

RMCC Work Order Terms



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RMCC – Work Order Terms

1. SCOPE OF WORK, TEMPORARY WORK AND WORK METHODS

1.1 The Works

The scope of the Works is described in the Work Order and this document (as applicable), and includes:

- (a) all the work specifically referred to in or otherwise contemplated by the Work Order Documents;
- (b) all items not specifically referred to or described in the Work Order Documents 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 the Work Order Documents or otherwise necessary for the Works to be fit for the purposes required by the Work Order but omitted from other Work Order Documents (those omitted items are included in the scope of the Works, unless the context requires otherwise); and
- (d) all items of work reasonably inferred from the Work Order Documents as necessary to properly execute and complete the Works.

1.2 Service Provider Acknowledgement

The Service Provider acknowledges that it has made full allowance in the Ordered Work Price (if it is a lump sum as contemplated by clause 10.1), for the matters referred to in clause 1.1.

1.3 Temporary Work

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

- (a) RTA 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 RTA's Direction;
- (b) if RTA's 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 RTA not given the Direction, the Service Provider may be entitled to those extra costs, and an extension of time under clause 8.1 (if applicable); and
- (c) 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

Should a specification not prescribe a work method the Service Provider is free to use any work method, subject to the following:

- (a) the Service Provider is solely responsible for all work methods, whether specified in the General Conditions or not;

- (b) the Service Provider warrants that it has undertaken all necessary investigation and inquiry to satisfy itself that all work methods specified in the Work Order or which the Service Provider otherwise proposes to use are appropriate for the purposes of the Work Order Terms;
- (c) if a particular work method is specified in the Work Order Terms, the Service Provider must use it;
- (d) if a particular work method is specified in the Work Order Terms 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;
- (e) if a particular work method for which the Service Provider is responsible is impractical and the Service Provider, with or without the Direction of RTA, uses another work method by necessity to complete the Works, the Service Provider is not entitled to an extension of time or extra cost;
- (f) RTA may Direct the Service Provider at any time to use a particular work method; and
- (g) subject to sub-paragraphs (d) and (e) above, if RTA's 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 RTA not given the Direction, the Service Provider is entitled to those extra costs as an addition to the Ordered Work Price (if it demonstrates to the reasonable satisfaction of RTA that it incurred such extra costs) and may be entitled to an extension of time under clause 8.1 (if applicable).

1.5 Quality

- (a) The Service Provider must perform the Work under the Work Order Terms in accordance with all the requisite standards required under the Contract.
- (b) The Service Provider must, prior to commencing the Works, demonstrate to the RTA's reasonable satisfaction that the Service Provider has in place an appropriate quality system for the Works (including any changes to the Quality Plan required for the particular Works).

2. TIME MANAGEMENT

2.1 Time management

- (a) The Service Provider must commence Design and construction of the Works on Site in accordance with the terms of the Work Order.
- (b) The Service Provider must carry out Design and construction of the Works in accordance with Scheduled Progress and whenever requested, the Service Provider must demonstrate to RTA that it is achieving Scheduled Progress.
- (c) If the Service Provider is not achieving Scheduled Progress, RTA may instruct the Service Provider to take all reasonable steps to achieve Scheduled Progress, at the Service Provider's cost.

2.2 Extension of time

All extension of time Claims must demonstrate how the Service Provider has been or will be delayed in reaching Completion.

2.3 Working hours

Despite any other provision in the Work Order Terms, the Service Provider must only perform Works during the working hours set out in the Work Order.

3. COMMUNITY CONSULTATION

3.1 General

The Service Provider must undertake all community consultation and/or advertising:

- (a) in accordance with the requirements of RTA M1; and
- (b) as set out in the Work Order.

