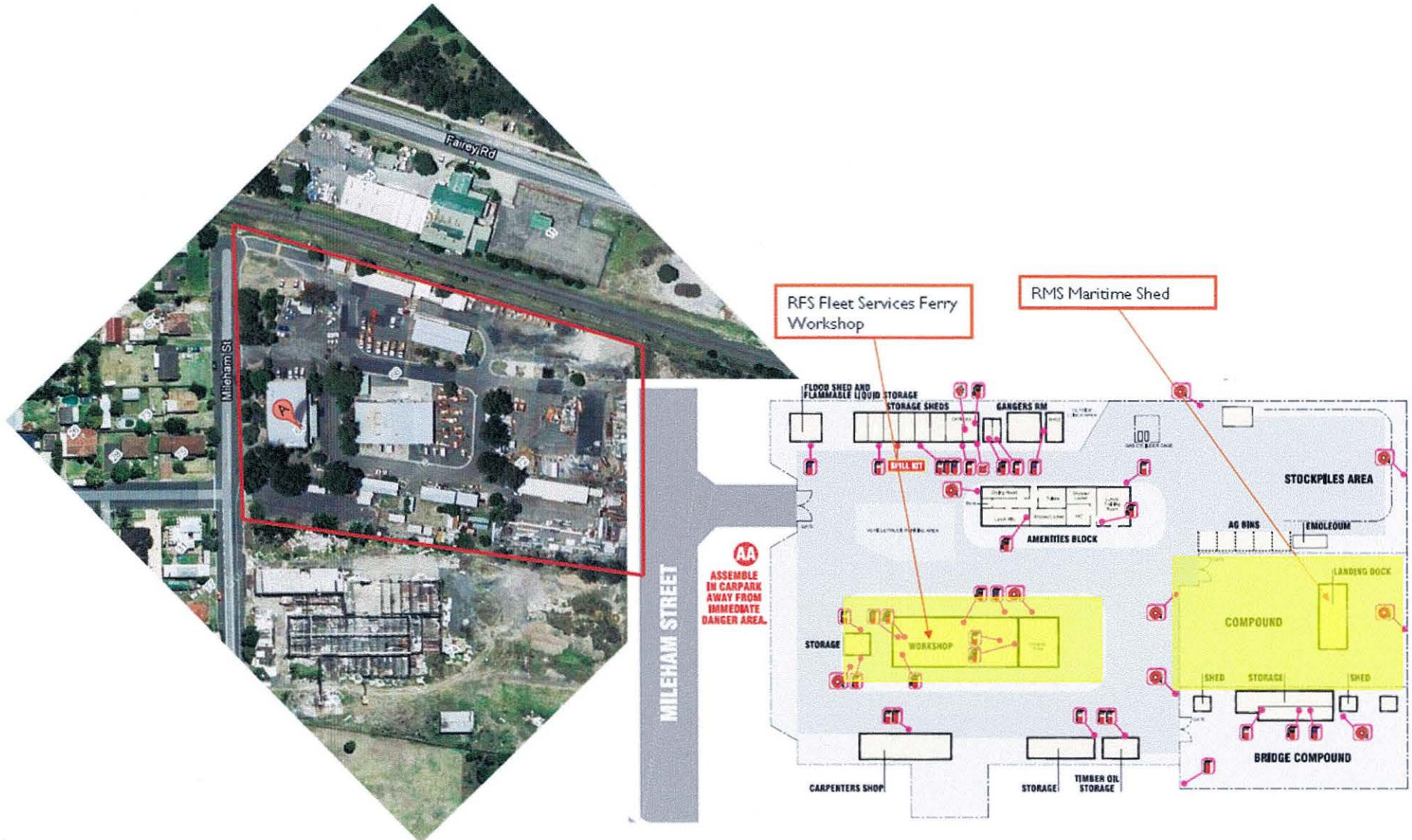


Office Demountable



Car Storage

Depot Details – Windsor



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Item	Description
Location	68 Mileham Street, South Windsor
Facilities	<ul style="list-style-type: none"> • Purpose built works depot, improvements scattered throughout the site. • Large area of vacant land used as hardstand storage. • RFS Fleet Services ferries workshop contained in a combined low and high clearance warehouse with adjoining open awning and storage facilities. • Purpose built maritime storage facility. • Administration buildings. • Amenities block. • Two access points off Mileham Road, with potential for additional access points.
Current uses	<ul style="list-style-type: none"> • RFS Civil Works • RFS Bridge Services • RFS Fleet Workshop for Ferries • RMS Maritime
Personnel	TBC
Issues	<ol style="list-style-type: none"> 1. Location does not allow good access to main road network. 2. Need to retain RMS Maritime shed permanently with demarcation. 3. Need to retain RFS Fleet Services Ferries Workshop temporarily until Oatley relocation. 4. Site requires entrances to be established and demarcation. 5. Facilities may need improvement. 6. Proximity to surrounding residential development – may limit usage and noise.



Office Area



Appendix 2 Items for Sale

Equipment & plant description	South Zone	West Zone
Alternator set 36-50 kva	1	1
Backhoe loader dig depth < 3m		1
Backhoe loader dig depth 4m +	2	4
Compressor 60<90l/sec (135<200cfm)	1	1
Compressor, air, 90-132 l/sec	1	1
Compressor, air, 132-179 l/sec	3	
E.P.V. (truck mounted type) 5<10m reach	1	1
Fork lift truck 2.5t lifting capacity	1	
Grader 75<95kw mass 9000kg<11400kg		1
Grader 95<110kw mass 11400kg<13200kg		1
Hammer - hydraulic	1	
Loader skid steer 800<900kg		1
Loader skid steer, cll 100, 1100<1200kg	1	
Loader skid steer 1200kg +	1	1
Materials handler - lift cap 3t<4t		1
Pavement maintenance machine - small	1	
Pavement maintenance machine - medium	1	
Pavement maintenance machine - large		1
Roller s/p pneumatic tyred <10.0t	1	
Roller s/p pneumatic tyred 10.0t<15.0t		1
Roller s/p vib s/d sgl mass 12000<13500		1
Roller s/p vib tandem smooth 1.5t<2.0t	1	
Roller s/p vib tandem smooth 2.0t<3.0t	5	5
Scissor lift truck		1
Spreader, self prop -chip; cap <4.0t	1	
Sweeper, street	1	
Tanker, water capacity 14000<16000l		1
Tractor mower attached	1	1
Tractor wheeled 45<60kw		2
Traffic control equipment (miscellaneous)	2	
Trailer, 2 axle, <=3t cap.	5	4

Stewardship Maintenance Contracts (SMCs) – Sydney – Brief for Transition Services

Trailer, 2 axle, 3-8t cap.	2	4
Trailer, 2 axle, 8-12t cap.	2	1
Truck gym 1 to 6000	12	13
Truck gym 6001 to 9000	2	1
Truck gym 9001 to 12000	1	9
Truck gym 12001 to 16000	5	4
Truck gym 23001 to 99999	2	
	58	63

SCHEDULE 10

PROCEDURE FOR DEVELOPING AND UPDATING THE FORWARD WORKS PROGRAM

1. DEVELOPMENT OF THE FORWARD WORKS PROGRAM

- 1.1 No later than 9 months prior to the expiry of each Works Period, RMS will provide the Service Provider with the Forward Works Program Brief relating to the next Works Period;
- 1.2 Following receipt of the documents contemplated by paragraph 1.1, the Service Provider must, in collaboration with RMS, commence development of a Forward Works Program Proposal for the next Works Period which:
 - (a) outlines how the Service Provider will achieve the outcomes specified in the Forward Works Program Brief;
 - (b) addresses the requirements of section 4 of this Schedule; and
 - (c) addresses any other matters that RMS and the Service Provider have agreed will be addressed in the Forward Works Program Proposal.
- 1.3 No later than 6 months prior to the expiry of each Works Period, the Service Provider must submit to RMS for its review and comment a draft Forward Works Program Proposal for the next Works Period.
- 1.4 Following submission of a draft Forward Works Program Proposal under paragraph 1.3, RMS and the Service Provider must collaboratively discuss and agree the manner in which the initial draft Forward Works Program Proposal will be further developed and amended.
- 1.5 No later than 4 months prior to the expiry of each Works Period, the Service Provider must submit to RMS a Forward Works Program Proposal for the next Works Period.
- 1.6 Within 20 Business Days after submission by the Service Provider of a Forward Works Program Proposal to RMS under paragraph 1.5, RMS will notify the Service Provider in writing that the Forward Works Program Proposal is:
 - (a) "Agreed";
 - (b) "Agreed (Subject to Conditions)"; or
 - (c) "Not Agreed".
- 1.7 If RMS issues a notice under:
 - (a) paragraph 1.6(a), the Forward Works Program Proposal will become the Forward Works Program for the next Works Period;
 - (b) paragraph 1.6 (b), the Forward Works Program Proposal will become the Forward Works Program for the next Works Period and the Service Provider must satisfy the relevant conditions within the time required by RMS; or
 - (c) paragraph 1.6(c) and the time contemplated by clause 7.3(b) of the General Conditions has expired, then clause 7.4 of the General Conditions will apply.
- 1.8 The Service Provider must bear all costs that it incurs in preparing all Forward Works Program Proposals.

2. AMENDMENT OF THE FORWARD WORKS PROGRAM

- 2.1 If RMS and the Service Provider agree under clause 20.2(b) of the General Conditions that amendments are required to the Forward Works Program, the Service Provider must, in collaboration with RMS, commence development of a Forward Works Program Amendment Proposal which:
- (a) details the effect that the amendments will have, if any, on the Services to be provided under the Forward Works Program; and
 - (b) details any changes to the commercial basis on which the Services are to be provided.
- 2.2 No later than 20 Business Days after RMS and the Service Provider reach agreement under clause 20.2(b) of the General Conditions, the Service Provider must submit to RMS a Forward Works Program Amendment Proposal which addresses the requirements of paragraph 2.1.
- 2.3 Within 10 Business Days after submission by the Service Provider of a Forward Works Program Amendment Proposal, RMS will notify the Service Provider in writing that:
- (a) the Forward Works Program Amendment Proposal is "Agreed";
 - (b) "Agreed (Subject to Conditions)"; or
 - (c) the Forward Works Program Amendment Proposal is "Not Agreed".
- 2.4 If RMS issues a notice under:
- (a) paragraph 2.3(a), the Forward Works Program will be amended in the manner contemplated by the Forward Works Program Amendment Proposal; or
 - (b) paragraph 2.3(b), the Forward Works Program will be amended in the manner contemplated by the Forward Works Program Amendment Proposal and the Service Provider must satisfy the relevant conditions within the time required by RMS
 - (c) paragraph 2.3(c) and the time contemplated by clause 20.2(b)(i) of the General Conditions has expired, clause 20.2(c) of the General Conditions will apply.
- 2.5 The Service Provider must bear all costs that it incurs in preparing all Forward Works Program Amendment Proposals.

3. REQUIREMENTS FOR FORWARD WORKS PROGRAM PROPOSALS

- 3.1 Each Forward Works Program Proposal must include details of the proposed arrangements for the provision of the Services that will be the subject of the relevant Forward Works Program.
- 3.2 These details include:
- (a) scope of and detailed estimates for the Services to be provided;
 - (b) the proposed delivery program for the Services;
 - (d) proposed Milestones for relevant elements of the Services;
 - (c) details of all elements of the Services that are to be performed by Subcontractors;

- (d) details of any departures from the Forward Works Program Brief to apply to applicable aspects of the Services;
- (e) a detailed risk assessment for the Services;
- (f) the proposed contingency allowances for each element of the Services;
- (g) the proposed cash flow for the Services;
- (h) comments on the Payment Types specified by RMS in the Forward Works Program Brief for each Service Category;
- (i) details of any proposed changes to:
 - (i) the Key Performance Indicators and Key Result Areas and their associated weightings;
 - (ii) the rates set out in Pricing Tables 8A, 8B and 9A, for the next Works Period;
- (j) details of any proposed changes to the RMS Specifications;
- (k) details of any key dependencies;
- (l) a benchmarking report providing historical details of outcomes achieved and respective costs including detailed reconciliation of the cost of providing similar services against the current estimates;
- (m) details of lessons learnt outlining what has worked well and what has not worked well in previous FWPs (including the Initial FWP) and setting out how the Service Provider intends to improve on previous performance with the benefit of these lessons learnt;
- (n) all other documents, plans, specifications and information that that are required to be provided by the Service Provider as part of a Forward Works Program Proposal by any other provisions of this document; and
- (o) any other details required by RMS.

3.3 All pricing for the Services that will be the subject of the Forward Works Program must reflect the Efficiency Commitment.

4. **DETAILS TO BE INCLUDED IN THE FORWARD WORKS PROGRAM BRIEF**

4.1 Each Forward Works Program Brief will set out:

- (a) the outcomes required by RMS from the Services provided by the Service Provider;
- (b) the Services that are required to be provided by the Service Provider;
- (c) relevant works and services that will be performed by RMS to enable the Service Provider to provide the Services;
- (d) RMS' proposed commercial arrangements for the provision of each Service Category, including the Payment Type for each Service Category; and
- (e) such other details and requirements as RMS considers appropriate.

SCHEDULE 11
INITIAL FORWARD WORKS PROGRAM BRIEF

Stewardship Maintenance Contracts (SMCs) – Sydney

Schedule 11 – Initial Forward Works Program Brief

31 October 2013

Contents

1	Introduction	6
1.1	Background to the Initial Forward Works Program	6
1.2	Purpose of this document.....	6
2	Initial FWP Outcomes	8
2.1	Overview.....	8
2.2	Service Provider establishment outcomes.....	8
2.3	Other outcomes.....	8
3	Indicative Timeline	10
4	Initial FWP Milestones	11
5	Overview Scope of Services for Initial FWP	12
6	Brief for Program Management	14
6.1	Scope of Services.....	14
6.2	Assumptions for Third Party Works.....	14
6.3	Commercial arrangements.....	14
7	Brief for Asset Management Planning	16
7.1	Scope of Services.....	16
7.2	Bridge Level 2 Inspections.....	16
7.3	Slope Re-assessments.....	16
7.4	Slope Inspections.....	17
7.5	Commercial arrangements.....	17
7.6	Scope exclusions.....	17
8	Brief for Routine Services	18
8.1	Scope of Services.....	18
8.2	Maintenance of road and corridor Assets.....	19
8.3	Maintenance and minor repairs of bridge and tunnel Assets.....	19
8.4	Maintenance support for SHB Precinct.....	19
8.5	Maintenance of other Assets.....	20
8.6	Mitigation measures for Slope Risk Management Plans.....	20
8.7	Operation and maintenance of tidal flow schemes.....	20
8.8	Operation of bridges.....	20
8.9	Scope exclusions.....	21
8.10	Commercial arrangements.....	21
9	Brief for Tactical Road Pavement Works	22
9.1	Scope of Services.....	22
9.2	Expected outcomes for Initial FWP.....	22
9.3	Commercial arrangements.....	23
10	Brief for Tactical Corridor Works	24
10.1	Scope of Services.....	24
10.2	Commercial arrangements.....	24
11	Brief for Simple MIW	25
11.1	Scope of Services.....	25
11.2	Commercial arrangements.....	25

12	Brief for Complex MIW	26
12.1	Scope of Services	26
12.2	Commercial arrangements	26

Appendices

Appendix 1	Forecast Forward Program	27
Appendix 2	Bridge Level 2 Inspections	28
Appendix 3	Slope Risk Management Plans	29
Appendix 4	Bridges & Tunnels Minor Repair Backlog	30
Appendix 5	Tactical Road Pavement - Detailed Job Requirements	31
Appendix 6	Tactical Road Pavement - Project Briefs	32
Appendix 7	Tactical Road Pavement – Provisional Outputs	33
Appendix 8	General Holmes Drive Crib Wall - Project Brief	34
Appendix 9	Simple MIW – Provisional Scope	35
Appendix 10	Complex MIW – Project Briefs	36
Appendix 11	Complex MIW Projects – Draft Work Terms information	37

Definitions

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

List of Abbreviations

AMP	Asset Maintenance Plan
ARL	Assessed Risk Level
BIS	Bridge Information System
FWP	Forward Works Program
ITS	Intelligent Traffic Systems
KPI	Key Performance Indicators
MIW	Minor Improvement Works
PAMS	Pavement Assets Management System
PSMC	Performance Specified Maintenance Contract
RFP	Request for Pricing
RMS	Roads and Maritime Services
RSMS	Road Slope Management System
SHB	Sydney Harbour Bridge
SMC	Stewardship Maintenance Contract
SPP	Special Project Proposal
SRMP	Slope Risk Management Plan
WAD	Works Authorisation Deed
ZSP	Zone Strategic Plan

1 Introduction

1.1 Background to the Initial Forward Works Program

- 1.1.1 RMS has developed an Asset Maintenance Plan (AMP) for the period from 2013/14 to 2023/24 which identifies the long-term funding needs for the effective sustainment of the State's road and maritime infrastructure.
- 1.1.2 In addition to the maintenance strategies outlined in the AMP, RMS also develops and delivers a number of programs for improvements to the Assets, focused on improving safety, reliability and performance of the Assets.
- 1.1.3 A Forward Works Program (FWP) sets out the broad range of Services to be performed by the Service Provider, along with the required outcomes, for a nominal three (3) year period under the Stewardship Maintenance Contract (SMC). FWPs will be developed collaboratively between RMS and the Service Provider
- 1.1.4 Under the SMC, RMS will prepare a Zone Strategic Plan (ZSP) and FWP Brief which will extract and consolidate its intended outcomes and requirements from the AMP and other strategies for the Services in each Zone. This FWP Brief will be used by RMS and the Service Provider to develop and agree the FWP and associated commercial arrangements.
- 1.1.5 The Initial Forward Works Program (Initial FWP) sets out the broad range of Services to be performed by the Service Provider during the Initial Works Period, along with the required outcomes.

1.2 Purpose of this document

- 1.2.1 RMS has prepared this Initial Forward Works Program Brief (Initial FWP Brief) for the purpose of defining the Services and key required outcomes for the Initial FWP. For the Initial FWP, RMS has prepared a more prescriptive Brief than will be the case for future FWPs. This has been done to facilitate the progression of the Service Provider into the role of network Steward.
- 1.2.2 This Initial FWP Brief has been provided to Proponents during the Request for Proposal (RFP) stage. Proponents will submit a draft proposal for the Initial FWP which will deliver the Services required to meet the Initial FWP Brief.
- 1.2.3 Following contract award and during the Transition Stage, RMS and the Service Provider will work collaboratively to finalise and agree all residual aspects of the Service Provider's proposal for the Initial FWP.
- 1.2.4 Once finalised, the Service Provider will deliver the Services in the agreed Initial FWP during the Initial Works Period.
- 1.2.5 This Initial FWP Brief sets out:
 - a) RMS' required outcomes for the Initial FWP;
 - b) Indicative timeline leading up to, and during the Initial Works Period;
 - c) Milestones for the Initial FWP;
 - d) Services which will be provided by RMS;
 - e) Services which will be provided by the Service Provider;
 - f) RMS' intended commercial arrangements including pricing structure for the Initial FWP; and
 - g) Applicable performance measures for the Initial FWP.
- 1.2.6 In defining the Services to be provided, this Initial FWP Brief should be read in conjunction with the broader SMC documents, and in particular:
 - a) SMC Brief for Transition Services;
 - b) SMC Services Requirements which describes the requirements for performing the Services;

- c) SMC Asset Definition Specification which defines the broad range of Assets that are under the Service Provider's Stewardship;
- d) SMC Commercial Framework;
- e) SMC Performance Framework; and
- f) RMS Specifications.

2 Initial FWP Outcomes

2.1 Overview

- 2.1.1 In the AMP, RMS has set out its intended outcomes and Key Performance Indicators (KPIs) for the maintenance of the NSW road network. In addition, the RMS Corporate Strategy 2012-16 includes a number of strategies relevant to the SMC, including to:
- a) improve the efficiency of the road network during peak times on Sydney's road corridors, including supporting road based public transport; and
 - b) deliver key safety related compliance schemes and programs of work to contribute to the safety and security of our networks.
- 2.1.2 These high level outcomes and strategies have been further developed for the purposes of this Initial FWP Brief, and can be categorised under two broad objectives:
- a) To successfully establish the Service Provider as Steward of the Assets; and
 - b) To meet safety, customer and asset outcomes sought for the Assets.

2.2 Service Provider establishment outcomes

- 2.2.1 In order to establish the Service Provider as network Steward, RMS seeks the following outcomes from the Initial FWP:
- a) To execute a smooth and successful transition from current service delivery arrangements to the new Service Provider;
 - b) To successfully deliver an agreed program of works which provides the Service Provider with an opportunity to learn about the Assets, within agreed commercial targets;
 - c) To develop and agree a "baseline" for the inventory, condition, performance and cost of maintaining the Assets;
 - d) To establish an effective working relationship between the Service Provider, RMS and other key stakeholders; and
 - e) To establish robust service delivery systems, plans and procedures.

2.3 Other outcomes

- 2.3.1 In order to satisfy RMS' safety and customer requirements along with the over-arching requirements of the AMP, RMS seeks the following specific outcomes from the Initial FWP:
- a) Contribute to the NSW 2021 Plan target of 93 per cent smooth travel by 2016. Note, that a large quantity of concrete diamond grinding will be needed in Sydney to meet the statewide target. The relevant targets determined by RMS for the respective Zones are provided in Table 1:

Table 1 Smooth Travel Targets

ZONE	PAVEMENT TYPE	2016 TARGET (measured during FY2017)
South Zone	Concrete	48.0%
	Rigid AC ≤ 100mm	85.3%
	Other	90.0%
	Total	86.4%
West Zone	Concrete	84.5%
	Rigid AC ≤ 100mm	93.0%
	Other	92.0%
	Total	91.8%

- b) Achieve all Milestones set for the delivery of Services;
- c) Enhance customer experience and RMS' reputation as a competent and effective Asset owner for example through positive press releases and compliments from the general public on the condition and performance of the network;
- d) Demonstrate a high level of responsiveness to safety issues identified across the network and prioritisation in the delivery of Services so that high risk safety issues are addressed expeditiously;
- e) Contribute towards a reduction in the overall number of incidents and accidents across the network, and improve response and recovery times to major incidents and emergencies; and
- f) Establish a framework for achieving and demonstrating continuous improvement in efficiency and effectiveness of the Services.

3 Indicative Timeline

3.1.1 The indicative timeline that the parties will be working towards leading up to, and during the Initial Works Period are indicated in Figure 1:

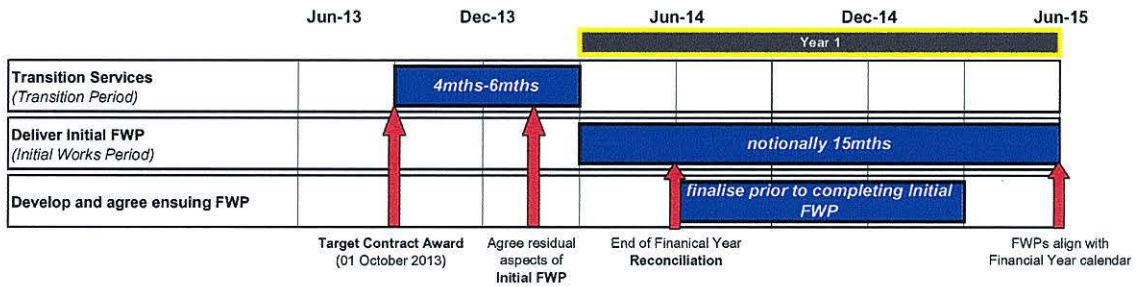


Figure 1: Indicative Initial FWP Timeline

- 3.1.2 The process of agreeing the residual aspects of the Initial FWP will be done collaboratively between RMS and the Service Provider following contract award, during the Transition Stage.
- 3.1.3 The Initial Works Period will be from the Full Services Commencement Date until 30 June 2015.
- 3.1.4 The duration to be used for pricing the Initial FWP is 15 months. Pricing will be adjusted to reflect the actual Initial Works Period i.e. the duration from Full Services Commencement Date until 30 June 2015.

4 Initial FWP Milestones

4.1.1 The Milestones for the Initial Works Period are as indicated below:

Milestone description	Milestone date (75 point condition)	Maximum overrun (30 point condition)
Draft Forward Works Program for FY2015-18	31 December 2014	+10 business days
Forward Works Program for FY2015-18	28 February 2015	+10 business days
All other Asset Management Planning plans and data required under the SMC including: <ul style="list-style-type: none"> • Zone AMP; and • Zone RMAP (updated to reflect accomplishment within Initial FWP); and • Any Asset data required under Section 5.8 of the SMC Services Requirements. 	30 June 2015	+10 business days
Completion of Tactical Road Pavement Works	30 June 2015	+45 business days
Completion of Complex MIW Projects	In accordance with Work Terms	

5 Overview Scope of Services for Initial FWP

- 5.1.1 To meet the key required outcomes identified in Section 2, RMS has developed the minimum scope of Services required to be performed under the SMC, as outlined in Table 2.
- 5.1.2 The Service Provider will be required to perform Services in the North Zone if RMS exercises its rights under clause 10.6 of the SMC to require the Service Provider to carry out these Services as a Pre-Agreed Change.

Table 2 Initial FWP Scope of Services

Service Category	Zones	Services Required
MANAGEMENT		
Program Management	All	Support and manage the delivery of Routine Services, Renewal and Improvement Works, and Events & Incidents, as described in this Initial FWP Brief. Refer Section 6.
Asset Management Planning	All	Perform the Services specified in Section 7.
ROUTINE SERVICES		
Maintenance	Varies (refer Section 8)	Plan and deliver maintenance works consisting of reactive and scheduled activities in accordance with the SMC Service Requirements. Refer Section 8.
Bridge Operations	North only	Perform the Services described at Section 8 for: <ul style="list-style-type: none"> - Spit Bridge; and - Old Glebe Island Bridge.
RENEWAL & IMPROVEMENT WORKS		
Tactical Road Pavement Works	South & West	Develop, plan and deliver the Tactical Road Pavement works set out in Section 9. This includes: <ul style="list-style-type: none"> • Projects for which RMS has developed detailed job requirements; • Projects for which RMS has developed Project Briefs for development by the Service Provider; • Provisional outputs required to meet RMS' required outcomes. The Service Provider is required to develop a program of works to meet these outcomes.
Tactical Corridor Works	All	A provisional sum has been included for Tactical Corridor Works based on the forecast expenditure in the AMP. Where required, these projects will be sourced as Special Project Proposals (SPPs). Project briefs for SPPs will be developed by RMS during the Initial Works Period. SPPs may be sought competitively from other service providers and therefore the provisional sum is not a guarantee of work for the Service Provider.

Service Category	Zones	Services Required
Tactical Bridge and Tunnel Works	All	<p>A provisional sum has been included for Tactical Bridge and Tunnel Works based on the forecast expenditure in the AMP.</p> <p>Where required, these projects will be sourced as Special Project Proposals (SPPs). Project briefs for SPPs will be developed by RMS during the Initial Works Period.</p> <p>SPPs may be sought competitively from other service providers and therefore the Tactical Bridge and Tunnel Works provisional sum is not a guarantee of work for the Service Provider.</p>
Simple Minor Improvement Works (MIW)	All	<p>Provisional scope has been prepared for Simple MIW (Appendix 9) which provides an indication of the different types of Simple MIW expected to be performed as part of the Initial FWP along with the estimated number of projects to be delivered.</p> <p>The provisional sum included for Simple MIW is based on the provisional scope. Pricing will be developed progressively using the principles outlined in the Commercial Framework.</p> <p>Refer to Section 11.</p>
Complex Minor Improvement Works (MIW)	All	<p>RMS has developed a number of Complex MIW projects which are to be developed and delivered by the Service Provider.</p> <p>Any other Complex MIW projects will be delivered as Special Project Proposals (SPPs). The provisional sum included for Complex MIW is to cover this balance of Complex MIW.</p> <p>Project briefs for SPPs will be developed by RMS during the Transition Stage and Initial Works Period.</p> <p>SPPs may be sought competitively from other service providers and therefore the Complex MIW provisional sum is not a guarantee of work for the Service Provider.</p>
EVENTS & MAJOR INCIDENTS		
Event Management Services	South (mostly) & West	Provide Event Management Services as described in the SMC Service Requirements and Major Traffic Incident Support and Event Management Requirements.
Major Traffic Incident Support	South & West	Provide Major Traffic Incident Support Services as described in the SMC Service Requirements and Major Traffic Incident Support and Event Management Requirements.
DEMOBILISATION AND HANDOVER		
Demobilisation and handover	All	All Services required in accordance with Clause 44 of the General Conditions and the SMC Services Requirements.

6 Brief for Program Management

6.1 Scope of Services

- 6.1.1 In order to deliver the Initial FWP, the Service Provider must provide all necessary Services related to program and project management.
- 6.1.2 The Services to be provided include, but are not limited to:
 - a) Program management including project management, communication and community engagement, and supervision of the Initial FWP in accordance with the SMC Service Requirements, including any necessary staff, systems and associated costs;
 - b) All facilities needed to support the delivery of Initial FWP (and Special Projects) including but not limited to staff accommodation, depot(s), and all associated running costs;
 - c) Management and verification of third party works to the Assets, in accordance with the SMC Service Requirements.

6.2 Assumptions for Third Party Works

- 6.2.1 In pricing the management of third party works, the Service Provider should assume the quantity of works performed is as follows:
 - a) Driveways: 15-30 projects per annum per Zone;
 - b) Minor and major WADs: 40-60 projects per annum per Zone;
 - c) Road openings: 100-200 road openings per annum per Zone.
- 6.2.2 The Service Provider must separately report the reasonable Program Management costs attributable to the management of third party works. This information is required to assist RMS in its budgeting process and for the recovery of costs from third parties.
- 6.2.3 The Service Provider will not be required to manage any of the significant transport programs being delivered by the NSW Government during the Initial Works Period. This includes the North West Rail Link, South West Rail Link, the Northern Sydney Freight Corridor program, and Westconnex.

6.3 Commercial arrangements

- 6.3.1 RMS requires Program Management to be priced as a Priced Component for the Initial FWP.
- 6.3.2 Program Management Services will commence on the Full Services Commencement Date unless otherwise agreed by RMS.
- 6.3.3 Program Management is to be priced on the basis of notional 15 month duration. Pricing for recurring costs will be adjusted for the actual duration of the Initial Works Period.
- 6.3.4 In addition, RMS also requires Program Management pricing for the ensuing FWP (1 July 2015 to 30 June 2018). To assist the Service Provider in understanding the indicative resource requirements for the ensuing FWP, RMS has prepared a longer term overview of the future funding program for the SMC. This is provided at Appendix I.
- 6.3.5 Except for those functions indicated in Clause 6.3.8, the pricing for Program Management is to include all project management and supervision. This includes, without limitation:
 - a) All 1st and 2nd management positions (except for those allocated to Service Category Asset Management Planning);
 - b) All commercial and administrative functions;
 - c) Office or depot-based roles which support the overall delivery (e.g. depot management, Road Occupancy Licence coordination);

- d) Design management (with design recovered as a direct cost); and
 - e) Any residual services relating to the completion of the transition stage.
- 6.3.6 The overarching organisation including supporting facilities must be sufficient to be able to deliver the SPPs. However additional project management and site supervision needed to deliver SPPs may be priced in the SPP.
- 6.3.7 For the avoidance of doubt, Program Management includes for the preparation of SPPs.
- 6.3.8 Some management functions may be allocated to Service Category Overheads. The management functions are limited to:
- a) Site-based project management and supervision (3rd tier and below);
 - b) Supporting functions which are related to the quantum of services and not otherwise performed by the project management roles. This includes WH&S officers, environment officers, and quality officers.

At the time of setting a Target Cost, the estimate of service category overheads (SCOH) within the Target Cost for Tactical Pavement and other projects within the Initial FWP (i.e. Pricing Schedule tables 6E, 6F, 6G, 6H and 6I) will be limited to [redacted] markup to the directs.

With regard to maintenance, in the case of an agreed Change to the Target Cost, the estimate of service category overheads (SCOH) for maintenance within the Initial FWP (i.e. Pricing Schedules tables 6B and 6C) will be limited to [redacted] markup to the directs.

Should the option for North Zone additional services be exercised by RMS, then the following would apply for the North Zone only:

At the time of setting a Target Cost, the estimate of service category overheads (SCOH) within the Target Cost for Tactical Pavement and other projects within the Initial FWP (i.e. Pricing Schedule tables 6F, 6G, 6H and 6I) will be limited to [redacted] markup to the directs.

With regard to maintenance, in the case of an agreed Change to the Target Cost, the estimate of service category overheads (SCOH) for maintenance within the Initial FWP (i.e. Pricing Schedules tables 6B, 6C and 6D) will be limited to [redacted] markup to the directs.

The allocation of staff and functions to the different Service Category is shown in Figure 2.

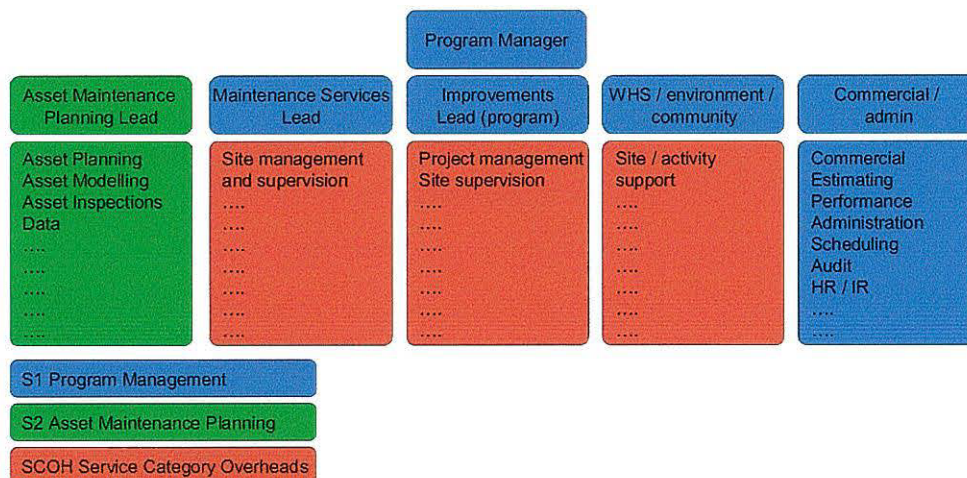


Figure 2: Allocation of Service Provider staff to Service Categories

7 Brief for Asset Management Planning

7.1 Scope of Services

- 7.1.1 The Initial FWP includes for all asset management planning needed to deliver the Services and develop future FWPs.
- 7.1.2 Specific Services relating to Asset Management Planning are identified in this section. Any other management Services not provided for in this Section 6 but which are needed to deliver the Initial FWP must be included within Program Management. Asset Management Planning should include only costs for resources dedicated to providing these Services.
- 7.1.3 The scope of Services for the Initial FWP for Asset Management Planning specifically includes:
- Developing and updating the Asset Management System;
 - Conducting all asset inspections, condition surveys and assessments required under the SMC Service Requirements;
 - Carrying out any asset modeling or similar activities in order to develop the ensuing FWP (i.e. for 2015-18);
 - Developing and updating the Zone Asset Maintenance Plan (Zone AMP);
 - Developing and updating Zone Routine Maintenance Annual Plans (Zone RMAPs);
 - Developing and optimizing specific maintenance plans for scheduled maintenance activities;
 - Establishing the baseline for the inventory, condition, performance and cost of maintaining the Assets; and
 - Development of Project Briefs for any provisional scopes of Service contained in the Initial FWP.

7.2 Bridge Level 2 Inspections

- 7.2.1 For the Initial FWP, RMS has identified a schedule of bridges requiring a Level 2 inspection, including the date by which the inspections must be carried out and results provided to RMS. The schedule of inspections is included at Appendix 2.

7.3 Slope Re-assessments

- 7.3.1 RMS maintains a Road Slope Maintenance System (RSMS) which it uses to manage critical risks associated with slopes adjacent to its roads. As part of the RSMS, RMS conducts risk assessments on slopes and assigns an Assessed Risk Level (ARL) to each slope. Slopes may be assigned a rating from ARL1 (being the highest risk) to ARL5 (the lowest risk).
- 7.3.2 For the Initial FWP, RMS has identified the number of slopes that will require an Assessed Risk Level (ARL) re-assessment during the Initial Works Period. This information is provided at Table 3.

Table 3 Assessed Slopes Requiring Re-Assessments

Rating	North	West	South
ARL1	5	0	0
ARL2	57	47	25
ARL3	321	279	207
ARL4	538	366	322
ARL5	444	323	223
Total Assessed Slopes	1,365	1,015	786
No. of Re-assessments	175	132	102

- 7.3.3 It should be noted that the Assets may include other minor slopes not included in Table 3 which RMS has deemed not to require a risk assessment. There are no re-assessments required for slopes that have not had an initial risk assessment undertaken.

7.4 Slope Inspections

- 7.4.1 For any slope with a risk rating of ARL1 or ARL2, RMS also prepares a Slope Risk Management Plan (SRMP) which sets out the inspection requirements and mitigation actions needed to manage the risk associated with the slope.
- 7.4.2 Throughout the Initial Works Period, the Service Provider will be required to perform routine and prompted inspections for all assessed slopes in accordance with these SRMPs.
- 7.4.3 The frequency of routine inspections will vary for slopes depending on the assigned ARL rating. Typically slopes with an ARL of 1 or 2 (the highest risk ratings) will require inspections on either an annual or 6-monthly basis. The SRMPs provide confirmation of the date of last inspection.
- 7.4.4 The frequency of prompted inspections will largely be determined by the occurrence of certain weather events, such as periods of significant rainfall. The SRMPs provide details of the events which trigger prompted inspections.
- 7.4.5 The Service Provider will be required to update the relevant Slope Risk Management Plans following inspections.
- 7.4.6 Two example SRMPs have been provided for information at Appendix 3. The remainder of the SRMPs for assessed slopes will be provided to the Service Provider during the Transition Stage.

7.5 Commercial arrangements

- 7.5.1 RMS requires Asset Management Planning to be priced as a Priced Component for the Initial FWP.
- 7.5.2 It is intended that RMS and the Service Provider work collaboratively in the development of FWPs. RMS may, if requested or agreed to by the Service Provider, provide input into asset modeling processes to optimise future FWPs.
- 7.5.3 To the extent that RMS provides support or performs Services on behalf of the Service Provider, RMS' reasonable costs associated with providing those Services will be accounted for in the FWP.
- 7.5.4 Notwithstanding that RMS staff may provide support or perform part of the Services, the Service Provider will have overall responsibility for the Services.
- 7.5.5 Asset Management Planning Services will commence upon Full Services Commencement Date unless otherwise agreed by RMS.
- 7.5.6 Asset Management Planning is to be priced on the basis of a notional 15 month duration. Pricing for recurring costs will be adjusted for the actual duration of the Initial Works Period.
- 7.5.7 In addition, RMS also requires Asset Management Planning pricing for the ensuing FWP (01 July 2015 to 30 June 2018). To assist the Service Provider in understanding the indicative resource requirements for the ensuing FWP, RMS has prepared a longer term overview of the future funding program for the SMC. This is provided at Appendix I.

7.6 Scope exclusions

- 7.6.1 Routine and prompted inspections of slopes in the North Zone are excluded.
- 7.6.2 Routine inspections of bridges in the North Zone are excluded.

8 Brief for Routine Services

8.1 Scope of Services

- 8.1.1 Routine Services are an important part of the Services. Effective and timely maintenance and operational support is fundamental to providing a safe operating network.
- 8.1.2 The Service Provider must conduct reactive and scheduled maintenance for all of the Assets to ensure that they remain in safe and effective operation with minimal disruption.
- 8.1.3 The scope of Routine Services differs by Zone. The Routine Services required to be performed for South and West Zones are outlined in Table 4:

Table 4 Routine Services for South and West Zone

	Subcategories of Routine Services	South	West
1	Maintenance of road and corridor Assets	✓	✓
2	Maintenance and minor repairs of bridge and tunnel Assets	✓	✓
3	Maintenance support for the SHB Precinct	✓	×
4	Maintenance of any other Assets	✓	✓
5	Performance of risk mitigation measures described in Slope Risk Management Plans	✓	✓
6	Operation of tidal flow schemes	✓	×
7	Operation of bridges	×	×

- 8.1.4 Not used.
- 8.1.5 The scope of Routine Services to be performed for the North Zone is significantly less than that required for the other Zones due to the existing Performance Specified Maintenance Contract (PSMC) in effect for that Zone. The Routine Services required to be performed for North Zone are limited to:
- a) Minor repair of bridge defects;
 - b) Maintenance of pedestrian lifts at bridges (excludes cleaning);
 - c) Maintenance of mechanical and electrical systems and lighting to tunnels;
 - d) Performance of risk mitigation measures described in Slope Risk Management Plans for slopes with a high risk ratings;
 - e) Electrical maintenance, including maintenance of lighting, to RMS street lights;
 - f) Maintenance of roadside emergency telephones; and
 - g) Operation of bridges.
- 8.1.6 The specific Routine Services required for the North Zone fall under the different subcategories of Routine Service addressed in the following sections of this Brief.
- 8.1.7 For the Initial FWP, the Service Provider will be required to keep an accurate measure of the following information with respect to Routine Services:
- a) work accomplishment including the quantity of different activities performed;
 - b) response times including the extent to which intervention standards are being met;
 - c) effort and expenditure including the quantity of labour, plant and materials spent on rectifying defects, and the resulting costs; and

- d) management and operational performance including: the extent to which the performance of maintenance Services meets the intended performance objectives; and the extent to which specification requirements are met.

8.2 Maintenance of road and corridor Assets

- 8.2.1 RMS has established a draft specification for the maintenance of road and corridor Assets (the M3 Specification).
- 8.2.2 Under the Specification, maintenance activities are categorised as:
 - a) **reactive** for those defects which constitute a safety hazard and require a definite response (intervention) within a required timeframe or before reaching a defined severity level; or
 - b) **scheduled** for those defects which need to be rectified but where the Service Provider can exercise some discretion in the degree or timing of the intervention. The specification provides guidance on performance objectives which should be considered when planning for these activities.
- 8.2.3 The Service Provider must maintain all road and corridor Assets in accordance with the M3 Specification (and any other relevant specifications) and report performance against the specification requirements.

8.3 Maintenance and minor repairs of bridge and tunnel Assets

- 8.3.1 For the avoidance of doubt, the requirements of the M3 Specification for road and corridor Assets also apply to those Assets when they are located on or in bridges and tunnels (e.g. maintenance of pavements and safety barriers).
- 8.3.2 The M3 Specification also includes additional requirements with respect to maintenance and minor repair of bridge and tunnel Assets.
- 8.3.3 The Service Provider must perform maintenance to all bridge and tunnel Assets in accordance with the M3 Specification (and any other relevant specifications) and report performance against the specification requirements.
- 8.3.4 Using the Bridge Information System (BIS), RMS has identified a list of outstanding defects to bridge and tunnel Assets which require minor repairs including, but not limited to:
 - a) repair of impact damaged concrete;
 - b) repair of spalling concrete;
 - c) patching and painting;
 - d) tightening of cover plates and bolts;
 - e) application of anti-skid coatings to pedestrian walkways; and
 - f) replacement of cracked damage walkway slabs.
- 8.3.5 A backlog schedule of minor repairs as at 09 May 2013 has been provided at Appendix 4. Although the entries to this schedule will change prior to Full Services Commencement, it can be considered indicative of the type and composition of the Services that will need to be planned and performed by the Service Provider.
- 8.3.6 RMS is seeking to work collaboratively with the Service Provider to develop a program for minor repairs with an objective of reducing the backlog of repairs. This program will be developed during the Transition Stage. In the interim, RMS has established a provisional sum for these Services.

8.4 Maintenance support for SHB Precinct

- 8.4.1 Maintenance for the SHB Precinct will be managed and largely delivered by RMS. However, limited Services are required to be delivered by the Service Provider, as described in the SMC Service Requirements.

- 8.4.2 The Service Provider will need to comply with all relevant specifications when performing these support Services and report performance against the relevant specification requirements.

8.5 Maintenance of other Assets

- 8.5.1 The Service Provider must perform maintenance to any other Assets to ensure they remain in safe and effective operation. The Service Provider will prepare maintenance plans for effective maintenance of these Assets to meet this objective.
- 8.5.2 There are some maintenance activities which are not described in the M3 Specification. Notwithstanding this, the Service Provider must perform all maintenance activities necessary to ensure the Assets remain in safe, reliable and effective operation.
- 8.5.3 The activities not described in the M3 Specification include maintenance to the following Assets:
- a) Bridge and tunnel Assets, including:
 - Mechanical, plumbing and electrical Assets;
 - Lifts;
 - Fire protection;
 - Bridge navigation lights;
 - Overheight detection systems.
 - b) Road and corridor Assets, including:
 - Roadside emergency telephones;
 - Street lights; and
 - Manual tidal flow systems (South Zone only).
- 8.5.4 Other activities, such as heavy patching and slab replacement, although not identified within the M3 Specification, may be undertaken as part of Routine Services to ensure a safe operating network, at the Service Provider's discretion.

8.6 Mitigation measures for Slope Risk Management Plans

- 8.6.1 The Service Provider is required to carry out all maintenance of slopes including mitigation and defect rectification actions arising from slope inspections undertaken in accordance with the relevant SRMPs.

8.7 Operation and maintenance of tidal flow schemes

- 8.7.1 There are two manual tidal flow (candy bar) schemes in the South Zone that are required to be managed by the Service Provider (South Zone only). These are:
- a) at the intersection of Princes Highway, Forest Rd and Wickham Rd at Arncliffe; and
 - b) along the Princes Highway at Blakehurst.
- 8.7.2 The scope of Services for the management of these schemes is contained within the SMC Service Requirements.

8.8 Operation of bridges

- 8.8.1 The operation of bridges scope of Service includes:
- a) Spit Bridge; and
 - b) Old Glebe Island Bridge

- 8.8.2 An operation management manual for Spit Bridge has been developed by RMS and an operation management manual for Old Glebe Island Bridge (which requires only periodic operation) will be developed in the Transition Stage by the Service Provider.

8.9 Scope exclusions

- 8.9.1 There are some existing legacy maintenance contracts which will continue to be managed by RMS in close consultation with the Service Provider during the Initial FWP. These are as outlined in the SMC Services Requirements.

8.10 Commercial arrangements

- 8.10.1 RMS requires Routine Services to be priced as a Target Cost for the Initial FWP.
- 8.10.2 The RFP Pricing Schedule has assigned provisional sums against certain activities where RMS has determined that the activity cannot reasonably be priced on a Target Cost basis at RFP stage. All other activities (including some activities where maintenance plans are to be developed following contract award) are to be priced on a Target Cost basis. This includes:
- a) Performance of mitigations and defect rectifications for slope and retaining walls;
 - b) Maintenance of transverse linemarking;
 - c) Maintenance of roadside emergency telephones;
 - d) Maintenance of street lights.
 - e) Bridge and tunnel maintenance and minor repairs;
 - f) SHB Precinct support services; and
 - g) Operation of bridges.
- 8.10.3 Routine Services pricing is to be provided on an annual basis. The annual price will be converted to a notional 15 month price within the relevant pricing summary of the RFP Pricing Schedule. Routine Services pricing will be adjusted for the actual duration of the Initial Works Period.
- 8.10.4 To support the pricing, estimated quantities of accomplishment are required to provide an indication of relative effort.
- 8.10.5 RMS intends that the Service Provider will undertake further investigation during the Transition Stage in order to significantly reduce, if not eliminate, provisional sums included within the Routine Services Target Cost.

9 Brief for Tactical Road Pavement Works

9.1 Scope of Services

- 9.1.1 Tactical Road Pavement works typically consists of the following project types:
- a) Spray Sealing;
 - b) Asphalt Surfacing;
 - c) Pavement Rebuilding;
 - d) Pavement Rehabilitation;
 - e) Diamond Grinding;
 - f) Heavy Patching; and
 - g) Slab Replacements.
- 9.1.2 RMS has developed the forward program including priority sites and treatments for FY2013/14. From this program, RMS has selected the projects which are forecast for delivery by the Service Provider after the Full Services Commencement Date. This includes:
- a) Detailed job requirements where available (Appendix 5);
 - b) Project Briefs for the balance of sites (Appendix 6).
- 9.1.3 The Service Provider will be responsible for carrying out the projects included at Appendix 5 and Appendix 6.
- 9.1.4 RMS has also developed provisional outputs for pavement treatments to be performed during FY2014/15. The provisional outputs are provided at Appendix 7. The Service Provider will be responsible for developing and delivering an optimal program of treatments to achieve the outcomes set out at Section 9.2.
- 9.1.5 The Service Provider is to allow for all site investigation and design necessary to deliver the projects. This may include activities such as deflection testing, survey, core drilling and geotechnical investigations.

9.2 Expected outcomes for Initial FWP

- 9.2.1 In its development of the program, RMS has identified expected average pavement conditions at end of FY2013/14 and 2014/15. The forecast outcomes are:

Table 5 Expected outcomes for Initial FWP

Pavement Conditions Criteria	Unit	SOUTH ZONE			WEST ZONE		
		2013/14	2014/15	Change	2013/14	2014/15	Change
Roughness	m/km	2.85	2.79	-0.06	2.65	2.63	-0.02
Seal Age	Year	9.7	9.3	-0.4	7.9	8.4	0.5
Asphalt Age	Year	13.4	12.5	-0.9	14.7	14.8	0.1
Pavement Age	Year	41.2	41.2	0.0	38.4	38.5	0.1
Texture	mm	0.79	0.76	-0.03	0.87	0.84	-0.03
Rut Depth	mm	5.05	4.96	-0.09	5.61	5.57	-0.04

- 9.2.2 The pavement condition changes contained in Table 5 are based on the Length Weighted Average condition of the various road segments across the network. RMS' Pavement Asset Management System (PAMS) has been used to determine the expected FY2014/15 conditions.
- 9.2.3 The Service Provider, working in collaboration with RMS, will be required to validate the performance of the completed Initial FWP as part of the Asset Management Planning Services.

9.3 Commercial arrangements

- 9.3.1 RMS requires these Services to be carried out on a Target Cost basis.
- 9.3.2 A provisional sum has been assigned against some work elements within the Project Brief and Detailed Job Requirement projects where the information available is not sufficient for Target Cost pricing. The provisional sum is to cover:
- a) Service adjustments for below ground utilities;
 - b) Slab replacement and stabilisation (for diamond grinding projects only);
 - c) Joint replacement (for diamond grinding projects only);
- 9.3.3 A provisional sum has also been included to cover the provisional outputs provided at Appendix 7.
- 9.3.4 RMS intends that the Service Provider will undertake further investigation during the Transition Stage in order to significantly reduce, if not eliminate, the provisional sums included within this Service Category.

10 Brief for Tactical Corridor Works

10.1 Scope of Services

- 10.1.1 In its AMP, RMS has identified a number of candidate sites where tactical corridor works may be required. For the most part the projects have not been developed and where required will be carried out under a Special Project Proposal (SPP).
- 10.1.2 A brief for an SPP to a project at General Holmes Drive, Botany has been included at Appendix 8.
- 10.1.3 The scope of developing the SPP is part of this Initial FWP for the South Zone only.

10.2 Commercial arrangements

- 10.2.1 RMS requires these Services to be carried out on a Target Cost basis.
- 10.2.2 The costs for developing this SPP may include:
 - a) External design, investigation and survey; and
 - b) Any other reasonable costs incurred but not allowed for under Program Management e.g. specialist studies.
- 10.2.3 Any other management costs such as project management, estimating, scheduling and the like required are to be included for in Program Management.

11 Brief for Simple MIW

11.1 Scope of Services

- 11.1.1 Through a number of different funding programs, RMS sponsors and delivers a variety of Simple Minor Improvement Works (Simple MIW) to improve road safety.
- 11.1.2 Candidate sites and concept treatments for Simple MIW will be identified by RMS Traffic and Safety Management Branch. RMS will also undertake initial consultation with affected stakeholders to identify any issues with the proposed treatments.
- 11.1.3 Once projects are identified they will be referred to the Service Provider. The scope of the Service Provider will be to develop and deliver these treatments.
- 11.1.4 Candidate sites for treatments are identified on an ongoing basis and may be required to be carried out as an urgent and/or reactive basis in response to emerging network issues. For the Initial FWP, RMS has identified a provisional scope of Services at Appendix 9.
- 11.1.5 The types of works which may be delivered as Simple MIW include, but are not limited to:
 - a) Provision of new pedestrian fencing to improve pedestrian safety;
 - b) Installation of skid resistant road surfacing to improve road safety;
 - c) Changing existing signs (e.g. to change speed limits to reflect changed road conditions);
 - d) Additional signposting (e.g. to warn drivers of unsafe road conditions or to improve guidance);
 - e) Provision of new pavement marking to improve road safety;
 - f) Provision of new pedestrian crossings to improve pedestrian safety;
 - g) Provision of new pram ramps to improve pedestrian safety;
 - h) Provision of new tactile indicators to improve pedestrian safety.

11.2 Commercial arrangements

- 11.2.1 The Services will be carried out under a Target Cost arrangement.
- 11.2.2 At the time of preparing this Initial FWP Brief, only provisional scopes are available. Target Costs will be developed and agreed progressively in accordance with the Commercial Framework.
- 11.2.3 In the interim, a provisional sum has been allowed based on RMS forecast expenditure.

12 Brief for Complex MIW

12.1 Scope of Services

- 12.1.1 For the most part, Complex MIWs will be developed and delivered under a Special Project Proposal (SPP).
- 12.1.2 However, in recognition of the objectives of the Initial FWP, RMS has identified a number of Complex MIW projects for inclusion in the Initial FWP.
- 12.1.3 The Complex MIW projects included in the Initial FWP are set out in Table 6:

Table 6 Complex MIW Projects included in Initial FWP

Ref	Project Name	Zone
1	Henry Lawson Drive & Bullecourt Avenue, Milperra, Intersection Upgrade	South
2	Pennant Hills, Intersection Upgrade	West
3	Glenfield Road, Intersection Upgrade	West
4	Pacific Highway, Gordon, Pedestrian Fencing	North

- 12.1.4 Concept Designs are provided for Pennant Hills (Ref 2) and Glenfield Road (Ref 3) at Appendix 10.
- 12.1.5 Project Briefs are provided for Henry Lawson Drive (Ref 1) and Pacific Highway (Ref 4) at Appendix 10.
- 12.1.6 Draft Work Terms information is included at Appendix 11.

12.2 Commercial arrangements

- 12.2.1 The Services will be carried out under a Target Cost arrangement.

Appendix I Forecast Forward Program

Refer to Exhibit 5.

Appendix 2 Bridge Level 2 Inspections

Refer to Exhibit 5.

Appendix 3 Slope Risk Management Plans

Refer to Exhibit 5.

Appendix 4 Bridges & Tunnels Minor Repair Backlog

Refer to Exhibit 5.

Appendix 5 Tactical Road Pavement - Detailed Job Requirements

Refer to Exhibit 5.

Appendix 6 Tactical Road Pavement - Project Briefs

Refer to Exhibit 5.

Appendix 7 Tactical Road Pavement – Provisional Outputs

Refer to Exhibit 5.

Appendix 8 General Holmes Drive Crib Wall - Project Brief

Refer to Exhibit 5.

Appendix 9 Simple MIW – Provisional Scope

Refer to Exhibit 5.

Appendix 10 Complex MIW – Project Briefs

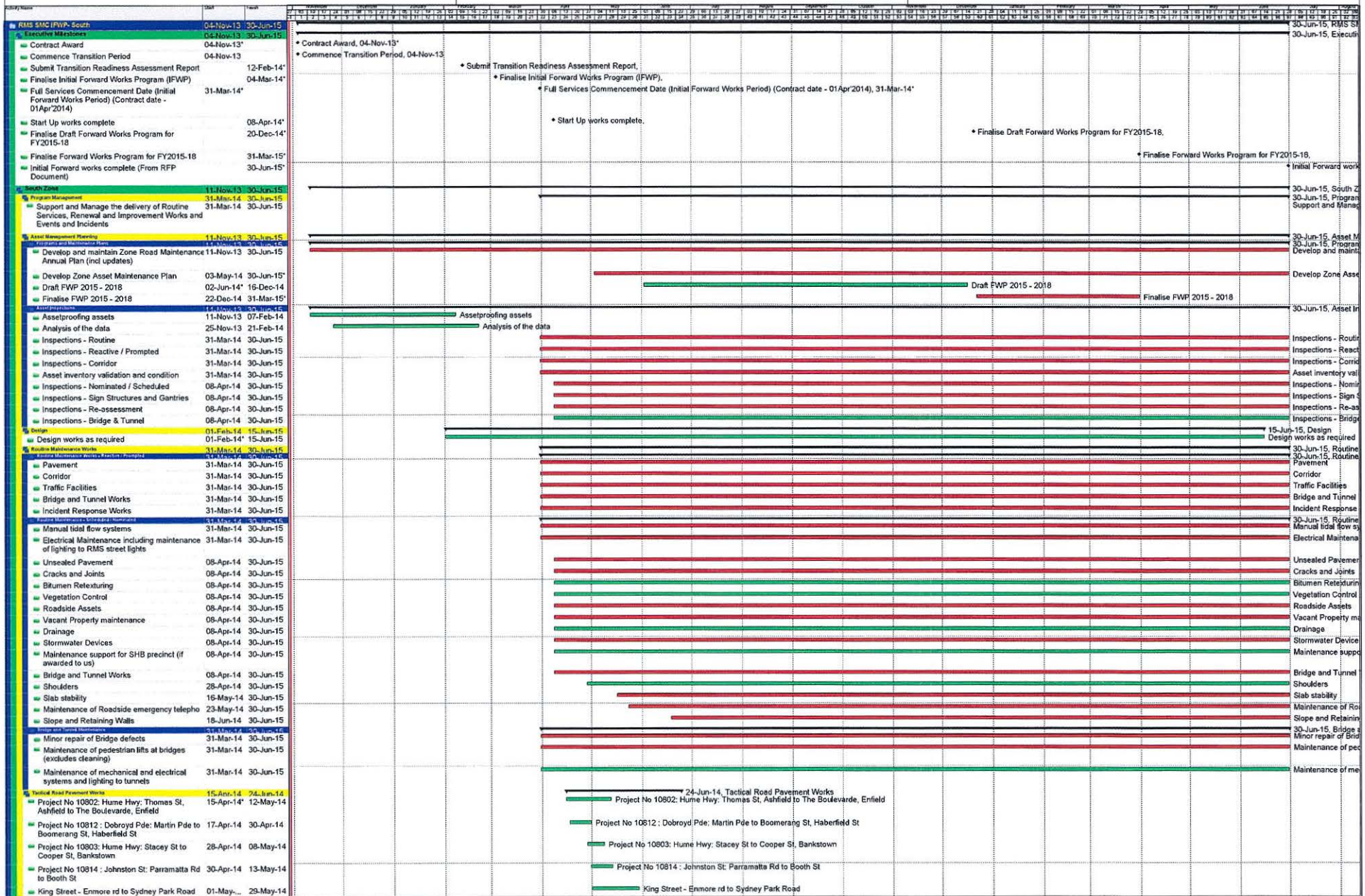
Refer to Exhibit 5 for the following Project Briefs:

- a) Henry Lawson Drive, Milperra, intersection upgrade;
- b) Pennant Hills, intersection upgrade;
- c) Glenfield Road, intersection upgrade; and
- d) Pacific Highway, Gordon, pedestrian fencing.

Appendix I I Complex MIW Projects – Draft Work Terms information

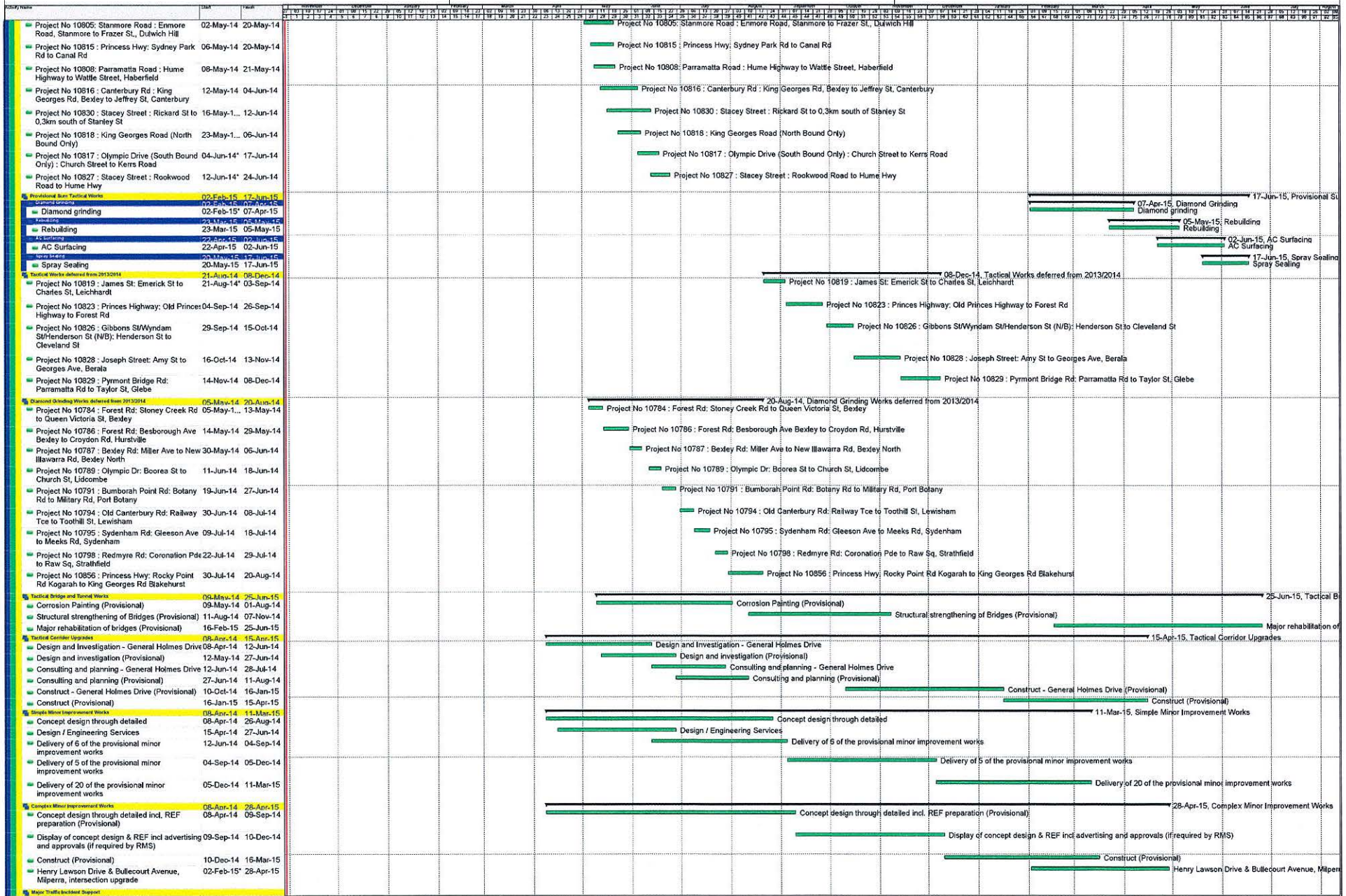
No	Work Terms Item	Details
1.	Commencement Date	Full Services Commencement Date
2.	Site	As described in the Project Briefs
3.	Scope of work under the Contract	As required in the Project Briefs
4.	Agreed lane closures	Service Provider must identify and agree required lane closures in consultation with TMC
5.	Date for Completion	30 June 2015 (individual Milestone for each project)
6.	Defects Liability Period	12 months
7.	Specifications	Relevant RMS Specifications that are current as at 15 August 2013
9.	Extent of design by the Service Provider	Alt I of Works Terms
10.	Responsibility for design	RMS has carried out design prior to the Commencement Date
11.	Works Fee	[Proponents to submit]
12.	Payment type	Target Cost
13.	Communications and Community Engagement requirements	To be developed in accordance with Communication and Community Engagement Requirements
14.	Subcontractor warranty	No

SCHEDULE 12
DRAFT INITIAL FORWARD WORKS PROGRAM



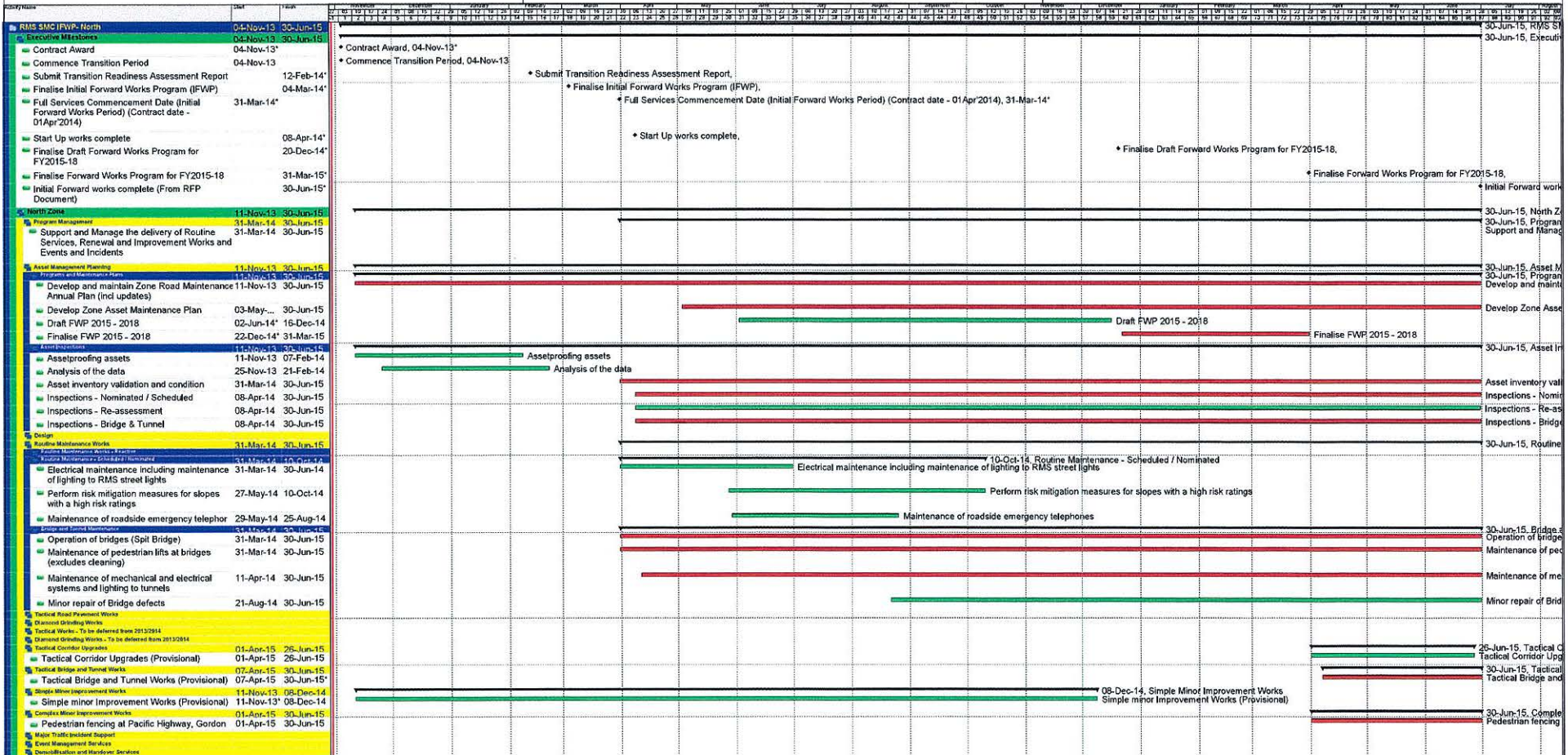
█ Actual Level of Effort █ Remaining Work ◆ ◆ Milestone
█ Actual Work █ Critical Remaining Work ← summary

Date	Revision	Checked	Approved
14-Aug-13	Revision 0	UC	KB/PR
01-Nov-13	Revision 1	BB	KB/PR



Actual Level of Effort	Remaining Work	Milestone
Actual Work	Critical Remaining Work	summary

Date	Revision	Checked	Approved
14-Aug-13	Revision 0	UC	KB/PR
01-Nov-13	Revision 1	BB	KB/PR



█ Actual Level of Effort █ Remaining Work ◆ Milestone
█ Actual Work █ Critical Remaining Work ← summary

Date	Revision	Checked	Approved
14-Aug-13	Revision 0	UC	KB/PR
31-Oct-13	Revision 1	BB	KB/PR

SCHEDULE 13
WORK TERMS

Stewardship Maintenance Contract – Sydney South Zone

Work Terms



CONTENTS

CLAUSE	PAGE
1. SCOPE OF WORK, TEMPORARY WORK AND WORK METHODS.....	1
1.1 Scope of work.....	1
1.2 Service Provider Acknowledgement	1
1.3 All work included.....	1
1.4 Work methods	2
1.5 Quality	2
2. TIME MANAGEMENT, WORKS PROGRAM AND COMMUNITY ENGAGEMENT	3
2.1 Time management	3
2.2 Works Program	3
2.3 Requirements of Works Program.....	3
2.4 Form and provision to RMS	4
2.5 Extension of time and Works Program.....	4
2.6 Community engagement	4
3. INSURANCE	5
3.1 RMS' insurance	5
4. DESIGN.....	5
4.1 Ambiguities.....	5
4.2 Service Provider's Documents.....	5
4.3 Adopting RMS' Documents	6
4.4 Submitting Service Provider's Documents.....	7
4.5 Subcontractor warranties.....	9
5. SITE	9
5.1 No warranty by RMS	9
5.2 Things of value found.....	9
6. WUC AND INSPECTION	10
6.1 Setting out the Works	10
6.2 WUC	10
6.3 Cleaning up.....	11
6.4 Testing.....	11
6.5 Defects.....	11
6.6 Acceptance with Defects not made good.....	12
6.7 RMS Access.....	12
6.8 RMS' right to inspect.....	13
7. EXTENSIONS OF TIME AND DELAY	13
7.1 Extensions of time.....	13
7.2 Delays caused by RMS	15
7.3 Delay to Completion	15
8. SUSPENSION	15
8.1 RMS' suspension	15
9. WORKS FEE	16
9.1 The Works Fee.....	16
9.2 Entitlements.....	16
9.3 Payment Claims	17
10. COMPLETION	17

10.1	Early use	17
10.2	Completion	17
10.3	Defects Liability Period	17
11.	TERMINATION BY RMS.....	18
11.1	Termination for Service Provider's Work Terms Default.....	18
11.2	Consequences of termination	18
12.	TERMINATION BY RMS FOR CONVENIENCE	19
12.1	RMS may terminate this document for convenience.....	19
12.2	Service Provider's obligations	19
12.3	Payments on termination for convenience.....	19
13.	TERMINATION AND EXPIRY OF THE CONTRACT.....	20
13.1	Termination under clauses 7.4(a)(ii), 40 and 43 of the General Conditions.....	20
13.2	Termination under clause 41 of the General Conditions.....	20
13.3	Expiry of the Contract Term	20
14.	INTERPRETATION	20
14.1	Definitions	20

Schedule

1	Work Terms Information	1
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Stewardship Maintenance Contract – Sydney South Zone

Work Terms

1. SCOPE OF WORK, TEMPORARY WORK AND WORK METHODS

1.1 Scope of work

The scope of work under the Contract (WUC) is described in this document, and includes:

- (a) all the work specifically referred to or described in, or otherwise contemplated by:
 - (i) Item 3; and
 - (ii) the Specifications;
- (b) all items not specifically referred to or described in Item 3 or the Specifications which nonetheless are required to complete the Works and achieve the effective and efficient use and operation of the Works;
- (c) all items referred to in one or more of Item 3 and the Specifications or, if Item 9 specifies that the Service Provider will perform Design, otherwise necessary for the Works to be fit for the purposes required by this document but omitted from other Specifications (those omitted items are included in the scope of WUC, unless the context requires otherwise); and
- (d) all items of work reasonably inferred from Item 3 or the Specifications as necessary to properly execute and complete the Works.