4. INSURANCE

4.1 RTA's insurance

- (a) RTA has effected an insurance policy or policies to cover RTA, the Contract and all subcontractors employed from time to time in relation to the Works for their respective rights, interests and liabilities with respect to:
 - (i) liability for loss or damage referred to in clause 17.2(a) of the General Conditions, including loss or damage to Materials (excluding constructional plant, motor vehicles, appliances and things (including scaffolding, formwork and the like), clothing, tools and sundry equipment) of the Service Provider or any subcontractor used in or in relation to the carrying out of the Works or entrusted to the Service Provider by RTA for that purpose, but not forming or intended to form part of the Works; and
 - (ii) liabilities to third parties of the type set out in clause 17.2(b) of the General Conditions.
- (b) RTA may in its discretion have other insureds named or included in the policy or policies referred to in clause 4.1(a), including any other government entity with an interest in the Works or the Site.
- (c) The policy or policies will be maintained by RTA until the issue of the Final Payment Schedule.
- (d) Before the earlier of:
 - (i) 10 Business Days after the Commencement Date; or
 - (ii) the Service Provider commencing to carry out any part of the Works,
 the Service Provider must contact the insurance broker nominated in writing to the Service Provider as the RTA's insurance broker and must provide to that person all details reasonably requested for the purpose of the insurances referred to in clause 4.1.
- (e) The insurance cover under clause 4.1(a) is subject to exclusions. These are set out in the policy terms.
- (f) The Service Provider will be responsible for paying or bearing all excesses in relation to insured matters under any policy referred to in clause 4.1(a) in

accordance with the policy terms. The Service Provider may effect its own insurance to cover the amount of any excess.

- (g) The Service Provider acknowledges that:
 - (i) the insurances referred to in clause 4.1(a) have been obtained at RTA's cost; and
 - (ii) the Service Provider will not be entitled to payment of any allowance for the cost of obtaining such insurances or any additional insurance cover it considers necessary in relation to the subject matter of that insurance.
- (h) The obtaining of insurance by RTA in accordance with this clause will not reduce, vary, or otherwise affect the Service Provider's liabilities and obligations pursuant to clause 18 of the General Conditions, warranties given or otherwise under the Contract or in connection with the Works.
- (i) If there is a claim for significant damage or destruction under the Works policy of insurance (as determined by RTA, acting reasonably):
 - (i) all settlement amounts must be paid by the insurer directly to RTA;
 - (ii) RTA may decide to have the Works reinstated, or may decide not to proceed with the Works, without creating any default by RTA under the Contract; and
 - (iii) the Service Provider must reinstate the Works if instructed to by RTA and except as otherwise provided in the Contract may only make a Claim for payment for reinstatement of the Works up to the amount of any insurance settlement.

4.2 Additional insurance

The Service Provider must effect such other insurance as required by RTA and specified in the Work Order.

5. THE SITE

5.1 Site information

- (a) RTA and the Service Provider acknowledge that:
 - (i) any information specified as Work Order Information and supplied by RTA with a Work Order, is supplied in good faith, and does not form part of the Contract;
 - (ii) RTA does not guarantee the completeness of the information specified in any Work Order Information;
 - (iii) RTA does not guarantee the accuracy, quality or completeness of the information specified in any Work Order Information;
 - (iv) RTA accepts no duty of care in connection with information specified in any Work Order Information (or with having provided it);
 - (v) the Service Provider warrants that it:
 - (A) has made its own inquiries (including the checking of information provided by RTA) concerning the Site;

- (B) did not in any way rely on the completeness of the information provided by RTA specified in Work Order Information other than as a guide for ascertaining what further Site information the Service Provider considers it needs to obtain; and
 - (C) did not in any way rely on the information (which information could contain errors, omissions and other inaccuracies) provided by RTA as specified in the Work Order Information; and
 - (vi) the Service Provider also warrants that it has made its own interpretations, deductions and conclusions from the information provided by RTA and did not in any way rely on interpretations, deductions and conclusions made by or for RTA.
- (b) The Service Provider warrants that it has:
- (i) examined the Site and surrounds and satisfied itself through its own investigation as to the condition and characteristics which may be encountered on, in or under the Site (including sub-surface conditions) and as to the further geotechnical or other information for the Site that may be required to be obtained by the Service Provider; and
 - (ii) made its own assessment of the risks, contingencies and other circumstances which might affect the Works and has allowed fully for these in the Ordered Work Price (subject to clause 5.2).
- (c) If the Service Provider considers that further geo-technical or other information for the Site is required, it may obtain further Site information and must give RTA details of that further Site information as it is obtained.
- (d) Further Site information does not include any information in the Contract Documents or information which by the Contract the Service Provider is required to otherwise obtain.
- (e) Except if the Contract provides otherwise, the Service Provider must bear the cost of obtaining any further Site information.