1.2 Service Provider Acknowledgement

The Service Provider acknowledges that the terms of this document and the Contract apply whether WUC is undertaken prior to, on or after the Work Terms Commencement Date.

1.3 All work included

The Service Provider must carry out and be responsible for all Temporary Work and carry out, perform, provide and do everything necessary including all ancillary or other work for or in connection with the Design, construction, supply and commissioning (as applicable) of the Works, subject to the following:

- (a) RMS may direct the Service Provider at any time to use a particular method or type of Temporary Work and the Service Provider must comply with RMS' direction;
- (b) subject to paragraph (d), if RMS' direction directly causes the Service Provider to incur necessarily and unavoidably any extra costs when compared with the costs the Service Provider would have incurred had RMS not given the direction, the Service Provider is entitled to those extra costs as an addition to the Works Fee (if it demonstrates to the reasonable satisfaction of RMS that it incurred such extra costs) and may be entitled to an extension of time under clause 7.1 (if applicable);
- (c) in determining the Service Provider's extra costs under paragraph (b), such costs must be valued in accordance with the Pricing Schedule; and

- (d) if the need for the instruction in paragraph (a) arises from the Service Provider's own act or omission, then the Service Provider is not entitled to those extra costs or extensions of time.

1.4 **Work methods**

- (a) The Service Provider may use any work method, subject to paragraph (b) and the following:
 - (i) the Service Provider is solely responsible for all work methods, whether specified in this document or the Contract or not;
 - (ii) the Service Provider warrants that it has undertaken all necessary investigation and inquiry to satisfy itself that all work methods:
 - (A) specified in this document or the Contract; or
 - (B) which the Service Provider otherwise proposes to use,are appropriate for the purposes of WUC;
 - (iii) if a particular work method is specified in the this document or the Contract, the Service Provider must use it;
 - (iv) if a particular work method is specified in this document or the Contract but it is not possible to use that method, the Service Provider must use another method without entitlement to extra cost or an extension of time; and
 - (v) if a particular work method for which the Service Provider is responsible is impractical and the Service Provider, with or without the direction of RMS, uses another work method by necessity to complete WUC, the Service Provider is not entitled to an extension of time or extra cost.
- (b) RMS may direct the Service Provider at any time to use a particular work method and, subject to paragraphs (a)(iv) and (a)(v) above, if RMS' direction directly causes the Service Provider to incur necessarily and unavoidably any extra costs when compared with the costs the Service Provider would have incurred had RMS not given the direction, the Service Provider is entitled to those extra costs as an addition to the Works Fee (if it demonstrates to the reasonable satisfaction of RMS that it incurred such extra costs) and may be entitled to an extension of time under clause 7.1 (if applicable).
- (c) In determining the Service Provider's extra costs under paragraph (b), such costs must be valued in accordance with the Pricing Schedule.

1.5 **Quality**

- (a) The Service Provider must Design (if so specified in Item 9) and carry out and complete WUC in accordance with all the requisite standards required under this document and the Contract.
- (b) The Service Provider must, prior to commencing WUC, demonstrate to the RMS' reasonable satisfaction that the Service Provider has in place an appropriate quality system for WUC (including any changes to the Quality Plan required in respect of WUC).

2. TIME MANAGEMENT, WORKS PROGRAM AND COMMUNITY ENGAGEMENT

2.1 Time management

- (a) The Service Provider must commence and carry out WUC in accordance with the Works Program.
- (b) The Service Provider must carry out Design and WUC in accordance with Scheduled Progress.
- (c) Whenever requested, the Service Provider must demonstrate to RMS that it is achieving Scheduled Progress.
- (d) If the Service Provider is not achieving Scheduled Progress, RMS may instruct the Service Provider to take all reasonable steps to achieve Scheduled Progress, at the Service Provider's cost.
- (e) The parties acknowledge that an instruction under paragraph (d) is not a direction to accelerate.

2.2 Works Program

- (a) The Service Provider must submit to RMS a program which complies with clause 2.3 within 10 Business Days of the Work Terms Commencement Date.
- (b) RMS may within 10 Business Days of receipt of the program advise the Service Provider if the program does not comply with clause 2.3. If RMS raises no objection and the program submitted by the Service Provider under this clause 2.2 complies with clause 2.3, it becomes the Works Program.
- (c) If the program does not comply with clause 2.3, the Service Provider must promptly and in any event within 10 Business Days of being notified by RMS of the non-compliance, submit to RMS a further program complying with the requirements in clause 2.3.
- (d) The Service Provider must update and resubmit the Works Program when directed by RMS acting reasonably, taking into account:
 - (i) actual progress;
 - (ii) any changed circumstances; and
 - (iii) the effects of delays and approved extensions of time.

2.3 Requirements of Works Program

The Works Program must comply with the following requirements:

- (a) show the dates of, or, in the case of future activities and events, the dates for commencement and completion of Design and other work activities, other significant events, any Milestones and the Date for Completion for all Milestones and the Works;
- (b) show the:
 - (i) date, time, extent and duration of; and
 - (ii) the specific location for,

each Lane closure required for carrying out WUC;

- (c) reflect Scheduled Progress and be consistent with all constraints on access, performance and co-ordination;
- (d) show the logical relationship between activities and events shown in the program, identify time leads and lags, resource and other constraints and the sequence of activities which constitute the critical path or critical paths;
- (e) show the dates when the Service Provider will require information, documents, materials or instructions from RMS and the dates when the Service Provider will provide information or documents to RMS. These dates are to be consistent with dates which RMS could reasonably have anticipated at the Work Terms Commencement Date that it would be required to provide this information, documents, materials or instructions; and
- (f) be in such form and include such detail as RMS reasonably requires (both hard copy form and electronic form) and be accurate, comprehensive and complete in all respects.

2.4 **Form and provision to RMS**

- (a) When requested by RMS, the Service Provider must provide the Works Program to RMS (in hard copy form and electronic form). The electronic form of the Works Program must be accessible and clearly show the requirements listed in this clause 2.
- (b) The software used by the Service Provider to create the Works Program must be acceptable to RMS.

2.5 **Extension of time and Works Program**

- (a) The Service Provider will not be entitled to Claim an extension of time under clause 7.1 or otherwise, until the Service Provider has submitted to RMS a Works Program in conformance with clause 2.3.
- (b) The Works Program submitted in respect of a Claim for an extension of time must be the Works Program current (as adjusted under clause 2.2(d)) at the time of the event or events giving rise to the Claim.
- (c) All extension of time Claims must show how the Service Provider has been or will be delayed in reaching Completion by the Date for Completion, by specific reference to an activity or activities on the then current (as adjusted under clause 2.2(d)) critical path or paths of the Works Program.
- (d) Provision of the Works Program does not relieve the Service Provider of any of its obligations under this document or the Contract.

2.6 **Community engagement**

The Service Provider must undertake all communication and community engagement as set out in Item 13 in compliance with the Communication and Community Engagement Requirements.

3. INSURANCE

3.1 RMS' insurance

- (a) RMS has effected contracts works and public and product liability insurance in accordance with clause 30.1 of the General Conditions.
- (b) Before the Service Provider commences any WUC, the Service Provider must contact the insurance broker nominated in writing to the Service Provider as RMS' insurance broker to provide to that person all details reasonably requested for the purpose of the insurances referred to in paragraph (a) in respect of the Works and the carrying out of any WUC.

4. DESIGN

4.1 Ambiguities

- (a) The Service Provider must, in addition to any responsibility to check RMS' Documents under clause 4.3 (if applicable), check the Specifications and notify RMS of any ambiguities, inconsistencies or discrepancies at least 15 Business Days before the Service Provider proposes to use them for Design or the carrying out of any WUC (including procurement, manufacture or fabrication).
- (b) If the ambiguity, inconsistency or discrepancy relates to the quality or standard of the Works, then the requirement which delivers the highest standard is to apply.
- (c) Where it is not possible to resolve the ambiguity, discrepancy or inconsistency by the application of the principles in paragraph (b), RMS must direct the interpretation of the ambiguity, inconsistency or discrepancy in the Specifications which the Service Provider must follow.
- (d) Subject to paragraph (e), if RMS' direction under paragraph (c) results in the Service Provider incurring increased or reduced costs when compared to the costs the Service Provider should reasonably have anticipated at the Work Terms Commencement Date, the Works Fee must be adjusted by the difference in costs agreed or valued under the procedures in clause 8 of the General Conditions.
- (e) In assessing what the Service Provider should reasonably have anticipated (as referred to above), RMS must have regard to the provisions of this document, in particular clause 1, and to whether the ambiguity, inconsistency or discrepancy was (or should have been) reasonably apparent to the Service Provider at the Work Terms Commencement Date.
- (f) If the Service Provider fails to take the steps required in paragraph (a), and RMS issues a direction to resolve an ambiguity, inconsistency or discrepancy which results in the Service Provider incurring increased costs when compared to the costs the Service Provider should reasonably have anticipated at the Work Terms Commencement Date, any adjustment to the Works Fee under paragraph (d) will not include the Service Provider's costs for delay or the cost of any aborted work (including Design).

4.2 Service Provider's Documents

- (a) Unless specified in Item 9, the Service Provider must carry out all necessary design to complete Design of the Works and must produce Service Provider's Documents which meet the requirements of all of the following:

- (i) this document;
 - (ii) the Contract, including the General Conditions;
 - (iii) RMS' directions;
 - (iv) Law;
 - (v) relevant Australian Standards; and
 - (vi) good industry standards applicable to the Works.
- (b) The Service Provider acknowledges that the Service Provider must not change any design in RMS' Documents without RMS' prior written approval. Whenever requested by RMS, the Service Provider must promptly confirm in writing that the Service Provider's Documents are consistent with and comply with RMS' Documents and other relevant Contract Documents.
 - (c) If Item 9 specifies that the Service Provider will perform Design, the Service Provider must produce Service Provider's Documents which will ensure that, when complete, the Works and every part of them are fit for the purposes set out in this document.
 - (d) The requirements of paragraph (c) are not affected by any Change.
 - (e) The Service Provider must, at its cost, correct any Fault in the Service Provider's Documents.

4.3 Adopting RMS' Documents

- (a) If Contract Information Item 10 specifies that RMS has carried out design prior to the Work Terms Commencement Date, and if Item 9 specifies that the Service Provider will perform Design, then this clause 4.3 will apply.
- (b) Before submitting Service Provider's Documents to RMS in accordance with clause 4.4 the Service Provider (at its own cost) must:
 - (i) check, and notify RMS of details (together with appropriate supporting documents) of any Fault in RMS' Documents;
 - (ii) amend the documents to correct the Faults so that, on Completion, the Works and every part of the Works will be fit for the purposes set out in this document; and
 - (iii) accept and adopt RMS' Documents as if the Service Provider prepared them so that they (amended by the Service Provider as necessary) become Service Provider's Documents when submitted under clause 4.4.
- (c) If Service Provider fails to notify RMS of a Fault in RMS' Documents in accordance with this clause 4.3:
 - (i) RMS may instruct a Change if the Fault in RMS' Documents requires a change to the Works; and
 - (ii) the Service Provider will not be entitled to any costs in respect of the Fault or Change..
- (d) The Service Provider acknowledges and accepts that:

- (i) design in RMS' Documents is incomplete and may contain Faults or conflict with Law or relevant Australian Standards or other codes or standards which the Service Provider is required to comply with under this document and the Contract;
- (ii) RMS makes no representation concerning any design in RMS' Documents and the Service Provider is not entitled to rely on the completeness or accuracy of such design; and
- (iii) RMS relies on the Service Provider to identify and remedy Faults in RMS' Documents.

4.4 **Submitting Service Provider's Documents**

- (a) If Item 9 specifies that the Service Provider will perform Design, then this clause 4.4 will apply to the extent that the Design is performed by the Service Provider.
- (b) The Service Provider must:
 - (i) undertake design review and consider the Design with those persons specified in the Specifications, or those persons identified by RMS, including those involved in using or occupying any part of the Works as end users; and
 - (ii) develop the Design and Service Provider's Documents using the outcomes of this review and consideration.
- (c) The Service Provider must, if required by RMS, ensure that appropriate personnel are available to explain the Design and provide such information regarding the Design as RMS reasonably requests.
- (d) The Service Provider must then submit to RMS for its consideration any necessary amendments to RMS' Documents proposed by the Service Provider, including those arising out of the design review and consideration, prior to the Service Provider submitting Service Provider's Documents, as referred to in paragraph (b).
- (e) The Service Provider must submit Service Provider's Documents (as developed progressively and in stages, but so that each part is complete and in sufficient detail to explain what is proposed) to RMS:
 - (i) in a manner which, having regard to the quantum of Service Provider's Documents submitted, will allow RMS a reasonable opportunity to review the Service Provider's Documents having regard to the time period allowed by this document for RMS to review the Service Provider's Documents; and
 - (ii) at least 20 Business Days before the date the Service Provider proposes to use them for carrying out any WUC (including procurement, manufacture or fabrication).
- (f) The Service Provider must provide the number of copies of the Service Provider's Documents specified in Item 8 when submitting Service Provider's Documents.
- (g) Within 10 Business Days after submission by the Service Provider to RMS of the Service Provider's Documents, as referred to in paragraph (b), RMS will notify the Service Provider that:

- (i) the Service Provider's Documents are "Not Rejected"; or
 - (ii) the Service Provider's Documents are "Rejected", if in the reasonable opinion of RMS, those Service Provider's Documents do not comply with the requirements of this document or the Contract, and provide written reasons for the rejection.
- (h) If RMS does not issue a notice under paragraph (g) within the required timeframe, the relevant Service Provider's Documents will be deemed to be "Not Rejected".
- (i) The Service Provider must, within 10 Business Days of receipt of notice from the RMS that the Service Provider's Documents are "Rejected", amend the Service Provider's Documents and submit them to RMS.
- (j) Paragraph (g) will reapply to the amended Service Provider's Documents submitted under paragraph (i), except that the amended Service Provider's Documents may be "Rejected" by RMS only in respect of a failure by the Service Provider to address the reasons given by RMS when it notified the Service Provider that the Service Provider's Documents were "Rejected".
- (k) Notwithstanding the design review and consideration by others under this clause 4.4, the Service Provider remains fully responsible for all Service Provider's Documents. The Service Provider will not be relieved from:
- (i) its obligations under this document or the Contract; or
 - (ii) any of its liabilities under this document, the Contract or according to Law,
- as a result of:
- (iii) complying with its obligations under this clause 4.4; or
 - (iv) RMS, or anyone acting on behalf of RMS, failing to detect any non-compliance in any the Service Provider's Documents or the Service Provider's obligations under this clause 4.4, including where any failure arises from any negligence on the part of RMS, RMS' Representative or any other person.
- (l) Nothing RMS does or omits to do in connection with this clause 4.4 makes RMS liable for any Service Provider's Documents or prevents RMS from relying on or enforcing a right under the Contract, according to Law or otherwise. The Service Provider acknowledges and agrees that RMS owes no duty to the Service Provider:
- (i) to review the Service Provider's Documents for errors or compliance with the requirements of this document or the Contract; or
 - (ii) in any review undertaken of any Service Provider's Documents; or
 - (iii) to consult with the Service Provider or to make any comments regarding the Service Provider's Documents.
- (m) RMS' exercise of (or failure to exercise) any of its rights under this clause 4.4 will not preclude RMS from subsequently asserting that the Service Provider's Documents do not comply with the requirements of this document and the

Contract (even if RMS previously gave a "Not Rejected" notice under paragraph (g) in respect of such Service Provider's Documents).

4.5 Subcontractor warranties

The Service Provider must obtain a warranty in favour of RMS in a form and on terms acceptable to RMS (in its absolute discretion) from:

- (a) each Subcontractor; and
- (b) each Subcontractor carrying out the trade or area of WUC,
listed in Item 14.

5. SITE

5.1 No warranty by RMS

RMS makes no representations and gives no warranty to the Service Provider in respect of:

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

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

5.2 Things of value found

- (a) Any things of value or archaeological or special interest found on the Site are as between the Service Provider and RMS, the property of RMS, in order for RMS to be able to return them to their rightful owner.
- (b) The Service Provider must:
 - (i) at its cost:
 - (A) immediately notify RMS if any such thing is found; and
 - (B) ensure that any such thing is protected and not disturbed; and
 - (ii) comply with all requirements of any Authority and directions of RMS in relation to the thing.

6. WUC AND INSPECTION

6.1 Setting out the Works

- (a) The Service Provider must set out the Works and carry out WUC at the locations and levels specified in or required by the Specifications.
- (b) The Service Provider may request in writing from RMS any necessary additional information to be provided by RMS relating to setting out the Works not included in the Specifications. The Service Provider must make the request at least 10 Business Days prior to the date the Service Provider proposes to use the information for setting out that part of the Works to which the information applies. As soon as practicable, RMS must provide any additional information which it has or can reasonably obtain.
- (c) While carrying out WUC, if the Service Provider discovers or is made aware of any error in the location, level, dimension or alignment of the Works:
 - (i) the Service Provider must notify RMS;
 - (ii) RMS need not respond to the Service Provider about any error;
 - (iii) RMS may instruct the Service Provider regarding necessary rectification work and the Service Provider must comply; and
 - (iv) the Service Provider must rectify any error to ensure that the Works comply with this document and the Contract.
- (d) The Service Provider must give RMS a copy of a survey showing the Works as constructed on the Site, including the relationship of the Works to any relevant property boundaries, easements, (including any right of way) and improvements on the Site.
- (e) If requested in writing by the Service Provider, RMS may agree (but is not obliged to do so) by notice in writing that certain matters can be excluded from the survey. The survey must be performed by a registered surveyor or other surveyor to whom RMS has no objection.

6.2 WUC

- (a) The Service Provider must:
 - (i) supply all Materials and Service Provider's Plant required for WUC; and
 - (ii) carry out and complete WUC in accordance with:
 - (A) this document;
 - (B) any requirements under the Contract;
 - (C) the Service Provider's Documents;
 - (D) RMS' directions concerning the Works;
 - (E) Law;
 - (F) relevant Australian Standards; and
 - (G) good industry standards applicable to the Works.

- (b) The Service Provider must comply with this clause 6.2 and ensure that, when complete:
 - (i) the Works comply with all requirements of this document and the Contract; and
 - (ii) if Item 9 specifies that the Service Provider will perform Design, the Works and every part of them are fit for the purposes set out in this document to the extent that the Works have been designed by the Service Provider.
- (c) The provisions of paragraph (b) are not affected by any Change.

6.3 **Cleaning up**

In carrying out WUC, the Service Provider must:

- (a) keep the Site clean and tidy and free of refuse;
- (b) regularly remove rubbish, litter, graffiti and surplus material from the Site; and
- (c) as a condition precedent to Completion of the whole of the Works, remove all rubbish and Temporary Works and any surplus materials, plant (including any Service Provider's Plant) or equipment from the Site except where the retention of any of these are required for the correction of Defects and this is approved by RMS.

6.4 **Testing**

- (a) The Service Provider must:
 - (i) Test (at its own cost) all parts of the Works specified in the Specifications to be Tested;
 - (ii) give RMS the opportunity to witness the Tests by giving reasonable notice; and
 - (iii) make the results available to RMS.
- (b) RMS may instruct the Service Provider at any time to Test any part of the Works in any manner RMS considers necessary. RMS must pay for the Tests (as an addition to the Works Fee) if the results of the Tests show full compliance with this document and the Contract. Otherwise, the Service Provider must pay for the Tests.
- (c) The Service Provider must repeat the Tests (at its own cost) of all parts of the Works where Defects have been found, until the results of the Tests confirm that all Defects have been made good and that the Works comply with this document and the Contract. The Service Provider must make the results of such Tests available to RMS.

6.5 **Defects**

- (a) The Service Provider must identify and promptly make good all Defects so that the Works comply with the requirements of this document and the Contract. This requirement does not affect any other remedy or right of RMS.

- (b) At any time before Completion of the whole of the Works, RMS may instruct the Service Provider to make good Defects within the time specified in a Defect Notice issued by RMS.
- (c) If the Service Provider fails to make good the Defects in the time specified in the Defect Notice, RMS may make good the Defects itself or have the Defects made good by others and then:
 - (i) the cost will be a debt due to RMS and may be deducted from any amounts payable to the Service Provider under the Contract; and
 - (ii) the Service Provider will be responsible for the work involved in making good the Defects as if the Service Provider had performed the work.
- (d) Nothing in this clause 6.5:
 - (i) reduces the Service Provider's warranties and other liabilities and obligations under the Contract; or
 - (ii) affects RMS' rights according to Law or otherwise.

6.6 Acceptance with Defects not made good

- (a) RMS, in its absolute discretion (and at any time, whether before or after Completion), may accept that specific Defects defined by RMS need not be made good.
- (b) Before RMS does so:
 - (i) RMS may propose deductions from the Works Fee (or any part of the Works Fee), and any terms it requires;
 - (ii) if the Service Provider agrees with the deductions and the terms, the Works Fee (or relevant part of the Works Fee) will be adjusted accordingly; or
 - (iii) if the Service Provider agrees with the terms but not with the proposed deductions, clauses 8.3(b), 8.3(c) and 8.3(d) of the General Conditions will apply.
- (c) If the parties do not agree in writing on RMS' terms, the Service Provider must make good the Defects defined by RMS.
- (d) The Service Provider remains liable for Defects whether known or not known at the time RMS accepts that Defects defined by RMS in paragraph (a) above need not be made good under this clause 6.6.

6.7 RMS Access

- (a) The Service Provider must ensure that at all times RMS, and any person authorised by RMS, has safe and convenient access to:
 - (i) the Works;
 - (ii) the Site;
 - (iii) any other place where any WUC is being carried out;
 - (iv) the Service Provider's Documents;

- (v) the current Works Program (as adjusted under clause 2.2(d)); and
 - (vi) any other documentation created for the purposes of the Works.
- (b) The Service Provider must at all times retain at the Site a copy of the current Works Program (as adjusted under clause 2.2(d)).

6.8 RMS' right to inspect

- (a) RMS, and any person authorised by RMS, may at any time inspect the Works.
- (b) Neither RMS nor any person authorised by RMS owe a duty to the Service Provider to:
- (i) inspect or otherwise review or monitor WUC or other actions or activities or lack of action; or
 - (ii) review, consider or identify any aspect of the Works for errors, omissions, compliance or non-compliance with the requirements of this document or the Contract (whether or not it does so) or notify the Service Provider thereof.
- (c) No inspection, review or monitoring of WUC will in any way lessen or otherwise affect:
- (i) the Service Provider's obligations under:
 - (A) this document; or
 - (B) the Contract; or
 - (ii) RMS' rights under this document, the Contract, according to Law or otherwise.

7. EXTENSIONS OF TIME AND DELAY

7.1 Extensions of time

- (a) If the Service Provider is, or will be delayed in reaching Completion by the Date for Completion, the Service Provider will be entitled to an extension of time for Completion for the number of days and on the terms assessed by RMS (including additional Lane closures required in addition to those set out in Item 4), if the Service Provider satisfies RMS that all the following conditions apply:
- (i) the delay is the direct result of:
 - (A) an act, default or omission of RMS which is not an act, default or omission:
 - (aa) expressly permitted by this document or the Contract; or
 - (bb) within a time frame expressly permitted by this document or the Contract;
 - (B) a Change;
 - (C) a Force Majeure Event;
 - (D) subject to clause 1.3(d), a direction by RMS under clause 1.3(a);

- (E) subject to clauses 1.4(a)(iv) and 1.4(a)(v), a direction by RMS under clause 1.4(b);
 - (F) an Change Event;
 - (G) a suspension under clause 8.1 provided that the need for the suspension arises pursuant to clause 8.1(c); or
 - (H) adverse weather conditions,
 - (I) and the Service Provider has not caused or contributed in any way to that delay, including by:
 - (J) the Service Provider's breach of this document or the Contract; or
 - (K) any negligent or unlawful act or omission of the Service Provider or any person for whom the Service Provider is responsible;
- (ii) the Service Provider has taken all reasonable steps to avoid and minimise the delay and its effects;
 - (iii) the Service Provider has given to RMS each of the notices required under paragraphs (b) and (c); and
 - (iv) the delay occurred to an activity or activities on a critical path of the then current Works Program (as adjusted under clause 2.2(d)), and the Service Provider has submitted this Works Program with the notice required under paragraph (c).
- (b) The Service Provider must give RMS notice of the delay, its cause, relevant facts, and its expected impact, as soon as practicable after the delay commenced.
 - (c) Within 10 Business Days of commencement of the delay, the Service Provider must give RMS notice of the extension of time claimed, together with the information required under clause 2.5(c) and other information sufficient for RMS to assess the Claim. If the delay continues for more than 10 Business Days, the Service Provider must give a further notice every 10 Business Days thereafter, until after the delay ends, if the Service Provider wishes to claim a further extension of time, together with further information of the kind required by this clause 7.1.
 - (d) An extension of time is only given for delays occurring on days on which the Service Provider usually carries out WUC.
 - (e) When concurrent events cause a delay in reaching Completion and one or more of the events is within the control of the Service Provider, then to the extent that the events are concurrent, the Service Provider will not be entitled to an extension of time for Completion notwithstanding that another cause of the delay is such that the Service Provider would have had an entitlement to an extension of time.
 - (f) RMS may in its absolute discretion for the benefit of RMS extend the time for Completion at any time and for any reason, whether or not the Service Provider has Claimed an extension of time. The Service Provider is not entitled to an extension of time for Completion under this paragraph (f) unless RMS exercises its discretion to extend the time for Completion.

7.2 Delays caused by RMS

The Service Provider's only remedy for delay, disruption or interference of any nature whatsoever caused by RMS (including for breach of Contract), whether under the Contract, according to Law or otherwise, is:

- (a) an extension of time for Completion under clause 7.1; and
- (b) **[ALT 1 – which will apply where the Works are being carried out on a Priced Component basis:** the actual, necessary, reasonable and direct costs unavoidably incurred by the Service Provider as a result of such delay, disruption or interference if and only if the Service Provider has taken all practicable steps to avoid or mitigate such costs.]

[ALT 2 – which will apply where the Works are being carried out on a Target Cost basis: an increase to the agreed estimate of Reimbursable Costs equal to the actual, necessary, reasonable and direct costs unavoidably incurred by the Service Provider as a result of such delay, disruption or interference if and only if the Service Provider has taken all practicable steps to avoid or mitigate such costs.]

[ALT 3 – which will apply where the Works are being carried out on a Cost Plus basis: not used.]

[Note: the alternative that applies will depend on the Payment Type specified in Item 12 of Schedule 1]

7.3 Delay to Completion

Nothing in this document affects or limits RMS' right to recover any loss, damage, cost or expense suffered or incurred by RMS (including in accordance with the Performance Framework) arising from or in connection with the Service Provider's delay in performing WUC, including the Service Provider's failure to achieve Completion by the Date for Completion.

8. SUSPENSION

8.1 RMS' suspension

- (a) In addition to RMS' rights under the General Conditions, RMS may instruct the Service Provider to suspend the carrying out of the whole or part of WUC and Temporary Work, and the Service Provider must comply.
- (b) The Service Provider must, as soon as reasonably practicable, resume carrying out WUC when instructed to by RMS.
- (c) If the need for the suspension arises from RMS' own act or omission which is not an act or omission:
 - (i) expressly permitted by this document or the Contract;
 - (ii) within a time frame expressly permitted by this document or the Contract; or
 - (iii) caused or contributed to by:
 - (A) the Service Provider's breach of this document or the Contract; or

- (B) any act or omission of the Service Provider or any person for whom the Service Provider is responsible,

then the Service Provider will be entitled to:

- (iv) an extension of time under clause 7.1; and
 - (v) (as an addition to the Works Fee) its reasonable, direct Site and off-Site costs of the suspension, unavoidably incurred, having taken all reasonable steps to minimise and mitigate such costs.
- (d) The Service Provider has no other remedies in connection with the suspension.

9. **WORKS FEE**

9.1 **The Works Fee**

- (a) RMS will pay the Service Provider the Works Fee as payment for the due and proper performance of WUC adjusted by any additions or deductions made pursuant to this document or the Contract.
- (b) The Works Fee will be payable in accordance with the Payment Schedule based on the Payment Type specified in Item 12.

9.2 **Entitlements**

- (a) Except as otherwise expressly stated under the General Conditions, the Works Fee is only to be increased if required under any of the following clauses:
 - (i) clause 1.3 (Temporary Work);
 - (ii) clause 1.4 (Work methods);
 - (iii) clause 4.1 (Ambiguities);
 - (iv) clause 5.2 (Things of value found);
 - (v) clause 6.4 (Testing);
 - (vi) clause 8.1 (RMS' suspension);
 - (vii) clause 10 of the General Conditions (Changes); and
 - (viii) clause 22.8 of the General Conditions (Interest on overdue monies).
- (b) The Works Fee may be decreased if required by this document or the General Conditions. Clauses that allow decreases in the Works Fee include:
 - (i) clause 4.1 (Ambiguities);
 - (ii) clause 6.5 (Defects);
 - (iii) clause 6.6 (Acceptance with Defects not made good); and
 - (iv) clause 10.3 (Defects Liability Period).
- (c) The Service Provider is not entitled to any other payments related to WUC whether under the Contract, according to Law or otherwise, except:

- (i) under clause 12.3;
- (ii) damages for breach of the Contract; or
- (iii) where this exclusion is not permitted by Law.

9.3 **Payment Claims**

- (a) The Service Provider may make Payment Claims for the Works Fee under clause 25.2 of the General Conditions.
- (b) The Service Provider warrants for itself and for and on behalf of its Subcontractors that no Encumbrance exists over any Materials incorporated into the Works.

10. **COMPLETION**

10.1 **Early use**

- (a) Before the Service Provider achieves Completion of the whole of the Works, RMS (and anyone authorised by RMS) may use or occupy any part of the Works which is sufficiently complete, or the whole of the Works. In those circumstances:
 - (i) the Service Provider's responsibilities are not affected except if RMS (or anyone authorised by it to use or occupy any part of the Works) causes the Service Provider's work to be hindered; and
 - (ii) RMS becomes responsible for any additional insurance required.
- (b) If RMS intends to use or occupy any part or the whole of the Works before the Service Provider achieves Completion of the whole of the Works, as provided in paragraph (a) above, RMS must give not less than 15 Business Days' notice in writing to the Service Provider that RMS will be using or occupying a part or parts, or the whole of the Works and must specify those parts, or that the whole of the Works is, to be so used or occupied.
- (c) The Service Provider must do everything necessary to provide to RMS promptly, but in any event no later than 15 Business Days after receipt of the notice in paragraph (b) above, all documents and other things relevant to the parts to be used or occupied, including those things listed in paragraphs (a) to (d) of the definition of Completion, and to otherwise provide full assistance and cooperation to RMS (and anyone authorised by RMS) in the use and occupation of the Works.