5.2 Site Conditions

- (a) The Service Provider agrees that it has no other entitlement arising out of or in connection with Site Conditions other than as referred to in this clause 5.2.
- (b) If the Service Provider encounters, in the execution of the Works (including when obtaining further Site information), Site Conditions which are materially adverse in comparison to the Site Conditions which the Service Provider should have reasonably foreseen at the date of the Work Order, having regard to the warranty in clause 5.1, the Service Provider must notify RTA in writing forthwith and in any event within 7 days of encountering these Site Conditions (and prior to making any related Claim), giving full details of:
 - (i) the Site Conditions encountered;
 - (ii) the manner in which they are said to be materially adverse (having regard to the warranty in clause 5.1, together with information supporting this contention);
 - (iii) the effect on the Works;

- (iv) subject to paragraph (i) below, the estimated additional cost (if any) of dealing with the Site Condition encountered and the additional work and resources involved;
 - (v) the delay (if any) to progress of the Works; and
 - (vi) any other relevant matters.
- (c) RTA may request the Service Provider to provide any further information relating to the circumstances of the Site Conditions encountered.
- (d) The Service Provider is solely responsible for dealing with the Site Conditions encountered in a manner so as to minimise any extra costs and in a manner to which RTA has no objection.
- (e) Subject to paragraph (i):
- (i) the Service Provider will be entitled to, as an adjustment to the Ordered Work Price (if it is a lump sum) its direct, reasonable additional costs (including costs of delay or disruption), necessarily and unavoidably incurred by the Service Provider in dealing with materially adverse Site Conditions, from the date of provision to RTA of the written notice required by paragraph (b), having taken all reasonable steps to minimise the costs in dealing with materially adverse Site Conditions; and
 - (ii) the Service Provider may also be entitled to an extension of time for Completion under clause 8 for delays caused by the materially adverse Site Conditions occurring from the date of provision to RTA of the written notice required by paragraph (b).
- (f) If a Variation is instructed or agreed as a result of Site Conditions shown by further Site information given to RTA no later than 21 days before work on the relevant part of the Site would have started, but for the Variation, it must be dealt with (including the matters of value and extension of time for Completion) under the Variation procedures in the General Conditions.
- (g) If a Variation is instructed or agreed as a result of Site Conditions, but the Service Provider does not give to RTA the further Site information within the time provided in paragraph (f):
- (i) the Variation must be valued under clause 10 of the General Conditions but the value of the Variation must exclude the costs of any aborted work arising out of the Variation; and
 - (ii) no payment will be made to the Service Provider for costs of delay or any aborted work under any other provision of the Contract or otherwise.
- (h) Paragraph (g) applies regardless of any provisions to the contrary in the Contract.
- (i) Notwithstanding anything in this clause, RTA may specify in a Work Order that the Service Provider is to bear the full risk (and costs) of encountering and dealing with materially adverse Site Conditions, in which case this clause 5.2 will not apply.
- (j) If a Variation is instructed or agreed as a result of Site Conditions, the parties' rights and obligations are not affected by paragraph (h).

6. DESIGN

6.1 Ambiguities

- (a) The Service Provider, in addition to any responsibility to check RTA's Documents under clause 6.3 (if applicable), must check the Work Order Documents and notify RTA of any ambiguities, inconsistencies or discrepancies.
- (b) RTA will resolve any ambiguities, inconsistencies or discrepancies in the Work Order Documents which are notified by the Service Provider to RTA for resolution.
- (c) Subject to paragraph (d) , if the resolution in paragraph (b) results in the Service Provider incurring increased or reduced costs than the Service Provider should reasonably have anticipated at the date of the Work Order, the Ordered Work Price may be adjusted by RTA by the difference in costs agreed.
- (d) If the Service Provider fails to take the steps required in paragraph (a), and a Variation is instructed by RTA due to any ambiguity, inconsistency or discrepancy:
 - (i) the Service Provider will not be entitled to costs for delay or the cost of any aborted work (including Design) resulting from the Variation under the Contract; except that
 - (ii) if clause 6.3 is not applicable, the Service Provider will be entitled to the reasonable and unavoidable cost of any aborted work (including Design) if the ambiguity, inconsistency or discrepancy is included in RTA's Documents forming part of the Work Order Documents.

6.2 The Service Provider's Documents

- (a) The Service Provider must carry out all necessary design to complete Design of the Works (whether or not it is responsible under clause 6.3(a) for RTA's design in RTA's Documents) and so produce the Service Provider's Documents which meet the requirements of all of the following:
 - (i) the Work Order Terms and the General Conditions;
 - (ii) Directions;
 - (iii) Law;
 - (iv) the Building Code of Australia (if applicable in the Work Order), and relevant Australian Standards; and
 - (v) good industry standards applicable to the Works.
- (b) The Service Provider acknowledges that the Service Provider must not change RTA's design in RTA's Documents without RTA's prior written approval. Whenever requested by RTA, the Service Provider must promptly confirm in writing that the Service Provider's Documents are consistent with and comply with RTA's Documents and other relevant Contract Documents. If RTA's design is required to be changed (with RTA's prior written approval), the Variation must be dealt with under the procedures in clause 10 of the General Conditions.
- (c) The Service Provider must produce Service Provider's Documents which will ensure that the Works and every part of them are fit for the purposes required by the Contract. This responsibility is reduced to the extent that the Service Provider's Documents are not fit because of design work by RTA for which RTA retains responsibility.

- (d) The requirements of paragraph (c) are not reduced or affected by any Variations.

6.3 Adopting RTA's Documents

- (a) If the Work Order specifies that the Service Provider must accept full responsibility for design carried out by RTA before the date of the Work Order, then before submitting Service Provider's Documents to RTA in accordance with clause 6.4 the Service Provider (at its own cost) must:
 - (i) check, and notify RTA of details (together with appropriate supporting documents) of any Fault in RTA's Documents;
 - (ii) amend the documents to correct Faults so that, on Completion, the Works and every part will be fit for the purposes required by the Contract; and
 - (iii) accept and adopt RTA's 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 6.4.
- (b) Subject to any provisions of the General Conditions which provide for change to RTA's Documents and clause 6.1, RTA must instruct a Variation if the Service Provider notifies RTA of a Fault in RTA's Documents and RTA requires a change to the Works as a result.
- (c) If RTA's Documents adopted by the Service Provider contain a Fault not notified to RTA by the Service Provider in accordance with clause 6.3(a):
 - (i) the Service Provider will be responsible for, and not entitled to payment for delays or the cost of any aborted work arising out of the Fault; and
 - (ii) the value of any Variation RTA instructs as a result of the Fault must not include the cost of such delays or aborted work.
- (d) The Service Provider acknowledges that:
 - (i) RTA's design is incomplete and may contain Faults or conflict with Law or the Building Code of Australia (if applicable in the Work Order) or other codes or standards which the Service Provider is required to comply with under the Contract;
 - (ii) RTA makes no representation concerning RTA's design and the Service Provider is not entitled to rely on the completeness or accuracy of RTA's design; and
 - (iii) RTA relies on the Service Provider to identify and remedy Faults in RTA's Documents.

6.4 Submitting Service Provider's Documents

- (a) 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 RTA at least 14 Business Days before the date the Service Provider proposes to use them for construction (including procurement, manufacture or fabrication) of any part of the Works. The Service Provider must provide the number of copies of the Service Provider's Documents specified in the Work Order when submitting Service Provider's Documents.
- (b) To the extent specified in the Contract, the Service Provider must undertake design review and consider the Design with those persons specified in the Work Order Documents, or those persons identified by RTA, including those involved in

using or occupying any part of the Works as end users. The Service Provider must carry out such design review and consideration with RTA and those other persons, and develop the Design and Service Provider's Documents using the outcomes of this review and consideration. The Service Provider must then submit to RTA for its consideration any necessary amendments to RTA's 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 (a).