10.2 **Completion**

- (a) The Service Provider must achieve Completion by the Date for Completion.
- (b) When the parties agree that Completion has been achieved, each party acting reasonably, RMS must give the Service Provider a notice stating the Date of Completion.

10.3 **Defects Liability Period**

- (a) The Defects Liability Period commences on the Date of Completion.
- (b) During the Defects Liability Period:

- (i) RMS may instruct the Service Provider to make good Defects within the time specified in a Defect Notice and may state whether there will be a further Defects Liability Period in relation to that work (which may not exceed that specified in Item 6, commencing on the date the Defect is made good and governed by this clause 10.3);
 - (ii) if the Service Provider fails to make good the Defects in the time specified in the Defect Notice, the provisions of clauses 6.5(c) and 6.5(d) will apply; and
 - (iii) RMS may instruct a Change in connection with any Defect instead of requiring the Defect to be made good under clause 6.5(b).
- (c) This clause 10.3 does not reduce the Service Provider's liability, whether arising under the Contract, according to Law or otherwise. The Service Provider's liability continues until any limitation period under statute expires.
 - (d) This clause 10.3 does not affect RMS' rights under clause 6.6.

11. TERMINATION BY RMS

11.1 Termination for Service Provider's Work Terms Default

- (a) RMS may terminate this document for a Service Provider's Work Terms Default by giving notice, as set out in this clause 11.
- (b) In the case of Service Provider's Work Terms Default, RMS must first give notice to the Service Provider that it has 7 Business Days after the notice is given to the Service Provider to remedy the Service Provider's Work Terms Default.
- (c) If the Service Provider fails to give RMS a notice containing clear evidence that it has remedied a Service Provider's Work Terms Default, or fails to propose steps reasonably acceptable to RMS to remedy a Service Provider's Work Terms Default, RMS may give the Service Provider a notice terminating this document.
- (d) Nothing in this clause 11 affects or negates RMS' rights according to Law to terminate or for damages.
- (e) Nothing in this clause 11 affects the Service Provider's obligation to perform its obligations under the Contract that are separate from its obligations under this document.

11.2 Consequences of termination

If RMS terminates this document under this clause 11, it may at its sole discretion employ others to complete WUC the subject of this document and the following will then apply:

- (a) the Service Provider must leave the Site as soon as reasonably practicable and remove all Materials it has brought onto the Site, but must leave any Materials required by RMS to have the Works completed;
- (b) the Service Provider must assign to RMS the Service Provider's rights and benefits in all its contracts concerning WUC, warranties and bank guarantees, insurance bonds, other security of a similar nature or purpose and retention held by the Service Provider, with effect from the date of termination of this document;

- (c) the Service Provider must consent to a novation to RMS or its nominee of all Subcontracts and its other contracts concerning WUC, as required by RMS and must procure at the time of entering into each Subcontract and other contracts, the consent in writing of all of its Subcontractors to such novation;
- (d) the Service Provider must do everything and sign all documents necessary to give effect to this clause, and it irrevocably appoints RMS as its attorney to do this in its name if it fails to do so;
- (e) if, the cost of appointing others to complete WUC exceeds the amount that would have been paid to the Service Provider to complete WUC, then the difference will be a debt due by the Service Provider to RMS; and
- (f) RMS may make provisional assessments of the amounts payable to RMS under paragraph (e) and may deduct, withhold or set off any such amounts from amounts otherwise payable to the Service Provider under the Contract or from the Security given by the Service Provider to RMS under the Contract.

12. TERMINATION BY RMS FOR CONVENIENCE

12.1 RMS may terminate this document for convenience

RMS may terminate this document, by giving notice with effect from the date stated in the notice, for its convenience and without the need to give reasons.

12.2 Service Provider's obligations

- (a) The Service Provider must comply with any directions of RMS to wind down and stop work.
- (b) The Service Provider must leave the Site as soon as reasonably practicable and remove all Materials it has brought onto the Site, but must leave any Materials required by RMS to have the Works completed.

12.3 Payments on termination for convenience

- (a) After termination under clause 12.1, subject to its rights under the Contract, including any right of set-off, RMS must pay the Service Provider:
 - (i) for WUC carried out to the date the termination notice takes effect, after taking into account previous payments and any deductions, retentions or set-offs;
 - (ii) the cost of Materials reasonably ordered by the Service Provider for WUC which it is legally liable to accept, but only if on payment these unfixed Materials become the property of RMS, free of any Encumbrances;
 - (iii) the reasonable, direct costs of removal of any Temporary Works and other things from the Site incurred by the Service Provider, but only if the Service Provider complies with a strict duty to minimise and mitigate such costs;
 - (iv) an amount of 2% of the unpaid portion (after taking into account the amount payable under paragraphs (a)(i) to (iii)) of the Works Fee; and
 - (v) where the Works Fee includes payment of any Reimbursable Costs in accordance with the Amortised Cost Principle, such Reimbursable Costs for a period of 2 months following the date of termination.

- (b) The payments referred to in paragraph (a) are in full compensation for termination under this clause 12, and the Service Provider has no claim for damages or other entitlement whether under the Contract, according to Law or otherwise.

13. **TERMINATION AND EXPIRY OF THE CONTRACT**

13.1 **Termination under clauses 7.4(a)(ii), 40 and 43 of the General Conditions**

- (a) Subject to paragraph (b), if the Contract:
 - (i) terminates under clause 7.4(a)(ii) of the General Conditions; or
 - (ii) is terminated under clauses 40 or 43 of the General Conditions,
 - (iii) this document is terminated with effect at the date of termination of the Contract, and the relevant clauses of the General Conditions will apply.
- (b) This document will not terminate in the circumstances contemplated by paragraph (a), where:
 - (i) the Works have not achieved Completion;
 - (ii) the Defects Liability Period has not expired; or
 - (iii) all Defects notified prior to the expiry of the Defects Liability Period have not been made good.

13.2 **Termination under clause 41 of the General Conditions**

- (a) Subject to paragraph (b), if the Contract is terminated under clause 41 of the General Conditions, this document is terminated with effect at the date of termination of the Contract, and the relevant clauses of the General Conditions will apply.
- (b) This document will not terminate in the circumstances contemplated by paragraph (a), where, in a notice issued under clause 41.1(a) of the General Conditions, RMS specifies that the Works the subject of this document must be carried out and completed notwithstanding the termination of the Contract under clause 41 of the General Conditions.

13.3 **Expiry of the Contract Term**

To the extent that the Service Provider has not satisfied any of its obligations under this document prior to the expiry of the Contract Term, such obligations will survive the expiry of the Contract Term.

14. **INTERPRETATION**

14.1 **Definitions**

Unless otherwise specified, capitalised terms in this document have the meaning set out in the General Conditions. The following definitions apply in this document:

Claim means a claimed entitlement of the Service Provider under or arising out of or connected with WUC, in tort, in equity, under any statute, or otherwise. It includes a claimed entitlement to an extension of time or for breach of this document by RMS.

Completion mean the state of the Works or a Milestone (as applicable) being complete, except for Defects not known. This includes, in respect of the Completion of the whole of the Works, the Service Provider delivering to RMS:

- (a) all Subcontractor's warranties required under clause 4.5 (duly executed by the relevant Subcontractor and (if applicable) the Service Provider), any operating manual or maintenance manuals, licences, access codes, as-built drawings or work-as-executed drawings in respect of the Works;
- (b) all certificates, authorisations, approvals and consents relating to the Works required from any Authority;
- (c) those certificates required for the occupation, use and maintenance of the Works; and
- (d) all other documents, Testing, training and other requirements specified in the Contract in respect of the Works.

Contract means the document entitled "Stewardship Maintenance Contract –Sydney South Zone" between RMS and the Service Provider dated **[Insert]**.

Date for Completion means the date (or the last day of the period) specified in Item 5 on, or by which, the Service Provider must achieve Completion of the Works or of a Milestone (as applicable), as may be adjusted under clause 7.1.

Date of Completion means the date on which Completion of the Works or of a Milestone (as applicable) is achieved by the Service Provider.

Defect means an error, omission, shrinkage, blemish in appearance or other fault in the Works or which affects the Works, which results from a failure of the Service Provider to comply with the requirements of this document or the Contract.

Defect Notice means a notice issued by RMS under clause 6.5(b) or 10.3(a) instructing that specified Defects be made good within a given period.

Defects Liability Period means the period specified in Item 6.

Design means:

- (a) all necessary design for or in respect of the Works, including the completion of any design which is described in RMS' Documents; and
- (b) if Item 10 specifies that RMS has carried out design prior to the Work Terms Commencement Date, any design which is described in RMS' Documents.

Designed, the Design, and other derivatives of Design have a corresponding meaning.

end users means persons to be involved in using or occupying any part of the Works.

Fault means ambiguity, inconsistency, discrepancy, omission, error or other fault.

General Conditions means clauses 1 to 48 of the Contract.

Item means and Item of the Work Terms Information.

Milestone means a part of the Works specified as such in Item 6.

RMS' Documents means the design and design work prepared by RMS in respect of the Works and included in the Specifications.

Scheduled Progress means the rate of progress to be achieved by the Service Provider in Designing and carrying out WUC, such that the Service Provider is proceeding with due expedition and without undue delay (other than a delay for which the Date for Completion is adjusted under this document), so that it will complete the Works and all Milestones by their respective Date for Completion.

Service Provider's Documents means:

- (a) drawings, specifications, calculations and other documents and information, meeting the requirements of clause 4.2, which the Service Provider must produce to Design and complete the Works in accordance with the requirements of this document and the Contract; and
- (b) documents which become Service Provider's Documents under this document, including RMS' Documents checked, accepted and adopted under clause 4.3.

Service Provider's Work Terms Default means a substantial breach by the Service Provider, including any of the following:

- (a) abandoning the carrying out of WUC;
- (b) suspending progress of the carrying out of WUC in whole or part without the written agreement of RMS;
- (c) significantly failing to achieve Scheduled Progress; or
- (d) failing to complete the Works or a Milestone (as applicable) by the Date for Completion.

Site means the lands and other places to be made available by RMS to the Service Provider for the purpose of executing WUC, and including any existing buildings, services or other improvements, as specified in Item 2.

Specifications means all documents listed in Item 7.

Temporary Work means temporary structures, amenities, physical services and other work, including Materials, Service Provider's Plant and equipment used in or in relation to the carrying out of WUC but not forming part of the Works.

Test means to examine, inspect, measure, prove and trial, including opening up of any part covered up, if necessary. Testing and other derivatives of Test have a corresponding meaning.

Work Terms Commencement Date means the date set out in Item 1.

Work Terms Information means the information set out in Schedule 1.

Works means the work to be Designed, constructed, supplied and commissioned (as applicable) by the Service Provider in accordance with this document, but excluding Temporary Work.

Works Fee means the amount specified in Item 11 for performing WUC, subject to adjustment in accordance with the Contract.

Works Program means the program described in clause 2.3.

WUC (from 'work under the Contract') means the work which the Service Provider is or may be required to carry out and complete under this document and includes Design, Changes, the making good of Defects and Temporary Works.

SCHEDULE 1

Work Terms Information

[Note: The parties will agree the terms of Schedule 1 for all Project Works]

No.	Work Terms Item	Details		Clause reference
Dates and times, Site and description of WUC				
1.	Work Terms Commencement Date			N/A
2.	Site			5, 14.1
3.	Scope of WUC To include: (a) relevant details of the scope of WUC, including details of RMS specifications applicable to the Works; and (b) a description of the purpose of the Works			1.1
4.	Agreed Lane Closures (if applicable)	1	Date for Lane closure: Period of Lane closure: Details (including location) of Lane closure:	2.3, 7.1
		2	Date for Lane closure: Period of Lane closure: Details (including location) of Lane closure:	

No.	Work Item	Terms	Details	Clause reference
		3	Date for Lane closure: Period of Lane closure:..... Details (including location) of Lane closure:	
5	Date for Completion	Date for Completion Milestone 1 (if applicable) Description: Date for Completion: Milestone 2 (if applicable) Description: Date for Completion: Milestone 3 (if applicable) Description: Date for Completion:	10, 14.1
6	Defects Liability Period	12 months		10.3

No.	Work Terms	Item	Details	Clause reference								
Documents												
7	Specifications		<table border="1"> <thead> <tr> <th>Title</th> <th>Exhibit Number</th> </tr> </thead> <tbody> <tr> <td>[RMS to insert]</td> <td>[RMS to insert]</td> </tr> <tr> <td>[RMS to insert]</td> <td>[RMS to insert]</td> </tr> <tr> <td>[RMS to insert]</td> <td>[RMS to insert]</td> </tr> </tbody> </table>	Title	Exhibit Number	[RMS to insert]	[RMS to insert]	[RMS to insert]	[RMS to insert]	[RMS to insert]	[RMS to insert]	14.1
Title	Exhibit Number											
[RMS to insert]	[RMS to insert]											
[RMS to insert]	[RMS to insert]											
[RMS to insert]	[RMS to insert]											
	<p>[Note: RMS to include all specifications required for the Works]</p>											
8	Number of copies of Service Provider's Documents to be provided to RMS:		<p>..... copies (5 applies if not filled in)</p> <p>[Note: RMS to specify number of copies required]</p>	4.4(f)								
Scope of Activities (Design and Construct)												
9	Extent of Design by the Service Provider		<p>[ALT 1] All necessary design for or in respect of the Works, as described in RMS' Documents including but not limited to all design development, documentation and coordination of the design of the various engineering and architectural disciplines, workshop detailing and finalisation of the Design in all respects, in accordance with the Specifications.</p> <p>[ALT 2] No design responsibility - Service Provider to deliver Works in accordance with RMS' Documents and clause 4.2 does not apply.</p>	4, 14.1								
10	Responsibility for Design	Has RMS carried out design prior to the Work Terms Commencement Date?	<p>[Yes / No]</p> <p>(No applies if not filled in)</p>	4.3								
Payments												
11	Works Fee		<p>[Note: Parties to insert details of the amounts that will be payable to the Service Provider for performance of the Works having regards to the Payment Type specified in Item 12]</p>	9.1, 9.2, 14.1								

No.	Work Terms Item	Details		Clause reference
12	Payment Type	[Note: RMS to specify the Payment Type that will be applicable to the Project Works]		9.1
Miscellaneous				
13	Communication and Community Engagement	Requirements: [RMS to insert]		2.6
14	Subcontractor warranty	Requirements: [RMS to insert details of those Subcontractors (or areas of WUC) for which it requires the Service Provider to procure a subcontractor warranty]	(No applies if not filled in)	4.5

EXHIBIT 1

[Note: The Specifications should be included as Exhibits to this document.]

SCHEDULE 14

KEY PERSONNEL

No.	Name	Role/Description
1.	Bob Smith	Management Review Group
2.	Peter Richardson	Management Review Group
3.	Peter Richardson	Mobilisation & Transformation Manager
4.	Kevin Badger	Program Manager
5.	Andrew McArthur	Asset Stewardship Manager
6.	Graham Christy	Improvement Works Manager
7.	Gunhan Guven	Maintenance Stewardship Manager
8.	Seamus Finneran	Work Health & Safety Manager
9.	Tara Kennedy	Community & Stakeholder Manager
10.	Phil Allen	Business & Risk Manager
11.	Brodie Birkett	Performance & Improvement Manager
12.	Andrew Macourt	HR / IR Manager
13.	Max Dallarmi	Project Manager
14.	Simon Denmeade	Maintenance Superintendent
15.	Andrew Balak	Program Estimator
16.	George Khoury	Quality & ICMS Manager
17.	Catherine Ebbage	Environmental Manager

SCHEDULE 15

CRITERIA FOR APPOINTMENT AND NOMINATION

1. CRITERIA

The members of the Dispute Avoidance Board must meet the following criteria:

(a) Experience

At least one Member of the Dispute Avoidance Board (and preferably all) must be experienced in the type of maintenance services and construction works required for the Services, interpretation of project documents and resolution of maintenance and construction issues or disputes.

At least two of the Members of the Dispute Avoidance Board must be experienced in Dispute Avoidance Boards or Dispute Resolution Boards.

(b) Neutrality

(i) The Members of the Dispute Avoidance Board must be neutral, act impartially and be free of any conflict of interest.

(ii) For the purposes of this section 1, the term "Member" also refers to the Member's current primary or full time employer, and "involved" means having a contractual relationship with either party to this document, or any other entity, such as a subcontractor, design professional or consultant having a role in the Services.

(c) Prohibitions and disqualifying relationships for prospective Members

A member of the Dispute Avoidance Board must not have:

(i) an ownership interest in any entity involved in the Services, or a financial interest in the Services except for payment for services on the Dispute Avoidance Board;

(ii) previous employment by, or financial ties to, any party involved in the Services within a period of 2 years prior to the date of this document, except for fee-based consulting services on other projects;

(iii) a close professional or personal relationship with any key member of any entity involved in the Services which, in the judgment of either party, could suggest partiality; or

(iv) prior involvement in the Services of a nature which could compromise that member's ability to participate impartially in the Dispute Avoidance Board's activities,

except with the express approval of both parties.

(d) Prohibitions and disqualifying relationships for Members

The following matters may be construed as a conflict of interest in respect of a Member:

- (i) an ownership interest in any entity involved in the project, or a financial interest in the Services except for payment for services on the Dispute Avoidance Board; or
- (ii) the Member entering into discussions concerning, or making an agreement with, an entity involved in the Services regarding employment after the project is completed.

2. **DISCLOSURE STATEMENT**

A disclosure statement for each prospective Member must be submitted to RMS and the Service Provider (including for a person nominated by the remaining two Members under clause 36.12 of this document).

Each disclosure statement must include:

- (a) a resume of relevant experience;
- (b) a declaration describing all past, present, anticipated and planned future relationships, including indirect relationships through the prospective Member's primary or full time employer, to the project and with all entities involved in the project, including subcontractors, designers and consultants;
- (c) disclosure of a close professional or personal relationship with any key members of any entity involved in the Services; and
- (d) disclosure of any other matter relevant to the criteria identified in section 1(c) above.

SCHEDULE 16
DAB AGREEMENT

Dispute Avoidance Board Agreement

Roads and Maritime Services

ABN 76 236 371 088

and

Leighton Contractors Pty Limited

ABN 98 000 893 667

and

Boral Construction Materials Limited

ABN 70 000 614 826

and

Amey Consulting Australia Pty Limited

ABN 34 162 890 940

and

The Members of the Dispute Avoidance Board



CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	1
1.1 Definitions	1
1.2 Terms defined in the Stewardship Maintenance Contract	2
1.3 Interpretation	2
2. STEWARDSHIP MAINTENANCE CONTRACT TO PREVAIL	3
3. FORMATION OF THE DISPUTE AVOIDANCE BOARD	3
3.1 Appointment of Members	3
3.2 Formation	3
3.3 Chairperson	4
4. ESTABLISHMENT OF PROCEDURES	4
5. DISPUTE AVOIDANCE BOARD MEMBER'S OBLIGATIONS	4
5.1 Dispute Prevention	4
5.2 Impartiality	4
5.3 Independence	4
5.4 General duties	4
6. COSTS AND FEES	5
7. COMMITMENTS AND RESPONSIBILITIES OF THE OTHER PARTIES	5
7.1 RMS commitments and responsibilities	5
7.2 Service Provider commitments and responsibilities	6
8. CONFIDENTIALITY	6
9. CONFLICT OF INTEREST	6
10. LIABILITY AND INDEMNITY	6
10.1 Liability	6
10.2 Indemnity	7
11. TERMINATION OF THIS AGREEMENT	7
11.1 Termination by RMS and the Service Provider	7
11.2 Automatic termination	7
11.3 Termination where a Member resigns or their appointment is terminated by RMS and the Service Provider	7
12. RESIGNATION AND TERMINATION OF APPOINTMENT	8
12.1 Resignation	8
12.2 Termination of appointment	8
12.3 Replacement	8
13. GOVERNING LAW	8
14. RELATIONSHIP OF THE PARTIES	8
15. NOTICES	9
15.1 How to give a notice	9
15.2 When a notice is given	9
15.3 Address for notices	9
16. GIVING EFFECT TO THIS AGREEMENT	10
17. SURVIVAL OF TERMS	11

18.	WAIVER OF RIGHTS	11
19.	OPERATION OF THIS AGREEMENT.....	11
20.	GOODS AND SERVICES TAX	11
	20.1 Interpretation	11
	20.2 Consideration is GST exclusive	11
	20.3 Gross up of consideration	11
	20.4 Reimbursements (net down)	12
	20.5 Tax invoices	12
	20.6 Adjustment event.....	12
21.	AMENDMENT.....	12
22.	COUNTERPARTS	12
23.	ATTORNEYS	12

Schedule

1	Dispute Avoidance Board General Operating Procedures	15
2	Rules for Dispute Avoidance Board Decisions	18
3	Schedule of Fees and Disbursements.....	20

THIS AGREEMENT is made on

2013

BETWEEN:

- (1) **Roads and Maritime Services** ABN 76 236 371 088 ("**RMS**"); and
- (2) **Leighton Contractors Pty Limited** ABN 98 000 893 667; and
Boral Construction Materials Limited ABN 70 000 614 826; and
Amey Consulting Australia Pty Limited ABN 34 162 890 940,
(together the "**Service Provider**"); and
- (3) The Members of the Dispute Avoidance Board, namely:
[Name, ABN, and address of member]
[Name, ABN, and address of member]
[Name, ABN, and address of member]
(collectively "**Members**" or the "**Dispute Avoidance Board**")

RECITALS:

- (A) On or before the date of this Agreement, RMS and the Service Provider entered into the Stewardship Maintenance Contract.
- (B) The Stewardship Maintenance Contract provides for a dispute resolution process through the establishment and the operation of a dispute avoidance and resolution board to assist the parties in preventing disputes from arising under the Stewardship Maintenance Contract and if a dispute cannot be prevented, to decide it.
- (C) The Members represent that they are experienced generally in the maintenance, construction and operation of road assets and project management services and, in particular, in the provision of, and the resolution of issues and disputes in relation to such services and offer their expertise in those fields.
- (D) The Stewardship Maintenance Contract contemplates that the Members will discharge those functions set out in Schedule 1 to this Agreement.
- (E) This Agreement sets out the rights, obligations and duties of the Members, RMS and the Service Provider in relation to the Dispute Avoidance Board.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

In this Agreement:

DAB Agreement Expiry Date means:

- (a) the date on which the Initial Works Period expires under the Stewardship Maintenance Contract; or

- (b) such later date as may be specified in a written notice issued by RMS to the Service Provider and the Members.

Members means the three persons appointed to the Dispute Avoidance Board in accordance with this Agreement, or the continuing Members and any replacement Member in the circumstances contemplated under clause 12.3 of this Agreement, as the case may be.

Other Parties means RMS and the Service Provider.

Rules has the meaning in clause 4(b)(ii) of this Agreement.

Stewardship Maintenance Contract means the contract between RMS and the Service Provider entitled "Stewardship Maintenance Contract – Sydney South Zone" dated on or before the date of this Agreement.

1.2 **Terms defined in the Stewardship Maintenance Contract**

Capitalised terms used in this Agreement which are not otherwise defined have the meaning given to them in the Stewardship Maintenance Contract.

1.3 **Interpretation**

In this Agreement unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Agreement includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Agreement or to any other deed, agreement, document or instrument is deemed to include a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
 - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and

- (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Agreement;
- (i) a reference to:
 - (i) a party or clause is a reference to a party or clause of or to this Agreement; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or subparagraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (l) a reference to "\$" is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

2. STEWARDSHIP MAINTENANCE CONTRACT TO PREVAIL

- (a) The parties agree that if there is any inconsistency between the terms of this Agreement and the Stewardship Maintenance Contract, the terms of the Stewardship Maintenance Contract will prevail to the extent of the inconsistency.
- (b) This Agreement is effective as of the date all parties sign this document and will continue until it terminates in accordance with clause 11.

3. FORMATION OF THE DISPUTE AVOIDANCE BOARD

3.1 Appointment of Members

- (a) Each of the Other Parties appoints each of the Members to perform the functions, activities and obligations contemplated for the Dispute Avoidance Board under the Stewardship Maintenance Contract and this Agreement.
- (b) The Members each confirm their acceptance of the appointment referred to in clause 3.1(a).

3.2 Formation

The parties acknowledge that the Dispute Avoidance Board:

- (a) has been formed;

- (b) is constituted by the Members; and
- (c) must perform its obligations and functions under the Stewardship Maintenance Contract and this Agreement.

3.3 **Chairperson**

The Members will determine which of them will act as chairperson from time to time.

4. **ESTABLISHMENT OF PROCEDURES**

- (a) During the first meeting of the Dispute Avoidance Board, the Dispute Avoidance Board will establish procedures for the conduct of its regular meetings, attendance at meetings of the Management Review Group, site visits and other matters (excluding the rules governing the Dispute Avoidance Board determination of a Dispute referred to it pursuant to clause 36.6 of the Stewardship Maintenance Contract) in accordance with the procedures included in Schedule 1 to this Agreement (unless otherwise agreed by the parties).
- (b) The parties agree to comply with:
 - (i) the general operating procedures in Schedule 1 to this Agreement; and
 - (ii) the rules for the Dispute Avoidance Board decision process (**Rules**) set out in Schedule 2 to this Agreement in respect of any Dispute referred to the Dispute Avoidance Board pursuant to clause 36.6 of the Stewardship Maintenance Contract.

5. **DISPUTE AVOIDANCE BOARD MEMBER'S OBLIGATIONS**

5.1 **Dispute Prevention**

Each Member agrees to do all things and to take such action as may be practicable in accordance with this Agreement to assist the Other Parties in preventing Disputes from arising under the Stewardship Maintenance Contract and if a Dispute cannot be prevented, to decide it in accordance with clause 36 of the Stewardship Maintenance Contract and this Agreement.

5.2 **Impartiality**

Each Member agrees to consider fairly and impartially the Disputes and other matters referred to the Dispute Avoidance Board.

5.3 **Independence**

Each Member agrees to act honestly, impartially, without bias and independently of the Other Parties and any of their Subcontractors in the performance of their obligations under this Agreement (including the consideration of facts and conditions relating to a Dispute) and in accordance with clause 5 of this Agreement.

5.4 **General duties**

Each Member agrees to carry out their obligations as a Member of the Dispute Avoidance Board:

- (a) with due care and diligence;
- (b) in compliance with the Stewardship Maintenance Contract and this Agreement; and

- (c) in compliance with all applicable Laws.

6. COSTS AND FEES

- (a) The Other Parties are jointly and severally liable for the payment of the Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3.
- (b) The Other Parties agree as between themselves that:
 - (i) they will each pay one half of:
 - (A) the Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3;
 - (B) any third party costs incurred in holding any conference referred to in clause 2 of the Rules, including any booking fee, room hire and transcript costs; and
 - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement (and any replacement) and their participation in any decision process of the Dispute Avoidance Board.
- (c) Each Member agrees that they will submit separate tax invoices to each of RMS and the Service Provider at one monthly intervals (unless a different frequency is agreed by the Other Parties), covering the preceding month's activities by the Member. The invoice is to separately identify the activities performed and the calculation of the relevant fees and disbursements (excluding GST) (**Payment Amount**) in sufficient detail to enable the Other Parties to review that the invoice is calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3. If either of the Other Parties is not satisfied that the Payment Amount is calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3, then either of the Other Parties may request clarification from the relevant Member.
- (d) Each Member agrees that they will issue separate tax invoices to each of RMS and the Service Provider, for one half of the agreed Payment Amount.
- (e) The Other Parties must pay the amounts payable in tax invoices issued in accordance with clause 6(d) within 30 days of receipt.
- (f) The Members are not entitled to engage any third party consultants or advisers in the performance of their obligations under this Agreement unless the Other Parties agree in writing for them to do so, and on the terms on which they may do so.

7. COMMITMENTS AND RESPONSIBILITIES OF THE OTHER PARTIES

7.1 RMS commitments and responsibilities

RMS acknowledges and agrees that it must:

- (a) act in good faith towards each Member and the Dispute Avoidance Board;
- (b) comply with the reasonable requests and directions of the Dispute Avoidance Board; and
- (c) except for its participation in the Dispute Avoidance Board's activities as provided in the Stewardship Maintenance Contract and this Agreement, not solicit advice or consultation from the Dispute Avoidance Board or the Members on matters dealing

with the prevention and resolution of Disputes which may compromise the Dispute Avoidance Board's integrity or compliance with this Agreement.

7.2 Service Provider commitments and responsibilities

The Service Provider acknowledges and agrees that it must:

- (a) act in good faith towards each Member and the Dispute Avoidance Board;
- (b) comply with the reasonable requests and directions of the Dispute Avoidance Board; and
- (c) except for its participation in the Dispute Avoidance Board's activities as provided in the Stewardship Maintenance Contract and this Agreement, not solicit advice or consultation from the Dispute Avoidance Board or the Members on matters dealing with the avoidance and resolution of Disputes which may compromise the Dispute Avoidance Board's integrity or compliance with this Agreement.

8. CONFIDENTIALITY

In relation to all confidential information disclosed to the Dispute Avoidance Board at any time each Member agrees:

- (a) to keep that information confidential;
- (b) not to disclose that information except if compelled by Law to do so;
- (c) not to use that information for a purpose other than complying with its obligations under this Agreement or the resolution of any Dispute referred to the Dispute Avoidance Board; and
- (d) to be bound by this obligation of confidentiality whether or not such confidential information is or later becomes in the public domain.

9. CONFLICT OF INTEREST

- (a) If a Member, during the term of appointment as a Member, becomes aware of any circumstance that might reasonably be considered to affect the Member's capacity to act independently, impartially and without bias, the Member must inform the Other Parties and the other Members of the Dispute Avoidance Board.
- (b) The other Members of the Dispute Avoidance Board will within five Business Days of notification under clause 9(a) confer and inform the Other Parties and the Member, whether they believe the circumstances notified are such that the Member should be replaced. In the event that the Other Parties agree, or one or both of the other Members believe, that the Member should be replaced, the Member must immediately resign from the Dispute Avoidance Board and a reappointment will occur pursuant to clause 12.3.

10. LIABILITY AND INDEMNITY

10.1 Liability

Except in the case of fraud:

- (a) the Members shall not be liable to the Other Parties or any of them upon any cause of action whatsoever for anything done or omitted to be done by the Dispute Avoidance Board or the Members; and

- (b) the Other Parties jointly and severally hereby release the Members against all actions, suits, proceedings, disputes, differences, accounts, claims, demands, costs, expenses and damages of any kind whatsoever (hereafter "**claims**") (including, but not limited to, defamation, bias or other misconduct) whether such claims arise:
 - (i) under or in any connection with this Agreement;
 - (ii) in tort for negligence, negligent advice or otherwise; or
 - (iii) otherwise at law (including by statute to the extent it is possible so to release, exclude, or indemnify) and in equity generally, including without limitation for unjust enrichment,

arising out of, or in connection with, the Services or the Dispute Avoidance Board's activities or any other process conducted pursuant to this Agreement.

10.2 **Indemnity**

RMS and the Service Provider hereby jointly and severally indemnify and keep indemnified the Members against all claims including without limitation claims by third parties upon any of the bases set out in clause 10.1 (or otherwise):

- (a) against the Other Parties, or any of them; and
- (b) against the Members or any of them,

arising out of anything done or omitted to be done by the Dispute Avoidance Board or the Members in the proper performance of their duties under this Agreement and the Stewardship Maintenance Contract.

11. **TERMINATION OF THIS AGREEMENT**

11.1 **Termination by RMS and the Service Provider**

RMS and the Service Provider may terminate this Agreement by giving joint written notice to the Members of the Dispute Avoidance Board.

11.2 **Automatic termination**

The parties acknowledge and agree that this Agreement will automatically terminate upon the later of:

- (a) the Dispute Avoidance Board having made a decision in accordance with clause 36.7 of the Stewardship Maintenance Contract in respect of all Disputes that were referred to it; or
- (b) either:
 - (i) the DAB Agreement Expiry Date; or
 - (ii) the termination of the Stewardship Maintenance Contract,

whichever first occurs.

11.3 **Termination where a Member resigns or their appointment is terminated by RMS and the Service Provider**

Where:

- (a) a Member resigns under clause 9(b) or 12.1; or
 - (b) the appointment of a Member is terminated by the Other Parties under clause 12.2,
- then despite the resignation or termination taking effect in accordance with its terms, this Agreement will remain in force until a replacement to this Agreement has been fully executed pursuant to clause 12.3(d), at which time this Agreement terminates.

12. RESIGNATION AND TERMINATION OF APPOINTMENT

12.1 Resignation

A Member may resign from the Dispute Avoidance Board by providing 30 Business Days' written notice to the other Members and the Other Parties (unless the Other Parties agree to a shorter notice period).

12.2 Termination of appointment

RMS and the Service Provider may terminate the appointment of a Member at any time by giving joint written notice to the Members of the Dispute Avoidance Board.

12.3 Replacement

The parties acknowledge and agree that if:

- (a) a Member resigns under clause 9(b) or 12.1; or
 - (b) the appointment of a Member is terminated by the Other Parties under clause 12.2,
- then:
- (c) a replacement Member may be appointed in accordance with clause 36.12 of the Stewardship Maintenance Contract; and
 - (d) RMS, the Service Provider, the continuing Members and the replacement Member must enter into a replacement agreement substantially similar to this Agreement as a condition of a valid re-appointment and re-constitution of the Dispute Avoidance Board under the terms of the Stewardship Maintenance Contract.

13. GOVERNING LAW

- (a) This Agreement will be governed by and construed in accordance with the Laws of the State of New South Wales.
- (b) Each party hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

14. RELATIONSHIP OF THE PARTIES

Nothing in this Agreement will be construed or interpreted as constituting the relationship between RMS, the Service Provider and the Members as that of partners, joint venturers or any other fiduciary relationship.