- (c) RTA need not respond to the Service Provider about Service Provider's Documents submitted.
- (d) If RTA objects to the Service Provider's Documents, the Service Provider must take the objections into account and discuss them with RTA. The Service Provider must correct any Fault in the Service Provider's Documents.
- (e) Notwithstanding the design review and consideration by others under this clause 6.4, the Service Provider remains fully responsible for all Service Provider's Documents.
- (f) Nothing RTA does or omits to do in connection with this clause 6.4 makes RTA liable for Service Provider's Documents, or prevents RTA from relying on or enforcing a right, under the Contract or otherwise.

7. CONSTRUCTION

7.1 Setting out the Works

- (a) The Service Provider must set out and construct the Works at the locations and levels specified in or required by the Work Order Documents.
- (b) The Service Provider may request in writing from RTA any necessary additional information to be provided by RTA relating to setting out the Works not included in the Work Order Documents. 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 set out for construction of the part of the Works to which the information applies. As soon as practicable, RTA must provide any additional information which it has or can reasonably obtain.
- (c) While carrying out the Works, 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 RTA;
 - (ii) RTA may not respond to the Service Provider about any error;
 - (iii) RTA may instruct the Service Provider regarding necessary rectification work and the Service Provider must comply;
 - (iv) the Service Provider must rectify any error to ensure that the Works comply with the Contract; and
 - (v) if an error occurs because of RTA's design for which RTA retains responsibility and causes the Service Provider to incur necessarily and unavoidably any extra costs, the Service Provider may be entitled to those extra costs and an extension of time under clause 8.1.

7.2 Construction

- (a) The Service Provider must supply all Materials and construct the Works in accordance with:
 - (i) any requirements under the Contract;
 - (ii) the Service Provider's Documents;
 - (iii) Directions concerning the Works;
 - (iv) Law;
 - (v) the Building Code of Australia (if applicable in the Work Order), and relevant Australian Standards; and
 - (vi) good industry standards applicable to the Works.
- (b) The Service Provider must comply with this clause 7.2 and ensure that the Works and every part of them are fit for the purposes required by the Contract. This responsibility is reduced to the extent that the Works are not fit because of design work by RTA for which RTA retains responsibility.
- (c) The provisions of paragraph (b) are not reduced or affected by any Variations.

7.3 Testing

- (a) The Service Provider must:
 - (i) Test (at its own cost) all parts of the Works specified in the Contract to be Tested;
 - (ii) give RTA the opportunity to witness the Tests by giving reasonable notice; and
 - (iii) make the results available to RTA.
- (b) RTA may instruct the Service Provider at any time to Test any part of the Works. RTA must pay for the Tests (as an addition to the Ordered Work Price) if the results of the Tests show full compliance with the Contract. Otherwise, the Service Provider must pay.
- (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 these Tests, as reported in writing to RTA, confirm that all Defects have been made good and that the Works comply with the Contract.

7.4 Defects

- (a) The Service Provider must identify and promptly make good all Defects so that the Works comply with the Contract. This requirement does not affect any other remedy or right of RTA.
- (b) At any time before Completion, RTA may instruct the Service Provider to make good Defects within the time specified in a Defect Notice issued by RTA.
- (c) If the Service Provider fails to make good the Defects in the time specified in the Defect Notice, RTA may have the Defects made good by others and then:

- (i) the cost will be a debt due to RTA and may be deducted from the Routine Services Fee or the Ordered Work Price, unless a Variation applies under paragraph (e); 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 7.4:
- (i) reduces the Service Provider's warranties and other liabilities and obligations under the Contract; or
 - (ii) affects RTA's common law right of damages.
- (e) If at any time before Completion the Service Provider becomes aware of any defect which results from design or other work or actions for which it is not responsible, it must:
- (i) promptly notify RTA; and
 - (ii) make good the defect as a Variation under clause 10 of the General Conditions, if instructed to by RTA.

7.5 Acceptance with Defects not made good

- (a) RTA, in its absolute discretion (and at any time, whether before or after Completion), may accept that specific Defects defined by RTA need not be made good.
- (b) Before RTA does so:
 - (i) RTA may propose deductions from the Routine Services Fee or the Ordered Work Price, and any terms it requires;
 - (ii) if the Service Provider agrees with the deductions and the terms, the Routine Services Fee or Ordered Work Price will be adjusted accordingly; or
 - (iii) if the Service Provider agrees with the terms but not with the proposed deductions, clause 27 of the General Conditions will apply.
- (c) If the parties do not agree in writing on RTA's terms, the Service Provider must make good the Defects defined by RTA.
- (d) The Service Provider remains liable for Defects whether known or not known at the time RTA accepts that Defects defined by RTA in paragraph (c) above need not be made good under this clause 7.5.

8. EXTENSIONS OF TIME AND DELAY

8.1 Extensions of time

- (a) If the Service Provider is, or will be delayed in reaching Completion, the Service Provider will be entitled to an extension of time for Completion for the number of days assessed by RTA, if the Service Provider satisfies RTA that all the following conditions apply:
 - (i) the cause of the delay was beyond the control of the Service Provider (including an act, default or omission of RTA including a direction

- contemplated by the General Conditions) and the Service Provider has not contributed in any way to the delay;
- (ii) the Service Provider has taken all reasonable steps to avoid and minimise the delay and its effects; and
 - (iii) the Service Provider has given to RTA each of the notices required under paragraphs (b) and (c).
- (b) The Service Provider must give RTA 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 RTA notice of the extension of time claimed, together with other information sufficient for RTA 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.
 - (d) An extension of time is only given for delays occurring on days on which the Service Provider usually carries out work under the Work Order.
 - (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) RTA may in its absolute discretion for the benefit of RTA 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 RTA exercises its discretion to extend the time for Completion.

8.2 Delays caused by RTA

- (a) The Service Provider acknowledges and agrees that there may be acts or omissions of RTA or a breach of the Contract by RTA which may cause the Service Provider delay, disruption or interference to the carrying out of the Works.
- (b) The Service Provider's only remedy for delay, disruption or interference of any nature whatsoever caused by RTA (including for breach of contract), whether under the Contract, at law or otherwise, is an extension of time for Completion of the Works under clause 8.1.
- (c) For the avoidance of doubt the parties agree that a delay caused by RTA (acting as an Authority or as expressly permitted or allowed by the Contract), does not constitute an act or omission under clause 8.1(a)(i).

8.3 Delay to Completion

- (a) If the Service Provider fails to achieve Completion by the Completion Date as required by clause 11, the Service Provider acknowledges that this will be taken into account in assessing the Service Provider's performance under the Contract, in particular against KPM OQ2.
- (b) The provisions of this clause 8.3 apply to a failure by the Service Provider to achieve Completion by the Completion Date, in respect of the Works and in respect of any Milestones.

9. SUSPENSION

9.1 RTA's suspension

- (a) In addition to RTA's rights under the General Conditions, RTA may instruct the Service Provider to suspend progress of the Works and Temporary Work, and the Service Provider must comply.
- (b) The Service Provider must resume carrying out the Works and Temporary Work when instructed to by RTA.
- (c) If the need for the suspension arises from RTA's own act or omission, then the Service Provider will be entitled to:
 - (i) any extension of time granted under clause 8.1; and
 - (ii) (as an addition to the Ordered Work Price) its reasonable, direct Site and off-Site costs of the suspension, unavoidably incurred, having taken all reasonable steps to minimise the costs.
- (d) The Service Provider has no other remedies in connection with the suspension.

10. ORDERED WORK PRICE

10.1 The Ordered Work Price

The Ordered Work Price and the rates and/or lump sums it includes are not adjusted for rise or fall in the cost of labour or Materials provided by the Service Provider.

10.2 Schedules of Rates

- (a) At the date of the Work Order, quantities in a Schedule of Rates are estimated only, and RTA does not guarantee either the estimated quantities or the descriptions of the items.
- (b) If the Work Order indicates that a Schedule of Rates applies, the Ordered Work Price is the sum of the products of the quantities and the relevant rate for each item in the Schedule of Rates, plus all lump sums (if any). Before an item is completed, the estimated quantity will be used in the calculation of the Ordered Work Price. After an item is completed, the actual quantity measured in accordance with the Contract will be used in the calculation of the Ordered Work Price.
- (c) The Service Provider is entitled to payment of the Ordered Work Price calculated for actual quantities measured in accordance with the Work Order Terms.