15. NOTICES

15.1 How to give a notice

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

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

15.2 When a notice is given

A notice, consent or other communication that complies with this clause 15 is regarded as given and received:

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

15.3 Address for notices

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

RMS

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

Fax: (02) 8588 4134

Email: stephen.cowdery@rms.nsw.gov.au
Attention: Stephen Cowdery, General Manager, Contract Management Office
(With a copy to Christine Lithgow, General Counsel)

Service Provider

Address: Level 5, 52 Phillip Street
Sydney NSW 2000
Fax: (02) 8668 6761
Email: kevin.badger@lbajv.com.au
Attention: Kevin Badger, Program Manager

Members

Name: *[Note: insert]*
Address: *[Note: insert]*
Fax: *[Note: insert]*
Email: *[Note: insert]*

Name: *[Note: insert]*
Address: *[Note: insert]*
Fax: *[Note: insert]*
Email: *[Note: insert]*

Name: *[Note: insert]*
Address: *[Note: insert]*
Fax: *[Note: insert]*
Email: *[Note: insert]*

16. **GIVING EFFECT TO THIS AGREEMENT**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that another party may reasonably require to give full effect to this Agreement.

17. **SURVIVAL OF TERMS**

The parties agree that clauses 6, 8, 10 and 13 and this clause 17 (and any other terms of this Agreement necessary for or incidental to the operation of the preceding terms) will survive the termination or expiry of this Agreement.

18. **WAIVER OF RIGHTS**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

19. **OPERATION OF THIS AGREEMENT**

- (a) Except as otherwise expressly specified in this Agreement, this Agreement contains the entire agreement between the parties about its subject matter, and any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

20. **GOODS AND SERVICES TAX**

20.1 **Interpretation**

Words or expressions used in this clause 20 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

20.2 **Consideration is GST exclusive**

Any consideration to be paid or provided for a supply made under or in connection with this Agreement, unless specifically described in this Agreement as 'GST inclusive', does not include an amount on account of GST.

20.3 **Gross up of consideration**

Despite any other provision in this Agreement, if a party (**Supplier**) makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier an amount equal to the GST payable on the supply (**GST Amount**); and

- (b) the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

20.4 Reimbursements (net down)

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of a GST group of which that party is a member, is entitled for that loss, cost or expense.

20.5 Tax invoices

The Recipient need not make a payment for a taxable supply made under or in connection with this Agreement until the Supplier has given the Recipient a Tax Invoice for the supply to which the payment relates.

20.6 Adjustment event

If an adjustment event occurs in relation to a taxable supply made under or in connection with this Agreement then the consideration payable in respect of the supply shall also be adjusted as follows:

- (a) if the adjustment event gives rise to an increase in the GST payable by the Supplier in relation to the supply a payment equal to that increase will be made by the Recipient to the Supplier; and
- (b) if the adjustment event gives rise to a decrease in the GST payable by the Supplier in relation to the supply payment equal to that decrease will be made by the Supplier to the Recipient.

Any payment that is required under this clause 20.6 will be made within five Business Days of the issuing of an adjustment note or an amended Tax Invoice, as the case may be, by the Supplier. If the adjustment event gives rise to an adjustment, the Supplier must issue an adjustment note to the Recipient as soon as it becomes aware of the adjustment event.

21. AMENDMENT

This Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.

22. COUNTERPARTS

- (a) This Agreement may be executed in counterparts, which taken together constitute one instrument.
- (b) A party may execute this Agreement by executing any counterpart.

23. ATTORNEYS

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

EXECUTED as an agreement

SIGNED for ROADS AND MARITIME SERVICES by its duly authorised officer, in the presence of:

Signature of officer

Signature of witness

Name

Name

EXECUTED by LEIGHTON CONTRACTORS PTY LIMITED ABN 98 000 893 667:

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by BORAL CONSTRUCTION MATERIALS LIMITED ABN 70 000 614 826:

Signature of director

Signature of director/secretary

Name

Name

SIGNED, SEALED and DELIVERED for AMEY CONSULTING AUSTRALIA PTY LIMITED ABN 34 162 890 940 under power of attorney in the presence of:

Signature of attorney

Signature of witness

Name of attorney

Name of witness

Date of power of attorney

SIGNED BY THE MEMBER in the presence
of:

Signature of Witness

Name of Witness (Please Print)

Signature of Member

Name of Member in full (Please Print)

SIGNED BY THE MEMBER in the presence
of:

Signature of Witness

Name of Witness (Please Print)

Signature of Member

Name of Member in full (Please Print)

SIGNED BY THE MEMBER in the presence
of:

Signature of Witness

Name of Witness (Please Print)

Signature of Member

Name of Member in full (Please Print)

SCHEDULE 1

Dispute Avoidance Board General Operating Procedures

1. General

- 1.1 The role of the Dispute Avoidance Board is to provide independent and specialised expertise in technical and administration aspects of the Stewardship Maintenance Contract in order to assist the Other Parties in firstly attempting to avoid or prevent and, if unable to avoid or prevent, in determining Disputes under clause 36 of the Stewardship Maintenance Contract in a timely manner.
- 1.2 To enable the Dispute Avoidance Board to fulfil its functions under this Agreement and the Stewardship Maintenance Contract, the Other Parties will provide all reasonable assistance to the Dispute Avoidance Board, including providing all information that the Dispute Avoidance Board reasonably requires or requests. Such information may include copies of Stewardship Maintenance Contract documents plus periodic reports, such as progress reports, minutes of weekly or other meetings, site meetings or similar meetings and any other documents that would be helpful in informing the Dispute Avoidance Board Members of matters in relation to the Services.
- 1.3 The individual Dispute Avoidance Board Members are not the representative of the party which appointed that Member. The entire Dispute Avoidance Board must function as an objective, impartial and independent body at all times.
- 1.4 The Members shall make prompt disclosure from time to time of any new or previously undisclosed circumstance, relationship or dealing, which comes to their attention and which might give rise to a conflict of interest or apprehension of bias.
- 1.5 Communications between the Other Parties and the Dispute Avoidance Board for the purpose of attempting to avoid or prevent Disputes are without prejudice communications and may not be adduced as evidence in any dispute resolution process under clause 36 of the Stewardship Maintenance Contract.

2. Management Review Group meetings

- 2.1 The Dispute Avoidance Board will attend meetings of the Management Review Group under the Stewardship Maintenance Contract whenever requested to attend by RMS or the Service Provider for the purposes contemplated by clauses 36.4 or 36.11 of the Stewardship Maintenance Contract.
- 2.2 That part of the Management Review Group meeting which the Dispute Avoidance Board attends will be deemed to be a meeting of the Dispute Avoidance Board and the relevant terms of this document will apply.
- 2.3 The Other Parties will invite the Members of the Dispute Avoidance Board to attend the first two meetings of the Management Review Group.

3. Frequency of regular meetings and site visits

- 3.1 The frequency and scheduling of meetings and site visits necessary to keep the Dispute Avoidance Board properly informed of the Services will be agreed between the Dispute Avoidance Board and the Other Parties.
- 3.2 The frequency of meetings of the Dispute Avoidance Board should generally coincide with the same day as meetings of the Management Review Group under clause 15 of the Stewardship Maintenance Contract (which the Members will attend if required by the Other Parties), but the meeting schedule may be influenced by work progress, unusual events and the number and complexity of potential Disputes. In any event, meetings of

the Dispute Avoidance Board may be convened separately to meetings of the Management Review Group if agreed between the Dispute Avoidance Board and the Other Parties.

- 3.3 All meetings held for the purposes of briefing and updating the Members on performance and progress of the Services under the Stewardship Maintenance Contract and issues or potential issues arising between the Other Parties shall be held on an in-confidence and "without prejudice" basis to encourage full and frank disclosure and discussions.
- 3.4 The provisions of clause 3.3 of this Schedule 1 as they relate to a "without prejudice basis" shall not apply to any inspection or conference convened in accordance with Schedule 2 - Rules for Dispute Avoidance Board Decisions in relation to a Dispute referred to the Dispute Avoidance Board for determination.
- 3.5 The chairperson of the Dispute Avoidance Board will develop an agenda for each regular meeting in accordance with the requirements of the Stewardship Maintenance Contract and this Agreement.

4. Minutes of meetings

- 4.1 The Management Review Group, under clause 15 of the Stewardship Maintenance Contract, will agree and document procedures relating to meetings of the Management Review Group, and any minutes of Management Review Group meetings will be circulated to the Dispute Avoidance Board Members for information only.
- 4.2 In accordance with clause 3.3 above, the minutes of the Dispute Avoidance Board meetings, held other than in accordance with Schedule 2 - Rules for Dispute Avoidance Board Decisions, shall be marked "in-confidence, without prejudice".
- 4.3 The minutes of Dispute Avoidance Board meetings will be prepared by the chairperson of the Dispute Avoidance Board and will be circulated to the attendees at the Dispute Avoidance Board meeting for comments, additions and corrections.
- 4.4 Minutes as may be amended will be adopted by the Dispute Avoidance Board Members at the next meeting.

5. Communications

- 5.1 Except when participating in the Dispute Avoidance Board's activities as contemplated by the Stewardship Maintenance Contract and this Agreement, the Other Parties shall not communicate with the Dispute Avoidance Board or its Members on matters dealing with the conduct of the Services or resolution of problems.
- 5.2 There must be no communication between Dispute Avoidance Board Members and employees of the Other Parties during the life of the Dispute Avoidance Board without the Dispute Avoidance Board Members informing the Other Parties. The Other Parties must direct any matters needing attention between meetings of the Dispute Avoidance Board to the chairperson of the Dispute Avoidance Board.
- 5.3 All communications to the Dispute Avoidance Board by the Other Parties outside the Dispute Avoidance Board meetings should be directed in writing to the chairperson and copied to the other Members and to the other party. All communications by the Members to the Other Parties should be addressed to the RMS' Representative and the Service Provider's Authorised Person.

6. Representation

Where required by the Dispute Avoidance Board, the Other Parties shall each ensure they are represented at Dispute Avoidance Board meetings by at least one senior project

executive and at least one member of the Management Review Group. The Other Parties shall inform the chairperson of the names and project roles of each of their respective representatives and, if applicable, the names and roles of any alternates.

7. Advisory Opinions

Where requested by the Other Parties, the Dispute Avoidance Board may provide an advisory opinion on any issue referred to it by the Other Parties. Any such advisory opinion will not be a decision as that term is referred to in Schedule 2.

8. Other Attendees

Where requested by the Other Parties, and approved by the Members, or where requested by the Members, and approved by the Other Parties, other persons who may be involved in the Services (such as the design manager) may be invited to make special presentations to the Dispute Avoidance Board on matters or issues relevant to the Services.

SCHEDULE 2

Rules for Dispute Avoidance Board Decisions

1. Written submissions

- 1.1 Within 5 Business Days after the referral of a Dispute to the Dispute Avoidance Board under clause 36.6 of the Stewardship Maintenance Contract, or such other time as the Dispute Avoidance Board may consider reasonable in the circumstances, Party A (i.e. the party who gave the Notice of Referral to the Dispute Avoidance Board under clause 36.6 of the Stewardship Maintenance Contract) must, in addition to any particulars provided by Party A in the relevant Notice of Referral to DAB, give the other party (**Party B**) and the Dispute Avoidance Board:
- (a) a written statement of the Dispute referred to the Dispute Avoidance Board;
 - (b) any agreed statement of facts; and
 - (c) a written submission (which may include witness statements) on the Dispute in support of Party A's contentions.
- 1.2 Within 10 Business Days after the statement in clause 1.1 is served, or such other time as the Dispute Avoidance Board may consider reasonable in the circumstances, Party B must give Party A and the Dispute Avoidance Board a written response to Party A's submissions.
- 1.3 If the Dispute Avoidance Board considers it appropriate, Party A may reply in writing to Party B's response in clause 1.2 within the time allowed by the Dispute Avoidance Board.
- 1.4 If the Dispute Avoidance Board decides further information or documentation is required for the determination of the Dispute, the Dispute Avoidance Board may direct one or more of the Other Parties to provide such further submissions, information or documents as the Dispute Avoidance Board may require.
- 1.5 The Dispute Avoidance Board must disclose to both of the Other Parties all submissions, further submissions, information and documents received.
- 1.6 Any failure by a party to make a written submission will not terminate or discontinue the decision making process.

2. Conference

- 2.1 Either of the Other Parties may, in writing, request the Dispute Avoidance Board to call a conference of the parties. Any such request shall include a summary of the matters the party considers should be included in the conference.
- 2.2 If neither of the Other Parties requests the Dispute Avoidance Board to call a conference, the chairperson of the Dispute Avoidance Board may nevertheless call a conference if they think it appropriate.
- 2.3 Unless the parties agree otherwise, the conference will be held at the offices of RMS.
- 2.4 At least 5 Business Days before the conference, the Dispute Avoidance Board must inform the Other Parties in writing of the date, venue and agenda for the conference.
- 2.5 The Other Parties must appear at the conference and may make submissions on the subject matter of the conference. If a party fails to appear at a conference of which that party had been notified under clause 2.4, the Dispute Avoidance Board and the other

party may nevertheless proceed with the conference and the absence of that party will not terminate or discontinue the decision making process.

2.6 The Other Parties:

- (a) may be accompanied at a conference by legal or other advisers; and
- (b) will be bound by any procedural directions as may be given by the Dispute Avoidance Board in relation to the conference both before and during the course of the conference.

2.7 The conference must be held in private.

2.8 If agreed between the parties, transcripts of the conference proceedings may be taken and made available to the Dispute Avoidance Board and the Other Parties.

3. The decision

3.1 As soon as possible after receipt of the submissions referred to in clause 1 or after any conference referred to in clause 2 and, in any event not later than 25 Business Days after referral of a Dispute to the Dispute Avoidance Board under clause 36.6 of the Stewardship Maintenance Contract (or such other period as the parties may agree), the Dispute Avoidance Board must:

- (a) decide the Dispute between the Other Parties; and
- (b) notify the Other Parties of that decision.

3.2 The decision of the Dispute Avoidance Board must:

- (a) be in writing;
- (b) state the Dispute Avoidance Board's decision and set out reasons for the decision;
- (c) state that it is given under clause 36.7(e) of the Stewardship Maintenance Contract;
- (d) be made on the basis of the submissions (if any) of the Other Parties, the conference (if any), and the Dispute Avoidance Board's own expertise; and
- (e) meet the requirements of the Stewardship Maintenance Contract.

3.3 If the Dispute Avoidance Board's decision contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect in form, the Dispute Avoidance Board must correct the decision.

4. Modification

These rules may be modified only by agreement in writing of the Other Parties.

SCHEDULE 3

Schedule of Fees and Disbursements

[The Fees are to be:

- (a) a fixed daily rate for attendance at Dispute Avoidance Board meetings and any Management Review Group meetings held on the same day; and*
- (b) based on an hourly rate for all other services, with a capped daily rate; or*
- (c) such other basis for payment as may be agreed.*

The Fees in (a) and the rates in (b) are both to include all disbursements and expenses, excluding:

- (c) travel and accommodation outside of Sydney; and*
- (d) any third party costs contemplated under clause 6(b)(i)(B) of this Agreement, including any booking fee, room hire and transcript costs.]*

SCHEDULE 17
FORM OF SECURITY BOND

On behalf of the Contractor

Name of Financial Institution:
The Principal: »
The Contractor:
ABN
Security Amount: \$
The Contract: The contract between the Principal and the Contractor
Contract Name: »
Contract Number: »

Undertaking

1. At the request of the Contractor and the Financial Institution, and in consideration of the Principal accepting this *Undertaking* from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.
2. The Financial Institution unconditionally agrees that, upon receipt from the Principal of notice in writing purportedly signed by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Contractor and despite any notice from the Contractor not to pay.
3. The Principal must not assign this *Undertaking* without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
4. This *Undertaking* continues until one of the following occurs:
 - (a) the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
 - (b) this *Undertaking* is returned to the Financial Institution; or
 - (c) the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.
5. At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this *Undertaking* (or a lesser sum specified by the Principal), and the liability of the Financial Institution will then immediately end.
6. This Undertaking is governed by the laws of New South Wales.

Dated at

Execution by the Financial Institution:

SCHEDULE 18
DEED OF GUARANTEE AND INDEMNITY

Deed of Guarantee and Indemnity

Roads and Maritime Services

ABN 76 236 371 088

and

Leighton Holdings Limited

ABN 57 004 482 982

and

Boral Limited

ABN 13 008 421 761

and

Amey UK Plc

Company No. 04736639



CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	1
1.1 Definitions	1
1.2 The Contract	3
1.3 Interpretation	3
1.4 No contra proferentem	3
2. GUARANTEE	3
2.1 Guarantee	3
2.2 Payment of Guaranteed Money	3
2.3 Perform obligations	4
3. INDEMNITY	4
3A. LIMITATION	4
4. NATURE AND PRESERVATION OF LIABILITY	5
4.1 Absolute liability	5
4.2 Unconditional liability	5
4.3 No marshalling	7
4.4 Void or voidable transactions	7
4.5 No double proof	7
4.6 Suspense account	8
4.7 Proof of debt in competition with Beneficiary	8
4.8 Claim on the Guarantor	8
4.9 No representation by Beneficiary	8
4.10 No contribution	8
5. CORPORATE REPRESENTATIONS AND WARRANTIES	8
5.1 Representations and warranties	8
5.2 Reliance on representations and warranties	10
5.3 No representations to Guarantor	10
6. PAYMENTS	10
6.1 On demand	10
6.2 Payment in gross	10
6.3 Appropriation of payments	10
6.4 Interest	10
6.5 Merger	10
6.6 Withholding for Taxes	10
7. EXPENSES, STAMP DUTY AND GST	11
7.1 Expenses	11
7.2 Stamp duties	11
7.3 Goods and Services Tax	11
8. ASSIGNMENTS	12
9. GOVERNING LAW AND JURISDICTION	12
9.1 Governing law	12
9.2 Jurisdiction	12
10. MISCELLANEOUS	12
10.1 Certificate of Beneficiary	12
10.2 Notices	12
10.3 Address for notices	13

10.4	Continuing obligation	14
10.5	Further assurance	14
10.6	Form of demand	14
10.7	Severability of provisions.....	14
10.8	Remedies cumulative.....	14
10.9	Waiver	14
10.10	Consents and approvals	15
10.11	Moratorium legislation.....	15
10.12	Debit accounts and set-off	15
10.13	Counterparts	15
10.14	Execution by less than all parties	15
10.15	Resolution of disputes binding	15
10.16	No right to be heard	15
10.17	Civil Liability Act	16

Schedule

1	Dispute provisions for certain foreign Guarantors	19
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THIS Deed is made on

2013

BETWEEN:

(1) **Roads and Maritime Services** ABN 76 236 371 088 (the **Beneficiary**); and

(2) **Leighton Holdings Limited** ABN 57 004 482 982; and

Boral Limited ABN 13 008 421 761; and

Amey UK Plc Company No. 04736639 of the Sherard Building, Edmund Halley Road, Oxford, OX4 4DQ, United Kingdom,

(jointly and severally the **Guarantor**).

RECITALS:

(A) The Beneficiary has agreed to enter into the Contract with the Contractor on the condition that the Guarantor provides this Deed.

(B) The Guarantor considers that by providing this Deed there will be a commercial benefit flowing to the Guarantor.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

Contract means the deed dated on or before the date of this Deed between the Beneficiary and the Contractor entitled "Stewardship Maintenance Contract –Sydney South Zone".

Contractor means:

(a) Leighton Contractors Pty Limited ABN 98 000 893 667;

(b) Boral Construction Materials Limited ABN 70 000 614 826; and

(c) Amey Consulting Australia Pty Limited ABN 34 162 890 940.

Contractor's Obligations means the due and punctual performance by the Contractor of all of its liabilities, obligations and agreements (present or future, actual or contingent) to the Beneficiary pursuant to or in connection with the Contract and each other Transaction Document but excluding all of the Contractor's Obligations with respect to payment of the Guaranteed Money.

Deed of Guarantee and Indemnity (Road Maintenance Transitional Agreement) means the deed between the Beneficiary, the Contractor and the Director General entitled "Deed of Guarantee and Indemnity (Road Maintenance Transitional Agreement)" dated on or before the date of this Deed.

Director General means the Director-General of the Department of Transport for and on behalf of Transport for NSW.

Encumbrance means a mortgage, charge, pledge, lien, hypothecation, guarantee (including the guarantee under this Deed), indemnity, letter of credit, letter of comfort,

performance bond or other avoidance against loss which secures any obligation which is or may be or becomes owing by any other Relevant Person to the Guarantor.

Government Agency means a government or government department, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with the administration of any applicable law.

Guaranteed Money means all money which the Contractor (whether alone or with any other person) is or at any time becomes actually or contingently liable to pay to, or for the account of, the Beneficiary on any account whatsoever under or in connection with the Contract or other Transaction Document including, without limitation, by way of interest, fees, costs, indemnities, charges, duties and expenses, or through payment of damages under or in relation to, or as a consequence of any breach or default of, the Contract or any other Transaction Document.

Guaranteed Obligations means the due and punctual payment of the Guaranteed Money and the due and punctual performance of the Contractor's Obligations.

Material Adverse Effect means, in respect of a person, a material adverse effect in the opinion of the Beneficiary on:

- (a) its business, assets or financial condition; or
- (b) its ability to perform its obligations under any Transaction Document.

Relevant Person means the Contractor, each Guarantor and any person who has executed a Security in favour of the Beneficiary.

Security means a mortgage, charge, pledge, lien, hypothecation, guarantee (including the guarantee under this Deed), indemnity (including the indemnity under this Deed), letter of credit, guarantee of comfort, performance bond, or other assurance against loss which secures the Guaranteed Money, and whether existing at the date of this Deed or at any time in the future.

Specified Rate means 2% above the Overdraft Index Rate fixed from time to time by the Commonwealth Bank of Australia.

Tax means any present or future tax, GST, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine and expense in connection with any of them) levied or imposed by any Government Agency, other than any imposed on overall net income.

Transaction Document means each of:

- (a) this Deed;
- (b) the Contract;
- (c) the Deed of Guarantee and Indemnity (Road Maintenance Transitional Agreement);
- (d) any other document which the Guarantor and the Beneficiary so designate in writing;
- (e) each other document contemplated by or required in connection with any of the above or the transactions they contemplate; and
- (f) each document entered into for the purpose of amending, novating, restating or replacing any of the above.

Unpaid Amount means an amount which is not paid on the date on which it is due and payable under this Deed.

1.2 **The Contract**

Defined words and expressions used in this Deed have the meanings given to them in the Contract.

1.3 **Interpretation**

In this Deed unless the context indicates a contrary intention:

- (a) if the "Contractor" is more than one person, "Contractor" means each of them severally and every two or more of them jointly;
- (b) if the Guarantor is more than one person, "Guarantor" means each of them severally and every two or more of them jointly;
- (c) "person" includes an individual, a body politic, a corporation and a statutory or other authority or association whether incorporated or unincorporated;
- (d) a reference to any party includes that party's executors, administrators, successors, substitutes and assigns, including any person taking by way of novation;
- (e) a reference to any document or agreement is to such document or agreement as amended, novated, supplemented or replaced from time to time;
- (f) the singular includes the plural (and vice versa) and words denoting a given gender include all other genders;
- (g) headings are for convenience only and do not affect interpretation; and
- (h) unless otherwise stated, a reference to any amount is a reference to all or part of the amount.

1.4 **No contra proferentem**

No term or provision of this Deed shall be construed against a party on the basis that the Deed or the term or provision in question was put forward or drafted by that party.

2. **GUARANTEE**

2.1 **Guarantee**

The Guarantor irrevocably and unconditionally guarantees to the Beneficiary:

- (a) the due and punctual payment by the Contractor of the Guaranteed Money; and
- (b) the due and punctual performance by the Contractor of all of the Contractor's Obligations.

2.2 **Payment of Guaranteed Money**

- (a) Subject to clause 2.2(b), if the Contractor does not pay the Guaranteed Money when due, the Guarantor must on demand pay to the Beneficiary the Guaranteed Money which is then due and payable.

- (b) The Guarantor shall not be liable to pay to the Beneficiary any part or parts of the Guaranteed Money which have been paid to the Beneficiary by another Guarantor.

2.3 Perform obligations

- (a) Subject to clause 2.3(b), if the Contractor defaults in the performance or observance of any of the Contractor's Obligations, the Guarantor shall, in addition to its obligations under clause 2.2 of this Deed, on demand from time to time by the Beneficiary, immediately perform (or procure the performance of) any of the Contractor's Obligations then required to be performed by the Contractor in the same manner and on the same terms as the Contractor is required to perform the Contractor's Obligations.
- (b) The Guarantor shall not be responsible for performing the Contractor's Obligations to the extent the relevant Contractor's Obligations have been performed by another Guarantor.

3. INDEMNITY

Subject to clause 3A, as a covenant separate and distinct from that contained in clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the Beneficiary and at all times to keep the Beneficiary indemnified against any loss or damage suffered by the Beneficiary arising out of or in connection with:

- (a) any failure by the Contractor to pay the Guaranteed Money duly and punctually; or
- (b) any failure by the Contractor to observe or perform any of the Contractor's Obligations; or
- (c) any Transaction Document being wholly or partly void, voidable or unenforceable against the Contractor for any reason and whether or not the Beneficiary knew or ought to have known of that reason, with the result in any such case that:
 - (i) sums which would (but for the voidness, voidability or unenforceability) have been Guaranteed Money are not recoverable by the Beneficiary under clause 2; or
 - (ii) obligations which would (but for the voidness, voidability or unenforceability) have been Contractor's Obligations are not guaranteed under clause 2.3; or
- (d) a disclaimer of any contract (including the Contract) or property made by a liquidator of the Contractor pursuant to Part 5.6 Division 7A of the *Corporations Act 2001* (Cth) or any other applicable laws.

3A. LIMITATION

- (a) Notwithstanding any other clause in this Deed but subject to paragraphs (b) and (c) below:
 - (i) the aggregate and combined liability of the Guarantors under this Deed will not exceed the aggregate liability of the Contractor under the Contract;
 - (ii) the liability of the Guarantors under this Deed in respect of a breach of the Contract by the Contractor shall not be greater than the liability of the Contractor under the Contract in respect of the breach;

- (iii) nothing in this Deed is intended to render the Contractor and either or both of the Guarantors liable for the same loss twice for the one breach of the Contract by the Contractor; and
 - (iv) payment by one of the Contractor or either of the Guarantors to or in favour of the Beneficiary shall be deemed to be good discharge against the Beneficiary in respect of that payment.
- (b) The limitation of liability under this clause 3A does not apply to liability to pay any GST in accordance with clause 7.3 of this Deed or otherwise.
 - (c) Nothing in this clause shall limit the Guarantor's liability for Contractor's Obligations which arise from or would have arisen from unenforceable Contractor's Obligations referred to in clause 3(c) of this Deed (if those Contractor's Obligations had not been voided, avoided or unenforceable), subject to such liability not exceeding the liability that the Contractor would have had if the Contractor's Obligations had not been unenforceable Contractor's Obligations.

4. NATURE AND PRESERVATION OF LIABILITY

4.1 Absolute liability

The liability of the Guarantor under this Deed arises immediately on execution and delivery of this Deed by the Guarantor and:

- (a) arises notwithstanding that any person expressed to be a party to this Deed does not execute and deliver this Deed, that there is any invalidity, forgery or irregularity in the execution or purported execution of this Deed by any person, or that this Deed is or becomes unenforceable against any such person for any reason; and
- (b) is not conditional on the entering into by any other person of any other document or agreement which might benefit (directly or indirectly) the Guarantor, or on the satisfaction of any other condition.

4.2 Unconditional liability

Except to the extent of a reduction in the Guarantor's liability expressly provided for in clauses 2.2(b) or 2.3(b), the liability of the Guarantor under this Deed will not be affected by any thing which, but for this clause 4.2, would release the Guarantor from or reduce that liability, including but not limited to:

- (a) **(Invalidity etc.):** any Security or any Transaction Document being terminated or discharged (whether by any party thereto or by operation of law) or being or becoming void, voidable or unenforceable for any reason;
- (b) **(Other Securities):** the Beneficiary accepting or declining to accept any Security from any person;
- (c) **(Time or indulgence):** the Beneficiary granting or agreeing with the Guarantor or the Contractor to grant time, waiver or other indulgence or concession to, or making any composition or compromise with any person whether or not pursuant to any Transaction Document;
- (d) **(Forbearance):** the Beneficiary not exercising or delaying in the exercise of any remedy or right it has at any time to terminate or enforce its rights under this Deed, any Transaction Document or any Security;

- (e) **(Variation)**: any variation, novation or alteration to or substitution of this Deed, any Transaction Document or any Security, whether or not that variation, novation or alteration permits or results in a change in the Guaranteed Obligations including the amount of the Guaranteed Money or a change in the date by which it must be paid, or a change in the identity of the Contractor;
- (f) **(Release)**: the partial or conditional release or discharge by the Beneficiary or by operation of law of any Relevant Person from its obligations under any Transaction Document or any Security;
- (g) **(Securities)**: the Beneficiary enforcing, releasing, disposing of, surrendering, wasting, impairing, destroying, abandoning, prejudicing, or failing or delaying to perfect, maintain, preserve, realise or enforce any Transaction Document or any Security, whether negligently or otherwise;
- (h) **(Accounts)**: the opening or operation of any new account with the Beneficiary by the Contractor;
- (i) **(Change of constitution)**: any change for any reason in the name or manner in which the Beneficiary or any Relevant Person carries on business, including any change in any partnership, firm or association of which the Beneficiary or any Relevant Person is a member;
- (j) **(Disclosure)**: any failure by the Beneficiary to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known by, or which ought to have been known by, the Beneficiary relating to or affecting any Relevant Person before or at any time after the date of this Deed;
- (k) **(Prejudicial conduct)**: any breach by the Beneficiary of any term of any Transaction Document or Security or any other act or omission (negligent or otherwise) of the Beneficiary with regard to any Transaction Document, any Security or any Relevant Person which is prejudicial to the interests of the Guarantor;
- (l) **(Preference)**: any claim by any person that a payment to, receipt by, or other transaction in favour of the Beneficiary in or towards satisfaction of the Guaranteed Money is void, voidable or capable of being set aside under any law relating to bankruptcy, insolvency or liquidation being upheld, conceded or compromised;
- (m) **(Assignment)**: the transfer, assignment or novation by the Beneficiary or any Relevant Person of all or any of its rights or obligations under any Transaction Document or Security to which it is a party;
- (n) **(Death or incapacity)**: (where the Guarantor is an individual) the death or mental incapacity of the Guarantor;
- (o) **(Administration)**: the provisions of section 440J of the *Corporations Act 2001* (Cth) so operating as to prevent or delay:
 - (i) the enforcement of this Deed against any Guarantor; and/or
 - (ii) any claim for contribution against any Guarantor; or
- (p) **(Disclaimer)**: a disclaimer of any contract (including the Contract) or property made by a liquidator of the Contractor pursuant to Part 5.6 Division 7A of the *Corporations Act 2001* (Cth) or other applicable laws.

4.3 **No marshalling**

The Beneficiary is under no obligation to marshal or appropriate in favour of any Guarantor or to exercise, apply, transfer or recover in favour of any Guarantor any Security or any funds or assets that the Beneficiary holds, has a claim on, or is entitled to receive.

4.4 **Void or voidable transactions**

If:

- (a) the Beneficiary has at any time released or discharged:
 - (i) the Guarantor from its obligations under this Deed or any Security executed by the Guarantor; or
 - (ii) any assets of the Guarantor from a Security,in either case in reliance on a payment, receipt or other transaction to or in favour of the Beneficiary;
- (b) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under a law relating to bankruptcy, insolvency or liquidation; and
- (c) that claim is upheld, conceded or compromised,

then:

- (d) **(Restitution of rights)**: the Beneficiary will immediately become entitled against the Guarantor to all such rights (including under any Security) as it had immediately before that release or discharge;
- (e) **(Restore Beneficiary's position)**: the Guarantor must immediately do all things and execute all documents as the Beneficiary may reasonably require to restore to the Beneficiary all those rights; and
- (f) **(Indemnity)**: the Guarantor must indemnify and keep indemnified the Beneficiary against costs, losses and expenses suffered or incurred by the Beneficiary as a result of the upholding, concession or compromise of the claim.

4.5 **No double proof**

This Deed constitutes a guarantee of the whole of the Guaranteed Obligations, even if the Beneficiary and the Guarantor have agreed or agree at any time that the Guarantor's liability under this Deed will be limited to a maximum amount. Accordingly, the Guarantor is not entitled to:

- (a) lodge any proof of debt in the winding up of the Contractor;
- (b) exercise any right of subrogation; or
- (c) otherwise be entitled to the benefit of any Security held by the Beneficiary,

with respect to any claim arising as a result of the Guarantor making a payment under this Deed, unless and until the Guaranteed Obligations have been paid, discharged or recovered by the Beneficiary in full.

4.6 **Suspense account**

The Beneficiary may retain and carry to a suspense account and appropriate at the discretion of the Beneficiary any dividend received by the Beneficiary in the winding up of any Relevant Person, plus any other sums received by the Beneficiary on account of the Guaranteed Money, until the Beneficiary has received the full amount of the Guaranteed Money.

4.7 **Proof of debt in competition with Beneficiary**

The Guarantor must prove in the winding up of any Relevant Person in respect of any claim it has against that Relevant Person other than a claim arising as a result of the Guarantor making a payment under this Deed, and agrees to hold any dividend received in respect of that proof on trust for the Beneficiary in or towards satisfaction of the Guarantor's obligations under this Deed. The Guarantor appoints the Beneficiary its attorney for the purposes of lodging a proof in the Guarantor's name, and authorises the Beneficiary to retain and to carry to a suspense account and appropriate at the discretion of the Beneficiary any amounts received in respect of that proof until, after taking the amount into account, the Beneficiary has recovered an amount equal to all of the Guaranteed Money. The Beneficiary must not exercise the power of attorney under this clause 4.7 unless the Guarantor has failed to lodge the proof within 14 days after receiving a written request to do so from the Beneficiary.

4.8 **Claim on the Guarantor**

The Beneficiary is not required to take any steps to enforce its rights under any Transaction Document or any Security before enforcing its rights against the Guarantor under this Deed.

4.9 **No representation by Beneficiary**

The Guarantor acknowledges that in entering into this Deed it has not relied on any representation, warranty or statement by the Beneficiary.

4.10 **No contribution**

The Guarantor must not make a claim under or enforce any right of contribution it may have against any other Relevant Person unless and until the Guaranteed Obligations have been paid, discharged or recovered by the Beneficiary in full.

5. **CORPORATE REPRESENTATIONS AND WARRANTIES**

5.1 **Representations and warranties**

If the Guarantor is a body corporate, it represents and warrants to the Beneficiary that:

- (a) **(Constitution)**: the execution, delivery and performance of this Deed does not violate its constitution or any other document, agreement, law or rules by which it is bound;
- (b) **(Corporate power)**: it has taken all action required to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed;
- (c) **(Filings)**: it has filed all notices and effected all registrations with the Australian Securities and Investments Commission or similar office in its jurisdiction of incorporation and in any other jurisdiction as required by law, and those filings and registrations are current, complete and accurate;

- (d) **(Corporate benefit):** the execution of this Deed is in the best commercial interests of the Guarantor;
- (e) **(Consideration):** this Deed is executed for valuable consideration, the receipt and adequacy of which the Guarantor acknowledges;
- (f) **(Status):** it is not in liquidation, provisional liquidation or receivership, or under administration, and no matter relating to it or any of its subsidiaries is the subject of a direction under, or having effect as if it were a direction under, section 14 of the *Australian Securities and Investments Commission Act 2001* (Cth) ('**ASC Law**'), or the subject of an investigation under, or taken to be under, the ASC Law;
- (g) **(Ownership of property):** it has full legal capacity and power to own its property and assets and carry on its business as it is now being conducted;
- (h) **(Ranking of obligations):** this Deed constitutes a valid and legally binding obligation, enforceable in accordance with its terms, to rank at all times at least equally with all of its other present and future unsecured payment obligations (including, without limitation, contingent obligations), other than those which are mandatorily preferred by law and that the Guarantor has taken all action required to ensure that its obligations under this Deed so rank and will continue to so rank;
- (i) **(No litigation):** no litigation, arbitration or administrative proceedings are taking place, pending or, to the knowledge of any of its officers, threatened against it or any of its subsidiaries or any of its or their property which, if adversely determined, would be likely to have either separately or in aggregate a Material Adverse Effect on it or any of its subsidiaries;
- (j) **(Financial statements):** the financial statements current as at the date of this Deed for each entity that comprises the Guarantor have been prepared in accordance with the laws of Australia or the laws of England and Wales, as applicable, and (except where inconsistent with those laws) generally accepted accounting principles consistently applied, and give a true and fair view of the financial condition of it and its subsidiaries as at the date to which they are made up, and of the results of operations for the financial year then ended, and there has been no change since that date having a Material Adverse Effect on it, or on it and its subsidiaries on a consolidated basis;
- (k) **(Other information):** the written information and reports (if any) which it has given to the Beneficiary in connection with the negotiation and preparation of this Deed:
 - (i) was, when given, true and accurate in all material respects and not misleading, whether by omission or otherwise; and
 - (ii) contain forecasts and opinions all of which were made or formed after due and careful consideration on the part of its relevant officers based on the best information available to it and were fair and reasonable when made or formed; and
- (l) **(No filings or Taxes):** it is not necessary or desirable to ensure the legality, validity, enforceability or admissibility in evidence of this Deed that this Deed or any other instrument be filed or registered with any Government Agency or that any Taxes be paid.

5.2 Reliance on representations and warranties

The Guarantor acknowledges that the Beneficiary entered into the Contract in reliance on the representations and warranties in this clause 5.

5.3 No representations to Guarantor

The Guarantor confirms that it has not executed this Deed as a result of or in reliance upon any promise, representation, statement or information of any kind or nature whatever given or offered to it by or on behalf of the Beneficiary whether in answer to any inquiry by or on behalf of the Guarantor or not.

6. PAYMENTS

6.1 On demand

All money payable by the Guarantor under this Deed must be paid on demand by the Beneficiary in immediately available funds to the account and in the manner notified from time to time by the Beneficiary to the Guarantor.

6.2 Payment in gross

All money received or recovered by the Beneficiary on account of the Guaranteed Money will be treated as payments in gross.

6.3 Appropriation of payments

The Beneficiary may appropriate any money received by it under or in respect of this Deed, any Transaction Document or any Security in the manner and order and at all times as the Beneficiary in its absolute discretion determines.

6.4 Interest

The Guarantor must on demand by the Beneficiary from time to time pay interest on all Unpaid Amounts. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment at the Specified Rate and, if not paid when due, will itself bear interest in accordance with this clause 6.4. Interest is calculated on the basis of the actual number of days on which interest has accrued and on a 365 day year.

6.5 Merger

If the liability of the Guarantor to pay to the Beneficiary any money under this Deed becomes merged in any judgment or order, then as an independent obligation the Guarantor must pay interest on the amount of that money at the rate which is the higher of that payable under clause 6.4 and that fixed by or payable under the judgment or order.

6.6 Withholding for Taxes

All payments by the Guarantor under this Deed will be without deduction or withholding for any present or future Taxes unless the Guarantor is compelled by law to make any deduction or withholding and if this is the case, the Guarantor must pay to the Beneficiary any additional amounts as are necessary to enable the Beneficiary to receive, after all those deductions and withholdings, a net amount equal to the full amount which would otherwise have been payable had no deduction or withholding been required to be made.

7. EXPENSES, STAMP DUTY AND GST

7.1 Expenses

The Guarantor must on demand indemnify and keep indemnified the Beneficiary against all reasonable expenses, including legal fees, costs and disbursements on a solicitor/own client basis, incurred by the Beneficiary in connection with the successful enforcement, attempted enforcement or preservation of any rights under this Deed.

7.2 Stamp duties

The Guarantor must:

- (a) **(Payment of all duties):** pay all stamp duties, registration and similar Taxes, including fines and penalties, financial institutions duty (if any) and debits tax (if any) in connection with the execution, delivery, performance, enforcement or attempted enforcement of this Deed or any payment or other transaction under or contemplated in this Deed; and
- (b) **(Indemnity):** indemnify and keep indemnified the Beneficiary against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay Taxes.

7.3 Goods and Services Tax

- (a) Capitalised expressions which are not defined in this clause 7.3 but which have a defined meaning in the GST Law have the same meaning in this clause 7.3.
- (b) In this clause 7.3 and elsewhere in this Deed where relevant:
 - (i) **GST** means the goods and services tax imposed by the GST Law including, where relevant, any related interest, penalties, fines or other charge arising directly as a result of a default by the Guarantor of an obligation under this Deed;
 - (ii) **GST Amount** means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is the consideration for a Taxable Supply) by the prevailing rate of GST;
 - (iii) **GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
 - (iv) **Payment** means:
 - (A) the amount of any monetary consideration (other than a GST Amount payable under this clause 7.3); and
 - (B) the GST Exclusive Market Value of any non-monetary consideration, paid or provided by the Guarantor for any Supply made under or in connection with this Deed or the Contract and includes an amount payable by way of indemnity, reimbursement, compensation or damages.
- (c) The parties agree that:

- (i) all Payments have been set or determined at an amount which is net of GST;
 - (ii) if the whole or any part of a Payment is the consideration for a Taxable Supply made by the Beneficiary, the GST Amount in respect of the Payment must be paid by, or on behalf of, the Guarantor to the Beneficiary as any additional amount, either concurrently with the Payment or as otherwise agreed in writing; and
 - (iii) the Beneficiary will provide a Tax Invoice, before any GST Amount is payable under this clause 7.3(b).
- (d) If a payment (including a Payment as defined in this clause 7.3) to the Beneficiary by the Guarantor under this Deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by the Beneficiary, then the payment will be reduced by the amount of any input tax credit to which the Beneficiary is entitled for that loss, cost or expense.

8. ASSIGNMENTS

The Beneficiary may at any time assign or otherwise transfer all or any part of its rights under any Transaction Document and may disclose to a proposed assignee or transferee any information in the possession of the Beneficiary relating to the Guarantor.

9. GOVERNING LAW AND JURISDICTION

9.1 Governing law

This Deed and where applicable, the arbitration reference contained in clause 9.3 of Schedule 1, is governed by and will be construed in accordance with the laws of the State or Territory which govern the Contract.

9.2 Jurisdiction

- (a) **(Acceptance of jurisdiction):** The Guarantor irrevocably submits to and accepts, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of the State or Territory whose laws govern this Deed with respect to any legal action or proceedings which may be brought at any time relating in any way to this Deed.
- (b) **(No objection to inconvenient forum):** The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any action or proceeding, and any claim it may now or in the future have that any action or proceeding has been brought in an inconvenient forum.

10. MISCELLANEOUS

10.1 Certificate of Beneficiary

A certificate in writing of the Beneficiary certifying the amount payable by the Contractor or the Guarantor to the Beneficiary or stating any other act, matter or thing relating to this Deed, any Transaction Document or any Security will be prima facie evidence of the contents of the certificate.

10.2 Notices

Every notice or other communication to be given or made under or arising from this Deed:

- (a) must be in writing;

- (b) must be signed by a person duly authorised to do so by the sender;
- (c) will be deemed to have been duly given or made to a person if delivered or posted by prepaid post to the address, or sent by fax to the fax number of that person set out in clause 10.3 (or any other address or fax number as is notified in writing by that person to the other parties from time to time); and
- (d) will be deemed to be given or made:
 - (i) (in the case of prepaid post) on the fifth day after the date of posting;
 - (ii) (in the case of delivery by hand) on delivery; and
 - (iii) (in the case of fax) on receipt of a transmission report confirming successful transmission.

10.3 Address for notices

The addresses and fax numbers of the parties for the purposes of clause 10.2 are:

The Guarantor

Address: 472 Pacific Highway
St Leonards NSW, 2065

Fax No.: (02) 9925 6000

Attention: Company Secretary

Address: Level 39, 50 Bridge Street
Sydney NSW 2000

Fax: 02 9233 6605

Attention: The Company Secretary

Address: The Sherard Building, Edmund Halley Road
Oxford OX4 4DQ United Kingdom

Fax: +44 1865 713300

Attention: Company Secretary and Group Legal

The Beneficiary

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

Fax No.: (02) 8588 4134

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

10.4 **Continuing obligation**

This Deed will be a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, a disclaimer of any contract (including any Transaction Document) or property made by a liquidator of the Contractor pursuant to Part 5.6 Division 7A of the *Corporations Act 2001* (Cth) or other applicable laws, express or implied revocation or any other matter or thing, and continues to entitle the Beneficiary to the due and punctual payment of any of the Guaranteed Money which becomes due or owing or is incurred after termination, settlement of account, payment, revocation or other matter or thing until a final discharge has been given to the Guarantor.

10.5 **Further assurance**

The Guarantor will immediately on demand by the Beneficiary, and at the entire cost and expense of the Guarantor, perform all things and execute all agreements, assurances and other documents as the Beneficiary reasonably requires, to perfect or give effect to the rights and powers of the Beneficiary created, or intended to be created, by this Deed.

10.6 **Form of demand**

A demand on the Guarantor for performance under this Deed may be in the form and contain any information as the Beneficiary determines. Where the demand relates to the payment of Guaranteed Money it shall specify the amount demanded and the basis of the calculation.

10.7 **Severability of provisions**

If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

10.8 **Remedies cumulative**

The rights and remedies conferred by this Deed on the Beneficiary are cumulative and in addition to all other rights or remedies available to the Beneficiary by law or by virtue of any Transaction Document or any Security.

10.9 **Waiver**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed by the Beneficiary will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Deed.
- (b) Any waiver, consent or approval given by the Beneficiary under this Deed will only be effective and binding on the Beneficiary if it is given or confirmed in writing by the Beneficiary, or given verbally and subsequently confirmed in writing by the Beneficiary.
- (c) No waiver by the Beneficiary of a breach of any term of this Deed will operate as a waiver of another breach of that term or of a breach of any other term of this Deed.

10.10 Consents and approvals

Where under this Deed the consent or approval of the Beneficiary is required to any act or thing then, unless expressly provided otherwise in this Deed, that consent or approval may be given or withheld in the absolute and unfettered discretion of the Beneficiary.

10.11 Moratorium legislation

To the fullest extent permitted by law, the provisions of all legislation whether existing now or in the future, operating directly or indirectly:

- (a) to lessen or otherwise to vary or affect in favour of the Guarantor any obligation under this Deed; or
- (b) to delay or otherwise prevent or prejudicially affect the exercise of any rights or remedies conferred on the Beneficiary under this Deed,

are expressly waived and excluded.

10.12 Debit accounts and set-off

The Beneficiary may without prior notice to the Guarantor set-off any amount which is owing on any account whatsoever by the Beneficiary to the Guarantor against any liability of the Guarantor to the Beneficiary under this Deed. The rights of the Beneficiary under this clause 10.12 are without prejudice and in addition to any other right or remedy to which it is at any time entitled.

10.13 Counterparts

This Deed may be executed in any number of counterparts and by the different parties on different counterparts, each of which constitutes an original of this Deed, and all of which together constitute one and the same instrument.

10.14 Execution by less than all parties

This Deed binds each of the persons executing it notwithstanding:

- (a) that one or more of the persons named in this Deed as a Guarantor may not execute or may not become or may cease to be bound by this Deed; or
- (b) that the Beneficiary may not execute or may only subsequently execute this Deed.

10.15 Resolution of disputes binding

The settlement or the final resolution of any dispute arising under or in connection with the Contract, including any dispute as to the Contractor's liability under or in connection with the Contract, in accordance with the procedures provided for in the Contract or otherwise as agreed between the parties in the Contract, will be final and binding on each of the Guarantors and a Guarantor will not reopen, revisit or otherwise dispute that settlement or resolution and the subject matter of that settlement or resolution.

10.16 No right to be heard

To the fullest extent permitted by law, the Guarantor waives and expressly disclaims any right to be heard at or appear in any proceedings (whether judicial, arbitral, administrative or of any other nature including but not limited to any alternative dispute resolution) conducted for the purpose of settling or resolving or attempting to settle or resolve any dispute referred to in clause 10.15 or otherwise to be involved in the settlement or resolution of any such dispute.

10.17 Civil Liability Act

- (a) It is agreed that the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under this Deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting the generality of clause 10.17(a), it is further agreed that the rights, obligations and liabilities of the Beneficiary and the Guarantor (including those relating to proportionate liability) are as specified in this Deed and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.

EXECUTED as a deed.

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

SIGNED for ROADS AND MARITIME SERVICES ABN 76 236 371 088 by its duly authorised officer, in the presence of:

Signature of officer

Signature of witness

Name

Name

SIGNED, SEALED and DELIVERED for **LEIGHTON HOLDINGS LIMITED ABN 57 004 482 982** by its Attorneys under a Power of Attorney dated 18 June 2013 (and the Attorneys declare that the Attorneys have not received any notice of the revocation of such Power of Attorney) in the presence of:

Signature of Attorney

Signature of Attorney

Name of Attorney in full

Name of Attorney in full

Signature of witness

Signature of witness

Name of witness in full

Name of witness in full

EXECUTED by BORAL LIMITED ABN 13 008 421 761:

Signature of director

Signature of director/secretary

Name

Name

SIGNED, SEALED and DELIVERED for
AMEY UK PLC COMPANY NO.
04736639 under power of attorney in the
presence of:

Signature of attorney

Signature of witness

Name of attorney

Name of witness

Date of power of attorney

SCHEDULE 1

Dispute provisions for certain foreign Guarantors

(Clause 9)

Explanatory Note: Where the Guarantor is a foreign entity and resident in a jurisdiction with reciprocity of treatment in relation to the enforcement of judgments for the purposes of the *Foreign Judgments Act 1991* (Cth), clause 9.2 of the Deed will apply. If, however, the Guarantor is a foreign entity and resident in a jurisdiction where there is no reciprocity, clause 9.1 of the Deed and clauses 9.3 to 9.8 of this Schedule will apply.

9.3 Reference to arbitration

- (a) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including but not limited to any question relating to the existence, validity or termination of this Deed) shall be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).
- (b) The seat of the arbitration will be Sydney.
- (c) The number of arbitrators will be three.
- (d) The language of the arbitration will be English.

9.4 General principles

The parties further agree to the following general principles relating to the procedure of the arbitration:

- (a) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
- (b) that any arbitration conducted pursuant to this clause 9 shall not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal;
- (c) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:
 - (i) how many written submissions will be allowed;
 - (ii) where appropriate, the length of written submissions;
 - (iii) the extent of document discovery permitted, if any;
 - (iv) the consolidation of arbitration proceedings, when requested;
 - (v) the joinder of parties or the consolidation of proceedings, when requested;
 - (vi) the length of any hearing; and
 - (vii) the number of experts, if any, each party is allowed to appoint; and
- (d) that the arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.

9.5 Expedited proceedings

- (a) The parties agree that the arbitral tribunal will conduct the arbitration as expeditiously as possible and no party will unnecessarily delay the arbitration proceedings.
- (b) All evidence in chief will be in writing, unless otherwise ordered by the arbitral tribunal.
- (c) Each party may only rely upon one expert witness in respect of any recognised area of specialisation, unless otherwise ordered by the arbitral tribunal.
- (d) After consultation with the parties the arbitral tribunal will determine whether to conduct the proceedings on the basis of documents and other materials only or whether an oral hearing will be held. In doing so the arbitral tribunal shall have particular regard to the parties' request for an expedited procedure and the rules of natural justice.
- (e) If the arbitral tribunal determines that an oral hearing will be conducted, the following principles will apply in respect of the oral hearing:
 - (i) the duration of the oral hearings shall be fixed by the arbitral tribunal;
 - (ii) unless otherwise ordered by the arbitral tribunal, the oral hearing shall be conducted on a stop-clock basis with the effect that the time available to the parties will be split equally between the parties so that each party shall have the same time to conduct its case unless, in the opinion of the arbitral tribunal, such a split would breach the rules of natural justice or is unfair to one of the parties;
 - (iii) oral evidence in chief at the hearing shall be permitted only with the permission of the arbitral tribunal for good cause;
 - (iv) not less than 14 days prior to the date fixed for the oral hearing, or any other period of time specified by the arbitral tribunal, each party shall give written notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross-examination; and
 - (v) in exceptional circumstances the arbitral tribunal may extend the time for the oral hearing set pursuant to clause 9.5(e)(i) above.

9.6 Consolidation

The parties agree that section 24 of the *International Arbitration Act 1974* (Cth) will apply in respect of consolidations.

9.7 Joinder

The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this Deed hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

9.8 Award final and binding

Any award will be final and binding upon the parties.

SCHEDULE 19

INSURANCE SCHEDULE AND POLICY SUMMARIES

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
Principal Arranged Insurance (RMS)				
The details of the policy are provided in the AON certificate of currency. A copy of the policy may be inspected by appointment at the offices of RMS' insurance broker.				
1.	Contract works	Contract works – as per declared value	Duration of the works – covering RMS, Service Provider and subcontractors and other parties as specified in the works contract	RMS has arranged standard policies of insurance for contract works insurance (reinstatement cost) insurance under its principal-arranged insurance.
Excess for contract works	<p>The Service Provider is responsible for meeting the amount of any excess payable under the principal-arranged insurance. The excess amounts current at the date of this document are:</p> <ul style="list-style-type: none"> • Contract works value (up to \$5m) - \$15,000 each occurrence • Contract works value (between \$5m & \$20m) – \$50,000 each occurrence • Contract works value (between \$20m & \$50m) – \$100,000 each occurrence • Except tunnelling contracts – \$250,000 each occurrence <p>The Service Provider may effect insurance to cover the amount of these excesses.</p>			
2.	Public and products liability	Public and products liability - \$200m each and every occurrence for public liability claims and \$200m any one occurrence and in the aggregate for all occurrences for product liability claims	Duration of the works – covering RMS, Service Provider and subcontractors and other parties as specified in the works contract	RMS has arranged standard policies of insurance for contract works insurance (reinstatement cost) and third party liability insurance under its principal-arranged insurance.
Excess for public and product liability	<p>The Service Provider is responsible for meeting the amount of any excess payable under the principal-arranged insurance. The excess amounts current at the date of this document are:</p> <ul style="list-style-type: none"> • Public Liability - \$10,000 each occurrence • Worker to Worker Liability –\$50,000 each occurrence • Products Liability – \$50,000 each occurrence 			

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
	<ul style="list-style-type: none"> Underground Services – \$50,000 each occurrence <p>The Service Provider may effect insurance to cover the amount of these excesses.</p>			
3.	Professional indemnity	RMS has effected a principal professional indemnity policy for its own benefit.		
Service Provider Arranged Insurances				
4.	Motor vehicle comprehensive or third party property damage effected with an approved insurer as defined in Definitions and Notes clause 1 below	\$20 million for each and every occurrence	Annual	<p>(a) Motor Vehicles owned or used by the Service Provider or subcontractors directly or indirectly engaged in performance of the Services.</p> <p>(b) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 2 below.</p> <p>(c) If applicable to this document – all plant and equipment owned or used by the Service Provider or subcontractors directly or indirectly in the performance of the Services.</p>
5.	Workers compensation effected with an approved insurer as defined in Definitions and Notes clause 1 below unless the Service Provider or subcontractors are licenced self-insurers for this risk in the relevant jurisdiction.	As per the relevant workers compensation legislation	Annual	As per State and Territory workers compensation legislation.

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
6.	Professional indemnity	RMS will not set any requirements for the minimum sum insured for professional indemnity in this document. The Service Provider should make its own independent decision regarding their own professional indemnity requirements.		

Definitions and Notes:

1. Approved insurer means:
 - (a) An insurance company which is authorised by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia;
 - (b) An insurer licenced to write workers compensation insurance in the relevant jurisdiction; or
 - (c) Registration as required under the statutory regime governing workers compensation in in the relevant jurisdiction; or
 - (d) Lloyds Underwriters; or
 - (e) A Treasury Managed Fund insurance scheme with the NSW State Government; or
 - (f) The Comcover insurance scheme for the Australian Federal Government.

Note that where the insurance risk is insured by an insurer not listed in Note 1(a) or 1(b) then a 'fronting' placement is acceptable from an insurer listed in Note 1(a) or 1(b).
2. Insurances policies must be subject to the laws of an Australian State or Territory and subject to the jurisdiction of the courts of that Australian State or Territory.
3. A severability clause which provides:
 - (a) that the policy operates as if there was a separate policy of insurance covering each of the insureds;
 - (b) that each insured has access to the full limit of indemnity of the policy (subject to that limit of indemnity not thereby being increased);
 - (c) that the insurer will not impute pre-contractual non-disclosures or acts or omissions or states of knowledge of one insured to any other insured for the purposes of determining rights to indemnity; and
 - (d) that the liability of one insured to another insured is covered by the policy.

SCHEDULE 20

STATUTORY DECLARATION AND SUBCONTRACTORS STATEMENT

RMS Form No 592 (Modified)	Schedule
Statutory Declaration	
I, _____ of _____	Insert name of Declarant
_____ do solemnly and sincerely declare that:	Insert address
1. I am a representative of _____ ("Service Provider") in the Office Bearer capacity of _____	Insert name of Contractor and ABN if applicable
2. The Service Provider is a party to a Stewardship Maintenance Contract with the Roads and Maritime Services in respect of the Sydney South Zone ("Contract").	Insert position title of Declarant
3. Attached to and forming part of this declaration is a Subcontractor's Statement given by the Service Provider in its capacity as 'Subcontractor' (as that term is defined in the Workers Compensation Act 1987, Pay-roll Tax Act 2007 and Industrial Relations Act 1996) which is a written statement:	Insert name of Contract
a. under the Workers Compensation Act 1987, section 175B, in the form and providing the detail required by that legislation;	
b. under the Pay-roll Tax Act 2007, Schedule 2 Part 5, section 18, in the form and providing the detail required by that legislation; and	
c. under the Industrial Relations Act 1996, section 127, in the form and providing the detail required by that legislation.	
4. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.	
5. The obligations of the Service Provider under the Contract relating to Security of Payment, if any, including payment of employees, workers and subcontractors of the Service Provider have been complied with by the Service Provider.	
6. The Service Provider has received from each of those subcontractors a statutory declaration and Subcontractor's Statement in equivalent terms to this declaration (made no earlier than 14 days before the date of this declaration).	
7. All statutory declarations and Subcontractor's Statements received by the Service Provider from subcontractors referred to in clause 6 were:	
(a) given to the Service Provider in its capacity as 'Principal Contractor' as defined in the Workers Compensation Act 1987, the Pay-roll Tax Act 2007 and the Industrial Relations Act 1996 ('Acts'); and	
(b) given by the subcontractors in their capacity as 'Subcontractors' as defined in the Acts.	
8. I am not aware of anything that would contradict the statements made in the statutory declarations and Subcontractor's Statements provided to the Service Provider by its subcontractors.	

9. The period of the Contract covered by this declaration and the attached Subcontractor's Statement is from _____ to _____.
10. The Service Provider is not, under any law, insolvent or unable to pay its debts as and when they fall due.

Insert the relevant payment period

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1900*.

Declared on _____ **at**
 Sydney in the State of New South Wales

[signature of declarant]

in the presence of an authorised witness, who states:

I, _____, a
 _____,
[name of authorised witness] *[qualification]* of
authorised witness

certify the following matters concerning the making of this statutory declaration by the person who made it: *[*please cross out any text that does not apply]*

1. *I saw the face of the person OR *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and
2. *I have known the person for at least 12 months OR *I have confirmed the person's identity using an identification document and the document I relied on was _____
[describe identification document relied on]

[signature of authorised witness] *[date]*

SUBCONTRACTOR'S STATEMENT

REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note1 – see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor:ABN:.....
(Business name)

of
(Address of subcontractor)

has entered into a contract withABN:
(Business name of principal contractor) (Note 2)

Contract number/identifier (Note 3)

This Statement applies for work between:...../...../..... and /..... /..... inclusive, (Note 4)

subject of the payment claim dated:/...../..... (Note 5)

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... (Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)

(f) Signature Full name

(g) Position/Title Date/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relation Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.

3. Provide the unique contract number, title, or other information that identifies the contract.

4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration '*as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.*'

Section 127(11) of the *Industrial Relations Act 1996* states '*to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.*'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that 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.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au , or 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.

SCHEDULE 21

RMS INTERFACE AGREEMENTS

The agreements listed in this Schedule 21 are RMS Interface Agreements. All of these agreements were contained in the online data room for the Request for Proposals titled "Road Maintenance Contestability Reform Program Stewardship Maintenance Contracts (SMCs) – Sydney").

The RMS Interface Agreements include the following agreements:

1. Memorandum of Understanding between SydneyWater Corporation and the Roads and Traffic Authority of New South Wales dated 22 May 2007;
2. Memorandum of Understanding between Ausgrid and the Roads and Traffic Authority of New South Wales and Department of Transport dated August 2011;
3. Memorandum of Understanding between Integral Energy and the Roads and Traffic Authority of New South Wales dated December 2008;
4. Interface Agreement, Managing Risks to Safety Due to Rail – Road Crossings between Rail Corporation New South Wales and RMS dated 2013;

SCHEDULE 22
PRE-AGREED CHANGES

1. **DESCRIPTION AND DATE FOR EXERCISE**

Description	Date for Exercise
All works and services relating to the Sydney North Zone which are described in sections 5.1.1 (Table 2), 7.3.2 (Table 3), 8.1.4 to 8.1.6 and 12.1.3 (Table 6) of the Initial Forward Works Program Brief.	By no later than 16 weeks after the Commencement Date.

2. **PRICING**

Refer to Schedule 8.

SCHEDULE 23
SALE AGREEMENT

Plant and Equipment Sale Agreement

Roads and Maritime Services

ABN 76 236 371 088

and

Leighton Contractors Pty Limited

ABN 98 000 893 667

and

Boral Construction Materials Limited

ABN 70 000 614 826

and

Amey Consulting Australia Pty Limited

ABN 34 162 890 940



CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	1
1.1 Definitions	1
1.2 Rules for interpreting this document.....	3
1.3 Multiple parties	4
2. AGREEMENT TO SELL AND BUY THE PLANT AND EQUIPMENT.....	4
2.1 Sale and purchase.....	4
2.2 Title, property and risk.....	4
3. COMPLETION	5
4. BUYER RELIES ON ITS OWN INVESTIGATIONS AND INQUIRIES	5
5. CONDITION OF THE PLANT AND EQUIPMENT	6
6. RELEASE AND INDEMNITY	6
6.1 Release	6
6.2 Indemnity by the Service Provider.....	7
6.3 No merger	8
7. SERVICE PROVIDER'S REPRESENTATIONS AND WARRANTIES	8
8. SELLERS REPRESENTATIONS AND WARRANTIES	9
9. GST.....	9
9.1 GST pass on.....	9
9.2 Later adjustment to price or GST	9
9.3 Tax invoices/adjustment notes	9
9.4 GST on claims and expenses	9
10. COSTS AND STAMP DUTY.....	10
10.1 Costs generally	10
10.2 Stamp duty generally.....	10
11. CONFIDENTIALITY	10
11.1 Confidentiality of this document.....	10
11.2 PPSA confidentiality	10
11.3 No merger	11
12. NOTICES	11
12.1 How to give a notice	11
12.2 When a notice is given	11
12.3 Address for notices.....	11
12.4 Authority to register and waiver of right to receive verification statements.....	12
13. AMENDMENT AND ASSIGNMENT.....	12
13.1 Amendment	12
13.2 Assignment.....	12
14. GENERAL.....	12
14.1 Governing law	12
14.2 Giving effect to this document.....	13
14.3 Consents	13
14.4 Waiver of rights	13
14.5 Operation of indemnities	13
14.6 Operation of this document.....	13

14.7	No merger	14
14.8	Counterparts	14

Schedule

1	Plant and Equipment	15
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THIS AGREEMENT is made on

2013

BETWEEN:

- (1) **Roads and Maritime Services** ABN 76 236 371 088 (**RMS**); and
- (2) **Leighton Contractors Pty Limited** ABN 98 000 893 667; and
Boral Construction Materials Limited ABN 70 000 614 826; and
Amey Consulting Australia Pty Limited ABN 34 162 890 940,
(together the **Service Provider**).

RECITALS:

RMS has agreed to sell and the Service Provider has agreed to buy the Plant and Equipment for the Purchase Price on the terms of this document.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

Authorisation means:

- (a) an authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and
- (b) in relation to anything that could be prohibited or restricted by Law if an Authority acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Authority means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a Law.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney.

Claim means any claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent, and specifically includes making any requisition or objection or claim for compensation, a failure to complete the transactions contemplated by this document or rescinding or terminating this document or attempting or purporting to do so.

Completion means completion of the sale and purchase of the Plant and Equipment under clause 3.

Completion Date means the date on which Completion occurs in accordance with the terms of this document.

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

GST has the meaning given in the GST Law.

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

Law means the common law and any act, ordinance, regulation, by-law, order or proclamation and includes the requirements of any Authority or of any Authorisation affecting all or any of the Plant and Equipment.

Loss includes:

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

Order means a valid request, direction, notice, demand, requirement, condition (including a condition of an Authorisation) or order from an Authority that requires anything to be done or not done.

Payment Date means **[Note: insert]** or such other date agreed by the parties in writing.

Plant and Equipment means the plant and equipment listed in Schedule 1.

PPS Register means the Personal Property Securities Register established under the PPSA.

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

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

Purchase Price means the purchase price for the Plant and Equipment specified in Schedule 1.

Security Interest means:

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

Services has the meaning given in the Stewardship Maintenance Contract.

Stewardship Maintenance Contract means the contract between RMS and the Service Provider entitled "Stewardship Maintenance Contract - Sydney South Zone" dated **[Note: insert date]**.

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech for that word has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) Words defined in the Corporations Act have the same meaning in this document.
- (g) The word "**agreement**" includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (h) The expression "**this document**" includes the agreement, arrangement, understanding or transaction recorded in this document.
- (i) A reference to "**information**" is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (j) A reference to "**dollars**" or "**\$**" is to an amount in Australian currency.
- (k) A reference to time is to local time in Sydney.
- (l) Words defined in the GST Law have the same meaning in clauses, paragraphs or other parts of this document concerning GST.

- (m) This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.
- (n) If the day on or by which a person must do something under this document is not a Business Day, the person must do it on or by the next Business Day.
- (o) If RMS is notionally liable to pay GST under the GST Law, then a reference in this document to a liability to pay GST or an entitlement to an input tax credit includes any notional GST liability or input tax credit entitlement.

1.3 **Multiple parties**

If a party to this document is made up of more than one person, or a term is used in this document to refer to more than one party, then unless otherwise specified in this document:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking relates to each of them separately.

2. **AGREEMENT TO SELL AND BUY THE PLANT AND EQUIPMENT**

2.1 **Sale and purchase**

RMS agrees to sell the Plant and Equipment to the Service Provider and the Service Provider agrees to buy the Plant and Equipment from RMS for the Purchase Price on the terms of this document.

2.2 **Title, property and risk**

- (a) Until Completion:
 - (i) ownership of and title to; and
 - (ii) subject to paragraph (c), risk in,

the Plant and Equipment remains with RMS and does not pass to the Service Provider until Completion.
- (b) On Completion:
 - (i) ownership of and title to the Plant and Equipment will vest in the Service Provider free of any Security Interest without the need for physical delivery to the Service Provider; and
 - (ii) risk in the Plant and Equipment will pass to the Service Provider (if it has not already passed to the Service Provider under paragraph (c)).
- (c) If the Service Provider takes possession of the Plant and Equipment prior to Completion, all risk in the Plant and Equipment will pass to the Service Provider at the time that the Service Provider takes possession of the Plant and Equipment.

3. COMPLETION

- (a) On the Payment Date the Purchase Price for the Plant and Equipment will become a debt due and payable to RMS by the Service Provider.
- (b) The Purchase Price for the Plant and Equipment may be:
 - (i) paid by the Service Provider to RMS on the Payment Date; or
 - (ii) if not paid by the Service Provider to RMS on the Payment Date, deducted by RMS from amounts which are due and payable to the Service Provider under the Stewardship Maintenance Contract.
- (c) Completion will be deemed to have occurred when:
 - (i) the Purchase Price has been paid to RMS by the Service Provider under paragraph (b)(i); or
 - (ii) RMS has set off the full amount of the Purchase Price from amounts which are due and payable to the Service Provider under the Stewardship Maintenance Contract.