10.3 Reimbursement of Actual Costs

If the Work Order indicates Reimbursement of Actual Cost applies, the Ordered Work Price is the sum of the Service Provider's Actual Costs multiplied by the agreed Ordered Work Margin.

10.4 Provisional Quantities

If RTA instructs the Service Provider to carry out work which is the subject of a Provisional Quantity and that instruction requires the Service Provider to carry out a greater or lesser quantity of work than the Provisional Quantity, including that no work the subject of the Provisional Quantity will be carried out, the Ordered Work Price must be adjusted by the

amount calculated by multiplying the work order rate applicable to the Provisional Quantity work by the difference between the Provisional Quantity and the quantity of work carried out.

10.5 Entitlements

- (a) Except as otherwise expressly stated under the Work Order Terms or the General Conditions, the Ordered Work Price (if a lump sum) 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 6.1 (Ambiguities);
 - (iv) clause 7.3 (Testing);
 - (v) clause 9.1 (RTA's suspension);
 - (vi) clause 10.1 (The Ordered Work Price - Schedule of Rates);
 - (vii) clause 10.3 (The Ordered Work Price - Provisional Quantities);
 - (viii) clause 10 of the General Conditions (Variations); and
 - (ix) clause 16.7 of the General Conditions (Interest on overdue monies).
- (b) The Ordered Work Price may be decreased if required by the Work Order Terms. Clauses that allow decreases in the Ordered Work Price include:
 - (i) clause 6.1 (Ambiguities);
 - (ii) clause 7.4 (Defects);
 - (iii) clause 7.5 (Acceptance with Defects not made good);
 - (iv) clause 10.1 (The Ordered Work Price - Schedule of Rates);
 - (v) clause 10.3 (The Ordered Work Price - Provisional Quantities); and
 - (vi) clause 11.2 (Defects Liability Period).
- (c) The Service Provider is not entitled to any other payments related to the subject matter of the Work Order, under the Contract or otherwise, except:
 - (i) under clause 13.3;
 - (ii) for breach of the Contract; or
 - (iii) where this exclusion is not permitted by law.

10.6 Payment Claims

- (a) The Service Provider must make Payment Claims for Ordered Work under clause 12 of the General Conditions based on the Value Completed and as specified in this clause 10.6.
- (b) If the Work Order specifies payment by Milestone Payment, then the Service Provider may only make a Payment Claim under clause 12 of the General Conditions for the value of a Milestone on its Completion. If the Work Order

specifies payment by Milestone Payment and monthly Progress Payment, then the Service Provider must make a Payment Claim in accordance with this paragraph (b) for Milestone Payments and paragraph (a) otherwise.

- (c) A Payment Claim under clause 12 of the General Conditions must:
 - (i) identify the work and Materials to which the Payment Claim relates; and
 - (ii) indicate the amount of the Progress Payment that the Service Provider claims to be due for the work done to which the payment relates, in accordance with clause 10.6(a), after allowing for payments already made, as the Value Completed.
- (d) The Service Provider warrants for itself and for and on behalf of subcontractors and suppliers that no Encumbrance exists over any Materials incorporated into the Works by the Service Provider. If the Contract or the Service Provider's employment under the Work Order Terms is terminated, the Service Provider must ensure that RTA, in respect of any unfixed Materials for which payment has been made or which have been appropriated to the Contract, may enter upon any premises where the Materials are stored and take possession of these Materials.
- (e) For work carried out and allowed in each Payment Claim, the following applies in calculating the Value Completed:
 - (i) for completed work covered by a lump sum:
 - (A) the Service Provider may claim a lump sum by instalments with each Payment Claim under clause 11 of the General Conditions. The total of the lump sum instalments must never exceed the total of the lump sum.
 - (B) the subtotal of "Value Completed \$" amounts is recorded;
 - (ii) for work covered by a Schedule of Rates:
 - (A) the Service Provider may claim for work covered by a Schedule of Rates as it is actually carried out; and
 - (B) the subtotal of "Value Completed \$" of work for all Schedule of Rates items is recorded;
 - (iii) for work covered by Reimbursement of Actual Costs, the Service Provider may claim for those Actual Costs incurred in the relevant month; and
 - (iv) the Value Completed at the time of the Payment Claim under clause 12 of the General Conditions is the sum of the values of work completed calculated under sub-paragraphs (i), (ii) and (iii) above.