4. BUYER RELIES ON ITS OWN INVESTIGATIONS AND INQUIRIES

Without limiting clause 6.1, and subject to the terms of this document, the Service Provider acknowledges and agrees that in entering into this document and completing the transactions contemplated by this document:

- (a) the Service Provider has not been induced to enter into this document by, and does not rely on, any:
 - (i) written or oral representations, warranties, undertakings, covenants, agreements or information provided; or
 - (ii) statements about any matter relating in any way to the Plant and Equipment made,

by or on behalf of RMS, RMS's representatives or their respective employees, officers, advisers or agents;
- (b) it has been given the opportunity to undertake its own due diligence investigations, to make such enquiries and conduct such assessments as it saw fit with respect to the Plant and Equipment and to consider all advice and reports received;
- (c) it has, and is taken to have, undertaken its own due diligence investigations, made its own enquiries and conducted its own assessments as it saw fit with respect to the Plant and Equipment, including without limitation, in respect of the following matters:
 - (i) the existence or non-existence of any approval, licence, permit or any Authorisation required by any Authority for the Plant and Equipment to be operated or used in the manner presently operated or in any manner planned to be operated;
 - (ii) the compliance or non-compliance, as the case may be, of the Plant and Equipment with any approval, licence, permit or any Laws, Orders and Authorisations relating to the Plant and Equipment at any time (including past, present and future);

- (iii) the condition, quality and state of repair of the Plant and Equipment;
- (iv) the fitness or suitability of the Plant and Equipment for the performance of the Services or any other purpose;
- (v) the financial return or income to be derived from the Plant and Equipment and the future economic feasibility and viability of the Plant and Equipment;
- (vi) any latent or patent defect in the Plant and Equipment;

and it has, and is taken to have, relied exclusively on these due diligence investigations, enquiries and assessments when entering into this document; and

- (d) it has, and is taken to have, relied exclusively on its own skill and judgment as well as that of its consultants and representatives, in understanding, interpreting and relying on all due diligence investigations, enquiries and assessments undertaken by the Service Provider in respect of the Plant and Equipment, including in respect of those matters listed in paragraph (c).

5. **CONDITION OF THE PLANT AND EQUIPMENT**

- (a) Subject to the terms of this document, the Service Provider acknowledges and agrees that:
 - (i) the Plant and Equipment is sold subject to all defects (if any) latent or patent and whether or not they could or should have been recognisable upon an inspection by the Service Provider of the Plant and Equipment or as a result of any examination and enquiry carried out by the Service Provider; and
 - (ii) the Plant and Equipment is sold and will be transferred "as is", "where is" and "with all faults" without any representation or warranty including, without limitation, any representation or warranty as to condition, fitness for any particular purpose or compliance with Laws.
- (b) Subject to the terms of this document, the Service Provider having made its own enquiries and on the basis set out in paragraph (a), accepts the Plant and Equipment in their condition as at the date of this document, including any dilapidation, infestation, defect (latent or patent).

6. **RELEASE AND INDEMNITY**

6.1 **Release**

To the full extent permitted by Law, the Service Provider:

- (a) cannot make any Claim against RMS in respect of; and
- (b) releases RMS from any obligation, duty or liability to the Service Provider arising from or in connection with,

any of the following:

- (c) any Loss, Order or liability in relation to the Plant and Equipment, irrespective of whether such Loss, Order or liability arises or exists before or after the Completion Date;
- (d) any matter disclosed or described in this document;

- (e) the existence or non-existence of any approval, licence, permit or any Authorisation required by any Authority for the Plant and Equipment to be operated or used in the manner presently operated or used or in any manner planned to be operated or used;
- (f) the compliance or non-compliance, as the case may be, of the Plant and Equipment with any approval, licence, permit or any Laws, Orders and Authorisations relating to the Plant and Equipment at any time (including past, present and future);
- (g) the condition, quality and state of repair of the Plant and Equipment;
- (h) the use and purposes for which the Plant and Equipment can be put;
- (i) the fitness or suitability of the Plant and Equipment for the performance of the Services or any other purpose;
- (j) the financial return or income to be derived from the Plant and Equipment and the future economic feasibility and viability of the Plant and Equipment;
- (k) any latent or patent defect in the Plant and Equipment; and
- (l) any right it may have to make any Claim against RMS based on:
 - (i) the Australian Consumer Law (including sections 4, 18 and 29); or
 - (ii) the *Sale of Goods Act 1923* (NSW) (including section 19),
 or on any corresponding provision of any State or Territory legislation, or on a similar provision under any other Law, for any statement or representation about any of those things which is not expressly contained in this document.

6.2 Indemnity by the Service Provider

The Service Provider assumes all responsibility and liability for the Plant and Equipment and hereby irrevocably indemnifies RMS from and against all and any Claim, Loss, Order or liability suffered or incurred by RMS relating to the Plant and Equipment or this document in any way on or after the Completion Date, including without limitation in respect of the following matters:

- (a) the existence or non-existence of any approval, licence, permit or any Authorisation required by any Authority for the Plant and Equipment to be operated or used in the manner presently operated or used or in any manner planned to be operated or used;
- (b) the compliance or non-compliance, as the case may be, of the Plant and Equipment with any approval, licence, permit or any Laws, Orders and Authorisations relating to the Plant and Equipment at any time (including past, present and future);
- (c) the condition, quality and state of repair of the Plant and Equipment;
- (d) the use and purposes for which the Plant and Equipment can be put;
- (e) the fitness or suitability of the Plant and Equipment for the performance of the Services or any other purpose;
- (f) the financial return or income to be derived from the Plant and Equipment and the future economic feasibility and viability of the Plant and Equipment; and
- (g) any latent or patent defect in the Plant and Equipment.

6.3 No merger

Clauses 6.1 and 6.2 do not merge on Completion but continue after Completion. The Service Provider acknowledges that clauses 6.1 and 6.2 apply to the full extent of the Law and continues despite any change in any Laws in the future.

7. SERVICE PROVIDER'S REPRESENTATIONS AND WARRANTIES

The Service Provider represents and warrants to RMS (and RMS enters into this document in reliance on these warranties) that as at the date of this document and again at the Completion Date:

- (a) if it is a company:
 - (i) **(status)** it is a company limited by shares under the Corporations Act; and
 - (ii) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions that this document contemplates;
- (b) **(power)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this document and to carry out the transactions that it contemplates;
- (c) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that it contemplates;
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business as it is now being conducted, and it is complying with any conditions to which any of these Authorisations is subject;
- (d) **(documents effective)** this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and Laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (e) **(no contravention)** neither its execution of this document nor the carrying out by it of the transactions that this document contemplates, does or will:
 - (i) contravene any Law to which it or any of its property is subject or any order of any Authority that is binding on it or any of its property;
 - (ii) contravene any Authorisation;
 - (iii) contravene any agreement binding on it or any of its property;
 - (iv) contravene its constitution or the powers or duties of its directors; or
 - (v) require it to make any payment or delivery in respect of any debt before it would otherwise be obliged to do so; and

- (f) **(solvency)** there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable.

8. **SELLERS REPRESENTATIONS AND WARRANTIES**

RMS represents and warrants to the Service Provider (and the Service Provider enters into this document in reliance on these warranties) that as at the date of this document and again at the Completion Date it has full legal capacity and power to:

- (a) own its property; and
- (b) enter into this document and to carry out the transactions that it contemplates.

9. **GST**

9.1 **GST pass on**

If GST is or will be payable on a supply made under or in connection with this document, to the extent that the consideration otherwise provided for that supply under this document is not stated to include an amount in respect of GST on the supply:

- (a) the consideration otherwise provided for that supply under this document is increased by the amount of that GST; and
- (b) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided, within 7 days' of receiving a written demand from the supplier.

9.2 **Later adjustment to price or GST**

If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the supplier, as appropriate, the supplier within 14 days of becoming aware of the adjustment event:

- (a) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving 7 days' written notice; or
- (b) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply to the extent that the supplier is entitled to a refund or credit from the Commissioner of Taxation; and
- (c) must issue an adjustment note or tax invoice reflecting the adjustment event in relation to the supply to the recipient within 28 days of the adjustment event except where the recipient is required to issue an adjustment note or tax invoice in relation to the supply.

9.3 **Tax invoices/adjustment notes**

The right of the supplier to recover any amount in respect of GST under this document on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient except where the recipient is required to issue the tax invoice or adjustment note.

9.4 **GST on claims and expenses**

- (a) If a party provides a payment for or any satisfaction of a Claim or a right to Claim under or in connection with this document (for example, for misrepresentation or

for a breach of any warranty or warranty of the Service Provider or for indemnity or for reimbursement of any expense) that gives rise to a liability for GST, the provider must pay, and indemnify the claimant on demand against, the amount of that GST.

- (b) If a party has a Claim under or in connection with this document for a cost on which that party must pay an amount for GST, the claim is for the cost plus the amount for GST (except any amount for GST for which that party is entitled to an input tax credit).
- (c) If a party has a Claim under or in connection with this document whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

10. **COSTS AND STAMP DUTY**

10.1 **Costs generally**

Subject to clause 10.2, each party must pay its own expenses incurred in negotiating, preparing, executing, completing and carrying into effect this document.

10.2 **Stamp duty generally**

The Service Provider is solely responsible for, and must indemnify RMS against, any duty that is payable on or in relation to:

- (a) this document;
- (b) the sale, purchase, assignment or transfer of any property under this document; and
- (c) any instrument or transaction that this document contemplates.

11. **CONFIDENTIALITY**

11.1 **Confidentiality of this document**

The parties acknowledge and agree that:

- (a) this document; and
- (b) all information exchanged between the parties in connection with this document,

is confidential and may only be disclosed in accordance with clause 34.1 of the Stewardship Maintenance Contract.

11.2 **PPSA confidentiality**

- (a) In this clause 11.2, all references to sections are to sections in the PPSA.
- (b) The parties must not disclose information of the kind mentioned in section 275(1), except in the circumstances required by sections 275(7)(b) to (e). The Service Provider must obtain RMS's consent before authorising the disclosure of information under section 275(7)(c) or requesting information under section 275(7)(d). Nothing in this paragraph prevents any disclosure by the Service Provider that it reasonably believes is necessary to comply with its other obligations under the PPSA.

11.3 **No merger**

This clause 11 does not merge on Completion but continues after Completion. The Service Provider acknowledges that this clause 11 applies to the full extent of the Law and continues despite any change in any Laws in the future.

12. **NOTICES**

12.1 **How to give a notice**

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

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

12.2 **When a notice is given**

A notice, consent or other communication that complies with this clause 12 is regarded as given and received:

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

12.3 **Address for notices**

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

RMS

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

Fax: (02) 8588 4134

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

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

Service Provider

Address: Level 5, 52 Phillip Street
Sydney NSW 2000

Fax: (02) 8668 6761

Email: kevin.badger@lbajv.com.au

Attention: Kevin Badger, Program Manager

12.4 Authority to register and waiver of right to receive verification statements

The Service Provider acknowledges that RMS may, at RMS's cost, register one or more financing statements in relation to any PPS Security Interests provided for by this document. If permitted by the PPSA, the Service Provider waives its rights under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.

13. AMENDMENT AND ASSIGNMENT**13.1 Amendment**

This document can only be amended or replaced by another document signed by the parties.

13.2 Assignment

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

14. GENERAL**14.1 Governing law**

- (a) This document is governed by the Laws of the State of New South Wales.
- (b) Each party submits to the jurisdiction of the courts of that State, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document.

14.2 Giving effect to this document

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

14.3 Consents

Where this document contemplates that a party may agree, approve or consent to something (however it is described), that party may not unreasonably withhold or delay giving that agreement, approval or consent, unless this document expressly contemplates otherwise.

14.4 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

14.5 Operation of indemnities

- (a) Each indemnity in this document survives the ending of this document.
- (b) RMS may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.
- (c) If a provision of this document is expressed to:
 - (i) indemnify;
 - (ii) exclude or limit any liability of; or
 - (iii) otherwise benefit,

a person who is not a party to this document, the Service Provider agrees that RMS holds the benefit of that indemnity, exclusion, limitation or other benefit on trust for that person and may enforce this document on their behalf and for their benefit.

14.6 Operation of this document

- (a) Subject to paragraph (b), this document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document

enforceable, unless this would materially change the intended effect of this document.

14.7 No merger

- (a) No provision of this document which is capable of continued operation after Completion:
 - (i) merges on or by virtue of Completion; or
 - (ii) is in any way modified, discharged or prejudiced by reason of any investigations made or information acquired by or on behalf of the Service Provider.

14.8 Counterparts

This document may be executed in counterparts.

SCHEDULE 1

Plant and Equipment

Item Number	Details / Description of Plant and Equipment	Quantity	Purchase Price(\$) (exclusive of GST)
1	<i>[Note: insert as appropriate]</i>	<i>[Note: insert as appropriate]</i>	<i>[Note: insert as appropriate]</i>
2			
3			
4			
5			
		TOTAL:	<i>[Note: insert as appropriate]</i>

EXECUTED as an agreement.

SIGNED for ROADS AND MARITIME SERVICES by its duly authorised officer, in the presence of:

Signature of officer

Signature of witness

Name

Name

EXECUTED by LEIGHTON CONTRACTORS PTY LIMITED ABN 98 000 893 667:

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by BORAL CONSTRUCTION MATERIALS LIMITED ABN 70 000 614 826:

Signature of director

Signature of director/secretary

Name

Name

SIGNED, SEALED and DELIVERED for AMEY CONSULTING AUSTRALIA PTY LIMITED ABN 34 162 890 940 under power of attorney in the presence of:

Signature of attorney

Signature of witness

Name of attorney

Name of witness

Date of power of attorney

SCHEDULE 24
RMS DEPOT LICENCE

Depot Licence

Roads and Maritime Services

ABN 76 236 371 088

and

Leighton Contractors Pty Limited

ABN 98 000 893 667

and

Boral Construction Materials Limited

ABN 70 000 614 826

and

Amey Consulting Australia Pty Limited

ABN 34 162 890 940



REFERENCE SCHEDULE

ITEM 1: RMS

- (a) Name: Roads and Maritime Services
- (b) ABN: 76 236 371 088
- (c) Address: Level 9, 101 Miller Street
North Sydney NSW 2060
- (d) Fax: (02) 8588 4134
- (e) Email: stephen.cowdery@rms.nsw.gov.au
- (f) Attention: Stephen Cowdery, General Manager, Contract Management Office
(With a copy to Christine Lithgow, General Counsel)

ITEM 2: Service Provider

- (a) Name: Leighton Contractors Pty Limited
Boral Construction Materials Limited
Amey Consulting Australia Pty Limited
- (b) ABN: 98 000 893 667
70 000 614 826
34 162 890 940
- (c) Address: Level 5, 52 Phillip Street
Sydney NSW 2000
- (d) Fax: (02) 8668 6761
- (e) Email: kevin.badger@lbajv.com.au
- (f) Attention: Kevin Badger, Program Manager

ITEM 3: Licensed Areas Those parts of the Depots which are described in Schedule 1.

ITEM 4: Depots *[Note: insert description of the Depots that are to be the subject of this Depot Licence]*

ITEM 5: Licence Commencement Date *[Note: insert date on which the licence will commence]*

ITEM 6	Licence Expiry Date	The date of expiry of the Contract Term of the Stewardship Maintenance Contract.
ITEM 7	Occupation Date	<i>[Note: insert date on which the Service Provider may occupy the Licenced Areas]</i>
ITEM 8:	Licence Fee	■ (exclusive of GST) per annum.
ITEM 9:	Payment Date	Each anniversary of the Occupation Date.
ITEM 10:	Licence Fee Commencement Date	The Occupation Date.
ITEM 11:	Permitted Use	<p>Prior to the Occupation Date</p> <p>Carrying out any fitout works and/or other preparatory works which are approved by RMS under the terms of this document and required to enable the Service Provider to use the Licensed Areas to provide the Services under the Stewardship Maintenance Contract.</p> <p>Following the Occupation Date</p> <p>Performance of the Services under the Stewardship Maintenance Contract.</p> <p>Performance of road maintenance services for third parties which are permitted under clause 6.3 of the Stewardship Maintenance Contract.</p>
ITEM 12:	Other Conditions	<i>[Note: insert details of any other conditions that will apply to this licence]</i>

CONTENTS

CLAUSE	PAGE
1. DEFINITIONS.....	1
1.1 Definitions.....	1
1.2 Interpretation	6
1.3 Business Days.....	7
1.4 Multiple parties	7
2. GRANT OF LICENCE	8
2.1 Licence	8
2.2 Nature of Licence.....	8
2.3 Licence Term	8
3. LICENCE FEE	8
3.1 Payment of Licence Fee	8
3.2 Interest on overdue money	8
3.3 Review of the Licence Fee	9
4. RMS'S RIGHTS.....	9
4.1 RMS' right to enter the Licensed Areas	9
4.2 RMS' right to appoint agent	9
5. SERVICE PROVIDER OBLIGATIONS.....	9
5.1 General obligations	9
5.2 Co-operation.....	10
5.3 Maintenance of Licensed Areas.....	10
5.4 Prohibitions on Service Provider	11
5.5 Conduct of Works	11
6. WORK HEALTH AND SAFETY	13
6.1 Compliance with WHS Act and WHS Regulation.....	13
6.2 Service Provider responsibility for WHS	13
6.3 Construction work undertaken at the Licensed Areas	13
7. ENVIRONMENTAL ISSUES	14
7.1 No representation	14
7.2 Environmental obligations	14
7.3 Release and indemnity	15
8. RISK AND LIABILITY	15
8.1 Risk.....	15
8.2 Service Provider's warranty	15
8.3 No restriction on RMS.....	15
8.4 Release of RMS	15
8.5 Indemnity	16
8.6 Continuing indemnity	16
8.7 Insurance.....	16
9. DEFAULT AND TERMINATION	17
9.1 Default	17
9.2 RMS' rights.....	17
9.3 RMS may remedy breach	17
9.4 Automatic termination.....	17
9.5 Termination for convenience.....	17
10. END OF LICENSE TERM	17

10.1	Make good.....	17
10.2	Storage of Service Provider's Property.....	18
11.	NOTICES.....	18
11.1	How to give a notice.....	18
11.2	When a notice is given.....	18
11.3	Address for notices	19
12.	LIABILITY FOR EXPENSES.....	19
13.	GST	19
13.1	Rules for interpreting this clause	19
13.2	Payment of GST	19
13.3	Tax Invoice.....	20
13.4	Indemnities and reimbursement.....	20
14.	AMENDMENT AND ASSIGNMENT	20
14.1	Amendment.....	20
14.2	Assignment	20
15.	GENERAL	20
15.1	Governing law	20
15.2	Giving effect to this document	20
15.3	Waiver of rights.....	20
15.4	Operation of indemnities.....	21
15.5	Operation of this document	21
15.6	Consents.....	21
15.7	No merger.....	22
15.8	Exclusion of contrary legislation	22
15.9	Expiry or termination	22
15.10	Counterparts.....	22

Schedule

1	LICENSED AREAS	25
2	INSURANCE SCHEDULE	26

THIS DEED is made on

2013

BETWEEN:

- (1) **Roads and Maritime Services** ABN 76 236 371 088 (**RMS**); and
- (2) **Leighton Contractors Pty Limited** ABN 98 000 893 667; and
Boral Construction Materials Limited ABN 70 000 614 826; and
Amey Consulting Australia Pty Limited ABN 34 162 890 940,
(together the **Service Provider**).

RECITALS

- A. RMS owns the Licensed Areas.
- B. RMS agrees to grant a non-exclusive licence to the Service Provider to use the Licensed Areas on the terms of this document.
- C. The Service Provider agrees to accept the licence to use the Licensed Areas, on the terms of this document.

OPERATIVE PROVISIONS

1. **DEFINITIONS**

1.1 **Definitions**

In this agreement, unless the contrary intention appears:

Authority means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a Law.

Building Code of Australia means the "Building Code of Australia" as published by the Australian Building Codes Board from time to time.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney.

Condition Report means the report prepared by RMS and approved by the Service Provider which details the state of repair and condition of the Licenced Areas as at the Licence Commencement Date.

Construction Project is a project that involves Construction Work where the cost of the construction work is \$250,000 or more.

Construction Work means any work carried out in connection with the construction, alteration, conversion, fitting-out, commissioning, renovation, repair, maintenance,

refurbishment, demolition, decommissioning or dismantling of a structure. Without limiting this definition, Construction Work includes the following:

- (a) any installation or testing carried out in connection with an activity referred to above;
- (b) the removal from the workplace of any product or waste resulting from demolition;
- (c) the prefabrication or testing of elements, at a place specifically established for the construction work, for use in construction work;
- (d) the assembly of prefabricated elements to form a structure, or the disassembly of prefabricated elements forming part of a structure;
- (e) the installation, testing or maintenance of an essential service in relation to a structure;
- (f) any work connected with an excavation;
- (g) any work connected with any preparatory work or site preparation (including landscaping as part of site preparation) carried out in connection with an activity referred to above; and
- (h) an activity referred to above, that is carried out on, under or near water, including work on buoys and obstructions to navigation.

Construction Work does not include any of the following:

- (a) the manufacture of plant;
- (b) the prefabrication of elements, other than at a place specifically established for the construction work, for use in construction work;
- (c) the construction or assembly of a structure that once constructed or assembled is intended to be transported to another place;
- (d) testing, maintenance or repair work of a minor nature carried out in connection with a structure; and
- (e) mining or the exploration for or extraction of minerals.

Contaminated or **Contamination** has the same meaning given to it in the *Contaminated Land Management Act 1997* (NSW).

Contract Term has the meaning set out in the Stewardship Maintenance Contract.

Controller has the same meaning as in the Corporations Act.

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

Dangerous Good has the same meaning as in the *Work Health and Safety Act 2011* (NSW).

Default Rate has the meaning given in the Stewardship Maintenance Contract.

Depots means the depots described at Item 4.

Environment has the meaning given in the *Contaminated Land Management Act 1997* (NSW).

Environmental Law means any law relating to the Environment, building, planning, health, safety or occupational health and safety and obligations under the common law.

GST means the same as in the GST Law.

GST Law means the same as "GST law" means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hazardous Material means material which, because it is toxic, corrosive, flammable, explosive, or infectious or because it possesses some other dangerous characteristic, is potentially dangerous to the Environment when stored or handled or any part of the Environment is exposed to it.

High Risk Construction Work means Construction Work that:

- (a) involves a risk of a person falling more than 2 metres;
- (b) is carried out on a telecommunication tower;
- (c) involves demolition of an element of a structure that is load-bearing or otherwise related to the physical integrity of the structure;
- (d) involves, or is likely to involve, the disturbance of asbestos;
- (e) involves structural alterations or repairs that require temporary support to prevent collapse;
- (f) is carried out in or near a confined space;
- (g) is carried out in or near:
 - (i) a shaft or trench with an excavated depth greater than 1.5 metres; or
 - (ii) a tunnel,
- (h) involves the use of explosives;
- (i) is carried out on or near pressurised gas distribution mains or piping;
- (j) is carried out on or near chemical, fuel or refrigerant lines;
- (k) is carried out on or near energised electrical installations or services;
- (l) is carried out in an area that may have a contaminated or flammable atmosphere;
- (m) involves tilt-up or precast concrete;
- (n) is carried out on, in or adjacent to a road, railway, shipping lane or other traffic corridor that is in use by traffic other than pedestrians;
- (o) is carried out in an area at a workplace in which there is any movement of powered mobile plant;
- (p) is carried out in an area in which there are artificial extremes of temperature;
- (q) is carried out in or near water or other liquid that involves a risk of drowning; or
- (r) involves diving work.

Insolvency Event means in respect of a person:

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

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

Licence Commencement Date means the date referred to in Item 5.

Licence Expiry Date means the date referred to in Item 6.

Licence Fee means the fee referred to in Item 8, as may be reviewed and varied in accordance with this document.

Licence Fee Commencement Date means the date specified in Item 10.

Licence Term means the period specified in clause 2.3.

Licensed Areas means the areas referred to in Item 3.

Occupation Date means the date referred to in Item 7.

Payment Date means the date referred to in Item 9.

Permitted Use means the use referred to in Item 11.

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

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

Principal Contractor means a person conducting a business or undertaking that commissions a Construction Project as defined in clause 293 of the WHS Regulation.

Reference Schedule means the reference schedule appearing at the front of this document and marked "Reference Schedule".

RMS' Property means RMS' plant, equipment, fixtures, fittings, furnishings and other property of RMS on the Licenced Area.

Security Interest means:

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

Service Provider's Associates means the employees, agents, contractors and invitees of the Service Provider.

Service Provider's Property means the Service Provider's plant, equipment, fixtures, fittings, furnishings and other property of the Service Provider on or in the Licensed Areas.

Services has the meaning given in the Stewardship Maintenance Contract.

Stewardship Maintenance Contract the contract between RMS and the Service Provider entitled "Stewardship Maintenance Contract - Sydney South Zone" dated **[Note: insert date]**.

SWMS means a safe work method statement prepared by a person conducting a business or undertaking who proposes to carry out High Risk Construction Work (before the High Risk Construction Work commences) in accordance with clause 299 of the WHS Regulation. A SWMS must:

- (a) identify the work that is high risk construction work;
- (b) specify hazards relating to the high risk construction work and risks to health and safety associated with those hazards;
- (c) describe the measures to be implemented to control the risks;
- (d) describe how the control measures are to be implemented, monitored and reviewed;
- (e) be prepared taking into account all relevant matters, including:
 - (i) circumstances at the workplace that may affect the way in which the high risk construction work is carried out; and

- (ii) if the high risk construction work is carried out in connection with a Construction Project—the WHSMP that has been prepared for the workplace; and
- (f) be set out and expressed in a way that is readily accessible and understandable to persons who use it.

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

Waste means a substance that is discarded, rejected, unwanted, surplus or abandoned whether or not intentionally, it has a value or use or it is intended for sale or recycling, reprocessing, recovery or purification but does not include Hazardous Materials or Dangerous Goods.

WHS Act means the *Work Health and Safety Act 2011 (NSW)*, as amended from time to time.

WHS Regulation means the *Work Health and Safety Regulation 2011 (NSW)*, as amended from time to time.

WHSMP means a work health and safety management plan prepared by a Principal Contractor for a Construction Project for the workplace before work on the Construction Project commences. A WHSMP must include the following:

- (a) the names, positions and health and safety responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the Construction Project;
- (b) the arrangements in place, between any persons conducting a business or undertaking at the workplace where the Construction Project is being undertaken, for consultation, co-operation and the co-ordination of activities in relation to compliance with their duties under the WHS Act and the WHS Regulation;
- (c) the arrangements in place for managing any work health and safety incidents that occur;
- (d) any site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules; and
- (e) the arrangements for the collection and any assessment, monitoring and review of safe work method statements at the workplace.

Works Period has the meaning given in the Stewardship Maintenance Contract.

1.2 Interpretation

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a NSW Government policy document or guideline is to that policy document or guideline as amended, re-enacted or replaced;

- (iii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iv) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (v) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (vi) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
 - (c) A word which suggests one gender includes the other genders.
 - (d) If a word is defined, another part of speech has a corresponding meaning.
 - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
 - (g) The expression "**this document**" includes the agreement, arrangement, understanding or transaction recorded in this document.
 - (h) A reference to a month is to a calendar month.
 - (i) A reference to an **Item** is to the relevant Item in the Reference Schedule in this document.
 - (j) The expressions "**subsidiary**", "**holding company**" and "**related body corporate**" have the same meanings as in the Corporations Act.
 - (k) A reference to "**dollars**" or "**\$**" is to an amount in Australian currency.

1.3 **Business Days**

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

1.4 **Multiple parties**

If a party to this document is made up of more than one person, or a term is used in this document to refer to more than one party:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or that term is a reference to each of those persons separately, so that (for example):

- (i) a representation, warranty or undertaking is given by each of them separately; and
- (ii) a reference to that party or that term is a reference to each of those persons separately.

2. GRANT OF LICENCE

2.1 Licence

RMS grants to the Service Provider a non-exclusive licence to use the Licensed Areas for the purposes only of carrying out the Permitted Use during the Licence Term, subject to the conditions (if any) set out in Item 12 and otherwise as set out in this document.

2.2 Nature of Licence

- (a) The Service Provider has a personal right of occupation on the terms specified in this document and has no interest in the Depots. The legal right to possession and control over the Licensed Areas remains vested in RMS throughout the duration of the Licence Term.
- (b) Nothing in this document:
 - (i) confers on the Service Provider any rights as a tenant of the Licensed Areas; or
 - (ii) creates the relationship of landlord and tenant between the parties.

2.3 Licence Term

The Licence Term commences on the Licence Commencement Date and expires on the Licence Expiry Date, unless terminated earlier.

3. LICENCE FEE

3.1 Payment of Licence Fee

- (a) The Service Provider's obligation to pay the Licence Fee commences on the Licence Fee Commencement Date.
- (b) Following the Licence Fee Commencement Date, the Licence Fee will become a debt due and payable to RMS by the Service Provider on each Payment Date.
- (c) The Licence Fee may be:
 - (i) paid by the Service Provider to RMS or RMS' nominee on the Payment Date; or
 - (ii) if not paid by the Service Provider to RMS or RMS' nominee on the Payment Date, deducted by RMS from amounts which are due and payable to the Service Provider under the Stewardship Maintenance Contract.

3.2 Interest on overdue money

If the Service Provider does not pay the Licence Fee or any other amounts payable by it under this document by the due date, it must, on demand by RMS, pay interest on such amounts at the Default Rate calculated daily and compounded monthly.

3.3 **Review of the Licence Fee**

RMS may vary the Licence Fee upon the expiry of each Works Period by giving the Service Provider no less than 3 months written notice specifying the varied Licence Fee that will apply on commencement of the next Works Period.

4. **RMS'S RIGHTS**

4.1 **RMS' right to enter the Licensed Areas**

(a) Subject to paragraph (b), RMS or its nominee may enter the Licensed Areas together with all necessary workmen and equipment at all reasonable times, if it gives the Service Provider reasonable notice, to:

- (i) determine:
 - (A) the condition of the Licensed Areas; or
 - (B) whether the Service Provider is complying with this document;
- (ii) exercise its rights under any provision of this document;
- (iii) enable it to comply with any law or any notice from any Authority;
- (iv) show the Licensed Areas or Depots to prospective purchasers, mortgagees or lessees at any time;
- (v) ensure that the Licensed Areas are locked and secure; and
- (vi) carry out any maintenance works.

(b) When exercising its rights under paragraph (a), RMS or its nominee:

- (i) must take reasonable steps to minimise any disruption to the Service Provider; and
- (ii) is not required to give reasonable notice or enter at a reasonable time in the case of an emergency.

4.2 **RMS' right to appoint agent**

RMS may by notice in writing to the Service Provider appoint an agent to exercise all or any of its rights under this document.

5. **SERVICE PROVIDER OBLIGATIONS**

5.1 **General obligations**

The Service Provider must and must ensure that the Service Provider's Associates:

- (a) **(comply with directions)** immediately comply at all times with the directions and requirements of RMS or its nominees while on the Licensed Areas;
- (b) **(laws)** at its own cost, comply with all laws and the requirements of all authorities in respect of its use of the Licensed Areas;
- (c) **(services, rates and taxes)** pay all charges for services to the Licensed Areas which are used by the Service Provider during the License Term, including but not limited to water, gas, electricity and telephone and pay all rates, taxes and other

charges in relation to the Licensed Areas in the event that the Licensed Areas is separately assessed as an individual landholding; and

- (d) **(use)** use the Licensed Areas only for the Permitted Use.

5.2 **Co-operation**

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

5.3 **Maintenance of Licensed Areas**

- (a) RMS will carry out repairs and maintenance to the base building & components, including the following:
 - (i) building structure;
 - (ii) building fabric;
 - (iii) fire equipment;
 - (iv) air conditioning; and
 - (v) essential services.
- (b) The Service Provider must, at its own cost:
 - (i) **(good and substantial repair)** keep the Licensed Areas in good and substantial repair and working condition excluding fair, wear and tear and any damage caused by fire, flood, lightning, storm, war or any act of God;
 - (ii) **(Service Provider's Property)** keep the Service Provider's Property within the Licensed Areas in good and substantial repair and working condition;
 - (iii) **(remove Waste):**
 - (A) remove all Waste produced by the Service Provider's occupation of the Licensed Areas from the Licensed Areas regularly; and
 - (B) comply with RMS' directions regarding refuse disposal; and
 - (C) not put any refuse in bins provided for common use.
 - (iv) **(damage)** immediately repair any damage to or defect in the Licensed Areas caused by the Service Provider or the Service Provider's Associates;

- (v) **(repairs and maintenance)** promptly carry out repairs and maintenance (other than repairs and maintenance contemplated by paragraph (a)) using high quality materials and workmanship and in keeping with the standard, quality and appearance of the Licensed Areas and RMS's Property;
 - (vi) **(cleaning)** having regard to the nature of the Licensed Areas, keep the Licensed Areas clean and clear of debris and rubbish;
 - (vii) **(landscaped areas)** if relevant, keep in good condition any part of the Licensed Areas that is landscaped, keep that part of the Licensed Areas free of weeds and, if required by RMS, engage a gardener approved by RMS to do so; and
 - (viii) **(RMS' Property)** keep in good condition RMS's Property located in the Licensed Areas including any air-conditioning, plant and fire equipment, and enter into and maintain any comprehensive maintenance contracts in respect of RMS's Property or Utilities that RMS requires.
- (c) The Service Provider accepts the Licensed Areas in their state of repair, order and condition as at the Occupation Date.

5.4 **Prohibitions on Service Provider**

The Service Provider must not:

- (a) **(no alteration)** make any change or structural alteration or addition to the Licensed Areas or RMS' Property except with the consent in writing of RMS;
- (b) **(no damage)** damage the Licensed Areas, or any thing on the Licensed Areas (whether or not it is the property of RMS), or injure any person in or around the Licensed Areas;
- (c) **(no rubbish)** keep any rubbish in or around the Licensed Areas;
- (d) **(no nuisance)** use the Licensed Areas for any illegal purpose or do anything which does or could annoy or offend RMS or the occupants of any nearby property;
- (e) **(no interference)** do anything or allow anything to be done which would cause an interference or obstruction to the operations being carried on by RMS or its employees, agents or other contractors in and around the Licensed Areas;
- (f) **(fire risk)** store any thing in the Licensed Areas which is dangerous, explosive or could increase the risk of fire on the Licensed Areas;
- (g) **(alienation)** grant any sub-licence or part with possession of the Licensed Areas or any part of it; or
- (h) **(RMS' Property)** alter RMS' Property or use RMS' Property for anything other than its intended use.
- (i) **(no obstruction)** not block or otherwise obstruct any emergency exit or access way.

5.5 **Conduct of Works**

If the Service Provider seeks to carry out any structural, building or installation works on the Licensed Areas during the License Term, the Service Provider must at its own cost:

- (a) submit a written application to RMS or its nominee describing the intended works;

- (b) obtain all relevant approvals required to carry out such works;
- (c) prepare, or cause to be prepared, a SWMS which complies with the requirements of the WHS Regulation;
- (d) not commence the works until the application has been approved by RMS or its nominee in writing and the Service Provider has complied with all conditions imposed by RMS or its nominee in relation to the works;
- (e) ensure that the works are carried out:
 - (i) in accordance with the requirements of all relevant laws and approvals;
 - (ii) promptly and within the period of time required by RMS or its nominee;
 - (iii) in accordance with good building practice and in keeping with the amenity and operation of the Licensed Areas;
 - (iv) in accordance with plans and specifications agreed by RMS or its nominee in writing;
 - (v) using new and good quality materials;
 - (vi) to the satisfaction of RMS or its nominee; and
 - (vii) by contractors with appropriate insurance cover as required by RMS or its nominee;
- (f) ensure that the works comply with the requirements of the Building Code of Australia;
- (g) protect any structures or items on the Licensed Areas from damage and, if any damage is caused directly or indirectly as a result of the works, at RMS's election, either:
 - (i) promptly repair and make good the damage to RMS' satisfaction; or
 - (ii) pay or reimburse RMS or its nominee on demand for any costs and expenses incurred by RMS relating to the make good of the damage;
- (h) accept full responsibility for the conduct and safety of the Service Provider's Associates;
- (i) comply on time with any laws, including any laws in relation to work health and safety;
- (j) remove from the Licensed Areas on a regular basis all rubbish, debris and residual materials resulting from the works;
- (k) pay or reimburse RMS or its nominee on demand by RMS or its nominee for any costs or expenses incurred by RMS or its nominee as a result of the works being carried out;
- (l) otherwise comply with RMS' requirements and directions from time to time relating to access to the Licensed Areas and the carrying out of the works, including but not limited to immediately ceasing the works if requested by RMS or its nominee; and
- (m) after the works are completed, provide RMS or its nominee with a written report confirming that the works are complete and comply with the requirements of this

document and including any information as required by RMS or its nominee (acting reasonably).

6. WORK HEALTH AND SAFETY

6.1 Compliance with WHS Act and WHS Regulation

Despite any other provision in this document, the Service Provider must at all times comply with the WHS Act and WHS Regulation and must provide to RMS upon request evidence that the Service Provider is complying with the WHS Act and WHS Regulation.

6.2 Service Provider responsibility for WHS

Without limiting the application of the WHS Act and WHS Regulation to the Service Provider, during the License Term, the Service Provider is responsible for all aspects of work health and safety in connection with its business or undertaking carried out in the Licensed Areas including:

- (a) the safe performance of its business or undertaking within the Licensed Areas;
- (b) the health and safety of any workers or others employed, engaged or who visit the Licensed Areas at any time for any purpose;
- (c) the provision and maintenance of a work environment that is without risk to health and safety;
- (d) the provision and maintenance of safe plant and structures;
- (e) the provision and maintenance of safe systems of work;
- (f) the safe use, handling and storage of plant, structures and substances at or in connection with the Licensed Areas;
- (g) the provision of adequate facilities for the welfare at work of workers in carrying out work for the Service Provider at or in connection with the Licensed Areas including ensuring access to those facilities;
- (h) the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking of the Service Provider at the Licensed Areas; and
- (i) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking of the Service Provider at the Licensed Areas.

6.3 Construction work undertaken at the Licensed Areas

- (a) If Construction Work or High Risk Construction Work (together in this clause referred to as Construction Work) is proposed to be undertaken at or in connection with the Licensed Areas, Chapter 6 of the WHS Regulation applies including, but not limited to, the identification of a Principal Contractor.
- (b) The Service Provider must carry out and ensure compliance with all obligations under Chapter 6 of the WHS Regulation in relation to Construction Work.
- (c) Without limiting the Service Provider's obligations elsewhere under this document, the Service Provider must, so far as is reasonably practicable, in connection with Construction Work carried out at the Licensed Areas:

- (iii) manage risks associated with the carrying out of the Construction Work; and
 - (iv) ensure that all workplaces are secured from unauthorised access, and in doing so, have regard to all relevant matters including risks to health and safety arising from unauthorised access to the workplace, the likelihood of unauthorised access occurring and to the extent that unauthorised access to the workplace cannot be prevented, how to isolate hazards within the workplace.
- (d) Without limiting the Service Provider's reporting or other obligations elsewhere in this document, upon request, the Service Provider must promptly provide RMS with a copy of:
- (i) the WHSMP for the workplace, including any revisions that are made to the WHSMP under clause 311 of the WHS Regulation;
 - (ii) the Service Provider's records in relation to the steps the Service Provider has taken to make persons carrying out work aware of the content of the WHSMP in accordance with clause 310 of the WHS Regulation;
 - (iii) any SWMS which have been obtained under clause 312 of the WHS Regulation;
 - (iv) the Service Provider's records in relation to the steps the Service Provider has taken to comply with clause 314 of the WHS Regulation;
 - (v) the Service Provider's records in relation to the steps the Service Provider has taken to comply with clause 315 of the WHS Regulation; and
 - (vi) any other registers, records and documents,
- that the Service Provider prepares, maintains, keeps or obtains in connection with Construction Work undertaken at the Licensed Areas.

7. ENVIRONMENTAL ISSUES

7.1 No representation

RMS does not warrant or represent:

- (a) that the Licensed Areas is suitable for any use, or for any particular use, including the Permitted Use;
- (b) the accuracy of information about the past use of the Licensed Areas; or
- (c) that the Licensed Areas is not Contaminated, or the nature or extent of any Contamination.

7.2 Environmental obligations

The Service Provider must:

- (a) **(not Contaminate)** not Contaminate or pollute the Licensed Areas or any adjacent land;
- (b) **(no dangerous materials)** not use, keep or handle on the Licensed Areas any Dangerous Good or Hazardous Material without the prior consent of RMS;

- (c) **(notify RMS)** promptly notify RMS if:
 - (i) it becomes aware, or as soon as a complaint is made, of a breach or alleged breach of an Environmental Law in respect of the Licensed Areas or any activity carried out by the Service Provider in the Licensed Areas;
 - (ii) the Licensed Areas becomes Contaminated in any way; or
 - (iii) the Service Provider is in breach of any of its obligations under this clause; and
- (d) **(compliance with policies and procedures relating to the environment)** comply with all policies and procedures of RMS and any person appointed by RMS to manage the Licensed Areas on behalf of RMS which relate to the protection of the environment.

7.3 **Release and indemnity**

To the extent permitted by law, the Service Provider releases and indemnifies RMS from all liabilities, costs, losses and expenses arising out of or in connection with any Contamination of the Licensed Areas or the Depots to the extent that such Contamination was caused or contributed to by the Service Provider or the Service Provider's Associates.

8. **RISK AND LIABILITY**

8.1 **Risk**

- (a) The Service Provider occupies the Licensed Areas and carries out all activities within the Licensed Area at its own risk.
- (b) If the Service Provider is obliged to do anything under this document, it does so at its own risk.

8.2 **Service Provider's warranty**

The Service Provider warrants that it has not been induced to enter into this document by any express or implied statement, warranty or representation:

- (a) whether oral, written or otherwise;
- (b) made by or on behalf of RMS in respect of the Licensed Areas or anything relating to, or which could have an effect on, the Licensed Areas including but not limited to the fitness or suitability of the Licensed Areas for any purpose.

8.3 **No restriction on RMS**

Subject to RMS and its employees, agents and contractors complying with the Service Provider's workplace health and safety policies and reasonable requirements in relation to the Licensed Area, nothing in this document restricts RMS' right to carry out works in or around the Licensed Areas at any time and for any purpose.

8.4 **Release of RMS**

- (a) The Service Provider uses the Licensed Areas at its own risk and RMS accepts no responsibility for any loss or damage to the property of the Service Provider.
- (b) To the extent permitted by law, the Service Provider releases RMS from any claim, action, damage, loss, liability, cost or expense which the Service Provider suffers or incurs or is liable for in respect of:

- (i) any loss or damage to the Licenced Area except to the extent caused by an act or omission of RMS or its employees, agents or contractors (other than the Service Provider);
- (ii) any loss or damage resulting from the Service Provider's use of the Licenced Area; or
- (iii) the death of, or injury to, any person who is in the Licenced Area except to the extent caused by a negligent act or omission of RMS or its employees, agents or contractors (other than the Service Provider).

8.5 Indemnity

The Service Provider indemnifies RMS against any claim, action, loss, damage, cost, liability, expense or payment suffered or incurred by RMS in respect of:

- (a) the use of or entry upon the Licenced Area by the Service Provider or any agent, employee, licensee, contractor or invitee of the Service Provider;
- (b) any default by the Service Provider under this document; and
- (c) RMS' termination of this document under clause 9.2 or 9.4 (provided that the reason for the termination of this document under clause 9.4 is not the termination of the Stewardship Maintenance Contract by RMS under clause 41.1 of the Stewardship Maintenance Contract),

including, without limitation, the loss to RMS of the benefit of the Service Provider performing its obligations under this document from the date of termination until the end of the License Term.

8.6 Continuing indemnity

Each indemnity of the Service Provider contained in this document is a:

- (a) continuing obligation of the Service Provider and remains in full force and effect until the termination of the Stewardship Maintenance Contract; and
- (b) separate and independent obligation of the Service Provider.

8.7 Insurance

- (a) In addition to the insurances required under the Stewardship Maintenance Contract, the Service Provider must, prior to entering into this document, effect and maintain the policies of insurance listed in Schedule 2:

- (i) on the terms;
- (ii) for the risks identified;
- (iii) for the period of time; and
- (iv) for the amounts,

specified in Schedule 2.

- (b) Prior to entering into this document and thereafter whenever requested by RMS, the Service Provider must provide to RMS evidence that the insurances listed in Schedule 2 are effective (normally by way of a suitable certificate of currency).

- (c) Within 5 Working Days of the Service Provider becoming aware of any claim or potential claim under any of the insurances listed in Schedule 2, the Service Provider must:
 - (i) notify RMS in writing of the claim or potential claim; and
 - (ii) give RMS any further information regarding the claim or potential claim as RMS may require.

9. DEFAULT AND TERMINATION

9.1 Default

The Service Provider is in default if:

- (a) it does not pay the Licence Fee or any other money payable under this document within 25 Business Days of the due date;
- (b) it does not perform any express or implied obligation under this document;
- (c) an Insolvency Event occurs in respect of the Service Provider; or
- (d) it repudiates its obligations under this document.

9.2 RMS' rights

If the Service Provider is in default of any of its obligations under this document following 10 Business Days from when it is served with written notice, RMS may terminate this document immediately by written notice and may exercise any other legal right.

9.3 RMS may remedy breach

If the Service Provider does not comply with any term of this document following 10 Business Days from when it is served with written notice, then without affecting any other right of RMS, RMS may, without notice, remedy the Service Provider's non-compliance at the Service Provider's cost.

9.4 Automatic termination

The parties acknowledge and agree that this document will automatically terminate upon the termination of the Stewardship Maintenance Contract.

9.5 Termination for convenience

- (a) RMS may, by giving 1 month written notice, terminate this document for its convenience and without the need to give reasons.
- (b) If RMS issues a termination notice under paragraph (a), the Service Provider must comply with any directions of RMS to wind down and stop work.

10. END OF LICENSE TERM

10.1 Make good

Howsoever this document is determined, the Service Provider must, at its cost and to the satisfaction of RMS:

- (a) remove all rubbish and the Service Provider's Property from the Licensed Areas, unless RMS agrees or directs otherwise, and make good any damage caused by the removal;
- (b) promptly leave the Licensed Areas in a condition consistent with the Service Provider's performance of its obligations under this document to maintain and repair the Licensed Areas having regard to the Condition Report;
- (c) remove any structures erected by it on the Licensed Areas (unless RMS agrees or directs otherwise);
- (d) hand over all keys provided by RMS in relation to the Licensed Areas, including security access devices; and
- (e) immediately repair any damage caused to the Licensed Areas in the course of complying with this clause and in all cases leave the Licensed Areas in no worse condition than it was in at the Occupation Date.

10.2 Storage of Service Provider's Property

- (a) If the Service Provider does not remove the Service Provider's Property or remedy any damage under clause 10.1, RMS may do so and store the Service Provider's Property at the Service Provider's cost.
- (b) If the Service Provider does not remove all of the Service Provider's Property from the Licensed Areas or from the place where it is stored by RMS within 5 Business Days of being asked to do so by RMS, that Service Provider's Property which has not been removed by the Service Provider becomes the property of RMS if the so elects.

11. NOTICES

11.1 How to give a notice

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

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

11.2 When a notice is given

A notice, consent or other communication that complies with this clause 11 is regarded as given and received:

- (a) if it is delivered or sent by fax:

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

11.3 **Address for notices**

A person's address, fax number and email address are those set out in Items 1 and 2 of the Reference Schedule or as notified from time to time.

12. **LIABILITY FOR EXPENSES**

RMS and the Service Provider agree to bear their own costs and expenses incurred in connection with:

- (a) legal costs incurred in connection with preparing this document;
- (b) any amendment to this document;
- (c) the cost of preparing any plan needed for this document; or
- (d) any default by the Service Provider or the Service Provider's Associates under this document and the enforcement or protection, or attempted enforcement or protection of any right under or in relation to this document.

13. **GST**

13.1 **Rules for interpreting this clause**

- (a) Words defined in the GST Law have the same meaning in clauses about GST.
- (b) If a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.
- (c) References to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST Law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled.

13.2 **Payment of GST**

A recipient of a taxable supply made under this document must:

- (a) pay to the supplier an amount equal to any GST for which the supplier is liable on any supply by the supplier under this document, without deduction or set-off of any other amount; and
- (b) make that payment as and when the consideration or part of it must be paid or provided. If the recipient does not pay the GST at that time, then it must pay the GST within seven days of a written request by the supplier for payment for the GST.

13.3 **Tax Invoice**

Each party making a taxable supply under this document must issue a tax invoice to the other party for each taxable supply within 14 days of making the taxable supply.

13.4 **Indemnities and reimbursement**

If a party is obliged to make a payment under an indemnity or is required to reimburse a party for a cost (such as a party's obligation to pay another party's legal costs) on which that other party must pay GST, the indemnity or reimbursement is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).

14. **AMENDMENT AND ASSIGNMENT**

14.1 **Amendment**

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

14.2 **Assignment**

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

15. **GENERAL**

15.1 **Governing law**

- (a) This document is governed by the law in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

15.2 **Giving effect to this document**

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

15.3 **Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;

- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

15.4 **Operation of indemnities**

- (a) Each indemnity in this document survives the ending of this document.
- (b) RMS may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.
- (c) If a provision of this document is expressed to:
 - (i) indemnify;
 - (ii) exclude or limit any liability of; or
 - (iii) otherwise benefit,

a person who is not a party to this document, the Service Provider agrees that RMS holds the benefit of that indemnity, exclusion, limitation or other benefit on trust for that person and may enforce this document on their behalf and for their benefit.

15.5 **Operation of this document**

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

15.6 **Consents**

- (a) Where this document contemplates that RMS may agree or consent to something (however it is described):
 - (i) RMS may:
 - (A) agree or consent, or not agree or consent, in its absolute discretion; or
 - (B) agree or consent subject to conditions; and
 - (ii) the consent must be in writing,unless this document expressly contemplates otherwise.
- (b) In making a discretionary determination, RMS will take into consideration any current government policy. RMS may withdraw a consent if it is inconsistent with government policy and the Service Provider must, without delay, cease the relevant activity and comply with the directions of RMS.

15.7 No merger

The provisions of this document do not merge on termination.

15.8 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of the Service Provider, or the exercise by RMS of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

15.9 Expiry or termination

Expiry or termination of this document does not affect any rights arising from a breach of this document before then.

15.10 Counterparts

This document may be executed in counterparts.

EXECUTED as a deed.

SIGNED for **ROADS AND MARITIME SERVICES** by its duly authorised officer, in the presence of:

Signature of officer

Signature of witness

Name

Name

EXECUTED by **LEIGHTON CONTRACTORS PTY LIMITED ABN 98 000 893 667**:

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by **BORAL CONSTRUCTION MATERIALS LIMITED ABN 70 000 614 826**:

Signature of director

Signature of director/secretary

Name

Name

SIGNED, SEALED and DELIVERED for
AMEY CONSULTING AUSTRALIA PTY
LIMITED ABN 34 162 890 940 under
power of attorney in the presence of:

Signature of attorney

Signature of witness

Name of attorney

Name of witness

Date of power of attorney

SCHEDULE 1
LICENSED AREAS

This drawing is COPYRIGHT and is the property of Arii Smits and Associates PTY LTD.

Figured dimensions are to be taken in preference to scaled dimensions. Contractors shall verify all dimensions on the job before preparing shop drawings or commencing work.

All materials are to be used in accordance with manufacturer's specifications and instructions, and to comply with relevant Australian Standards.



E	Issued for Approval	24.10.13
D	Issued for License	23.07.13
C	Issued for License	22.07.13
B	Issued for License	18.07.13
A	Preliminary	16.07.13
Rev.	Amendment	Date

CLIENT
ROADS & MARITIME SERVICES NSW
 PROJECT
 RMS ROCKDALE WORKS DEPOT
 422 WEST BOTANY STREET
 ROCKDALE SYDNEY NSW 2216

AriiSmits
 124 Chalmers Street
 Surry Hills NSW 2010
 P (+61 2) 9690 2222
 F (+61 2) 9690 2522
 arismits@arismits.com
 www.arismits.com

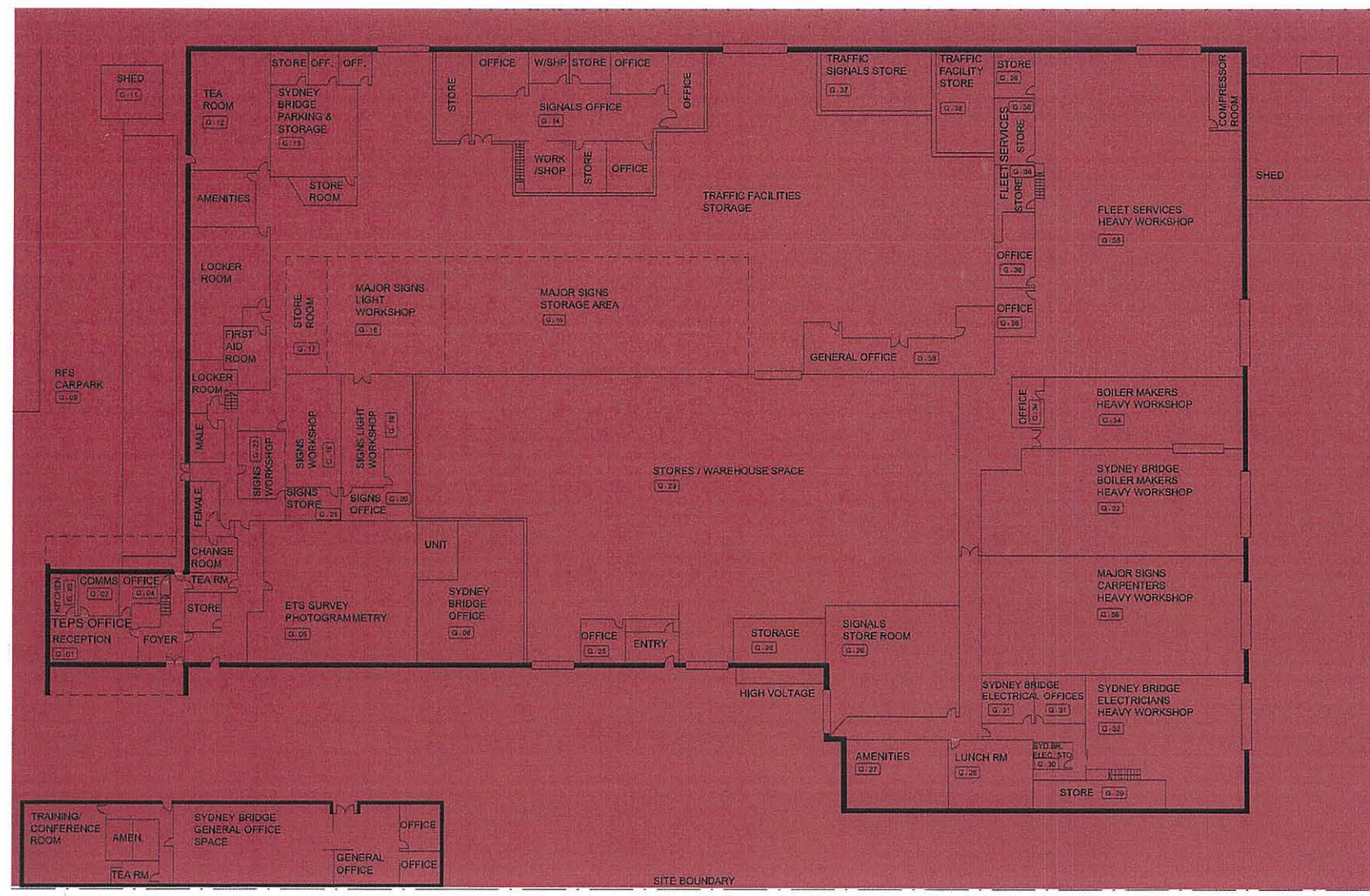
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SCALE	DATE	PLOT DATE
NTS @ A3	15.07.13	24.10.13
JOB NO.	DRAWN BY	CHECKED
13883	JM	AS
DRAWING NO.	REVISION	
A3.01	E	

LEGEND:

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- GATE (NEW)

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SITE BOUNDARY

LEGEND:

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C	Issued for License	22.07.13
B	Issued for License	18.07.13
A	Preliminary	18.07.13
Rev.	Amendment	Date

CLIENT
ROADS & MARITIME SERVICES NSW

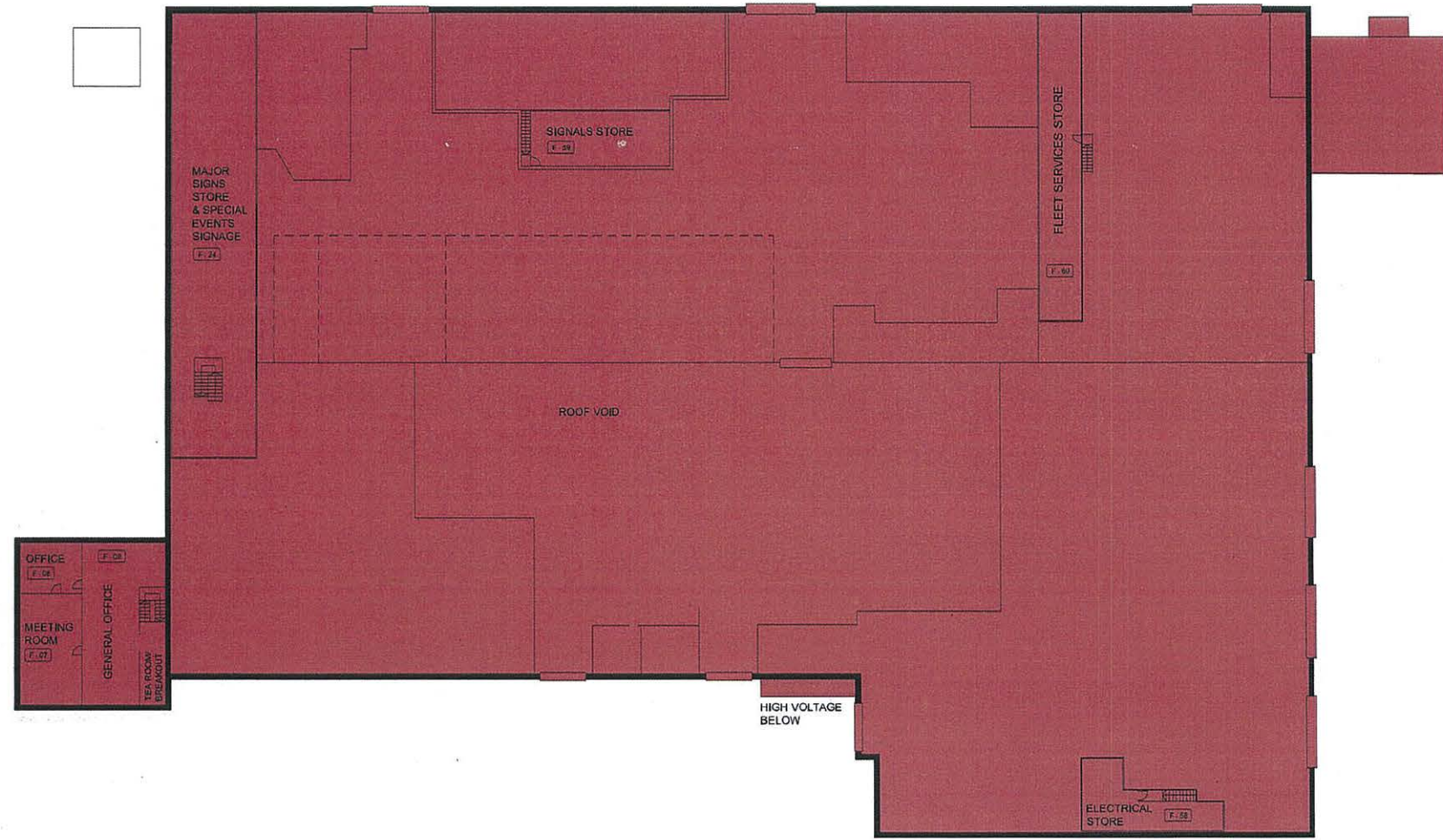
PROJECT
 RMS ROCKDALE WORKS DEPOT
 422 WEST BOTANY STREET
 ROCKDALE SYDNEY NSW 2216

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TITLE
 EXISTING ROCKDALE
 MEZZANINE FLOOR PLAN

SCALE	DATE	PLOT DATE
NTS @ A3	15.07.13	24.10.13
JOB NO.	DRAWN BY	CHECKED
13883	JM	AS
DRAWING NO.	REVISION	
A3.02	E	



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F	Issued for Approval	25.10.13
E	Issued for Approval	24.10.13
D	Issued for License	23.07.13
C	Issued for License	22.07.13
B	Issued for License	18.07.13
A	Preliminary	16.07.13
Rev.	Amendment	Date

CLIENT
ROADS & MARITIME SERVICES NSW

PROJECT
RMS ROCKDALE WORKS DEPOT
422 WEST BOTANY STREET
ROCKDALE SYDNEY NSW 2216

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TITLE
EXISTING ROCKDALE SITE PLAN

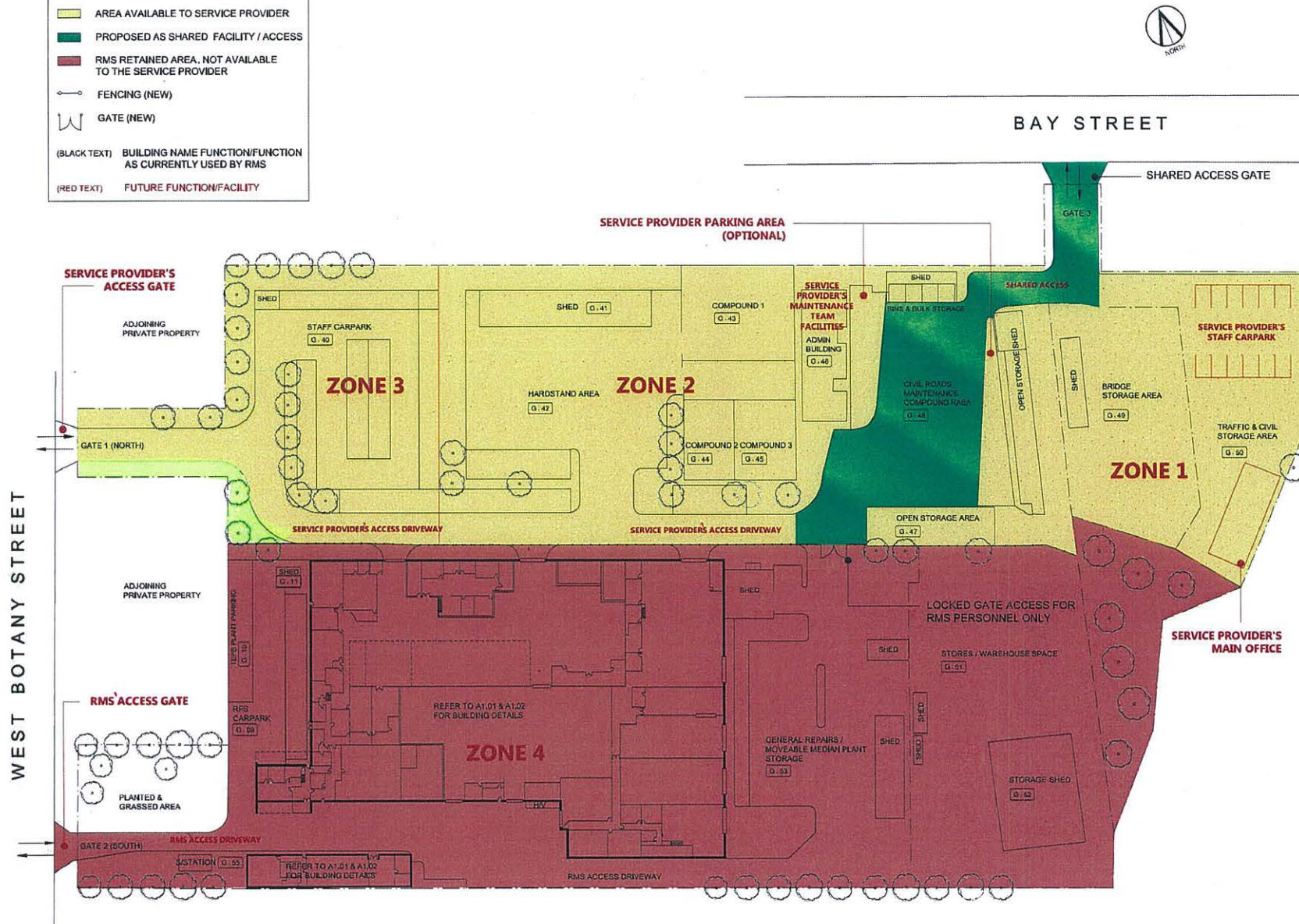
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NTS @ A3	15.07.13	25.10.13
JOB NO.	DRAWN BY	CHECKED
13883	JM	AS

DRAWING NO. REVISION
A3.00 F

LEGEND:

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- GATE (NEW)

(BLACK TEXT) BUILDING NAME FUNCTION/FUNCTION AS CURRENTLY USED BY RMS
(RED TEXT) FUTURE FUNCTION/FACILITY



SCHEDULE 2

INSURANCE SCHEDULE

TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	MINIMUM COVER
Tenants public liability risk	Public liability \$20 million each and every occurrence.	Annual for the duration of this document	<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. (d) Includes a severability clause as defined in clause 3 of the Definitions and Notes below. 	Endorsed to cover such other risks of an insurable nature for which the Service Provider is obliged to indemnify RMS under this document.
Tenant fittings and stock	Replacement value each and every occurrence	Annually for the duration of this document	<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. (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. 	Against loss or damage occasioned by fire, fusion, explosion, theft, burglary and malicious damage.

Definitions and Notes:

1. Approved insurer means:
 - (a) An insurance company which is authorised by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia; or
 - (b) Lloyds Underwriters;

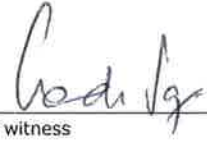
Note that where the insurance risk is insured by an insurer not listed in Note 1(a) or 1(b) then a 'fronting' placement is acceptable from an insurer listed in Note 1(a) or 1(b).
2. Insurances policies must be subject to the laws of an Australian State or Territory and subject to the jurisdiction of the courts of that Australian State or Territory.
3. A severability clause which provides:
 - (a) that the policy operates as if there was a separate policy of insurance covering each of the insureds;
 - (b) that each insured has access to the full limit of indemnity of the policy (subject to that limit of indemnity not thereby being increased);
 - (c) that the insurer will not impute pre-contractual non-disclosures or acts or omissions or states of knowledge of one insured to any other insured for the purposes of determining rights to indemnity; and
 - (d) that the liability of one insured to another insured is covered by the policy.
4. A waiver of subrogation which provides that the insurers agree to waive all rights of subrogation that they may have or acquire against RMS where required to do so under the this document.

EXECUTED as a deed.

SIGNED for ROADS AND MARITIME SERVICES ABN 76 236 371 088 by its duly authorised officer, in the presence of:



Signature of officer:



Signature of witness

Greg Evans

Name

GARETH SAGE

Name

EXECUTED by LEIGHTON CONTRACTORS PTY LIMITED ABN 98 000 893 667:





Signature of director



Signature of director/secretary

CRAIG LASLETT

Name


SHEILA CHOI

Name

EXECUTED by BORAL CONSTRUCTION MATERIALS LIMITED ABN 70 000 614 826:



Signature of director



Signature of director/secretary


MARIOS PASAS

Name


DOMINIC MILGATE

Name

SIGNED, SEALED and DELIVERED for
AMEY CONSULTING AUSTRALIA PTY
LIMITED ABN 34 162 890 940 under
power of attorney in the presence of:


Signature of witness

KAMINI CHOUDHERY
Name of witness


Signature of attorney

PETER RICHARDSON
Name of attorney

31/10/2013
Date of power of attorney