10.7 Final payment

- (a) The Service Provider must submit a Final Payment Claim under clause 12 of the General Conditions within 13 weeks after achieving Completion of the whole of the Works. The Final Payment Claim must include any Claim not previously claimed in a Payment Claim, and which is then permitted under clause 10.6, being a Claim agreed to by RTA or if not agreed, having been determined in accordance with the General Conditions.
- (b) Within 10 Business Days of receiving the Final Payment Claim (or, if the Service Provider has not submitted a Final Payment Claim, within 15 weeks after achieving Completion of the whole of the Works), RTA must give the Service Provider a Final

Payment Schedule stating the amount payable by one party to the other and where the Service Provider has submitted a Final Payment Claim, complying with the relevant provisions of clause 12 of the General Conditions.

- (c) Any payments by the Service Provider to RTA in accordance with the Final Payment Schedule must be made within a further 10 Business Days after it is issued.
- (d) Any other Claim not previously brought which the Service Provider is then entitled under the Contract to bring must be made (separate from the Final Payment Claim) within 13 weeks after achieving Completion of the whole of the Works. If RTA agrees to a Claim involving money under this clause 10.7(d), RTA will make payment within 20 Business Days of such agreement or of it being determined in accordance with the Contract.
- (e) The issue of the Final Payment Schedule is conclusive evidence that all necessary increases to the Ordered Work Price or to any other entitlement of the Service Provider have been made, except for those required by:
 - (i) arithmetical error; or
 - (ii) valuation of Variation in accordance with clause 10 of the General Conditions, relating to a Claim made in accordance with paragraph (d) above; and
 - (iii) resolution under clauses 26 of the General Conditions (as applicable) of any Claim made in accordance with paragraph (d).
- (f) The Service Provider's liability under the Contract or otherwise is not affected by the issue of the Final Payment Schedule. The Service Provider's liability continues until any limitation period under statute expires.

11. COMPLETION

11.1 Completion

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

11.2 Defects Liability Period

- (a) At any time during the Defects Liability Period:
 - (i) RTA may instruct the Service Provider to make good Defects within the time specified in a Defect Notice;
 - (ii) if the Service Provider fails to make good the Defects in the time specified in the Defect Notice, the provisions of clauses 7.4(c) and 7.4(d) will apply; and
 - (iii) RTA may instruct a Variation in connection with any Defect instead of requiring the Defect to be made good under clause 7.4(b).

- (b) This clause 11.2 does not reduce the Service Provider's liability, whether arising under the Contract or otherwise. The Service Provider's liability continues until any limitation period under statute expires.
- (c) This clause 11.2 does not affect RTA's rights under clause 7.5.

12. TERMINATION BY RTA

12.1 Termination for Contractor's Work Order Default

- (a) RTA may terminate the Service Provider's employment under the Work Order for Service Provider's Work Order Default by giving notice, as set out in this clause 12.
- (b) In the case of Service Provider's Work Order Default, RTA 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 Order Default.
- (c) If the Service Provider fails to give RTA a notice containing clear evidence that it has remedied a Service Provider's Work Order Default, or fails to propose steps reasonably acceptable to RTA to remedy a Service Provider's Work Order Default, RTA may give the Service Provider a notice terminating its employment under the Work Order.
- (d) Nothing in this clause 12 affects or negates RTA's common law rights to terminate or for damages.
- (e) Nothing in this clause 12 affects the Service Provider's rights to perform its other obligations under the General Conditions that is separate from its obligation under this Work Term.

12.2 Consequences of termination

If RTA terminates the Service Provider's employment under the Work Order under this clause 12, it may at its sole discretion employ others to complete the Works the subject of a Work Order 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 RTA to have the Works completed.
- (b) the Service Provider must assign to RTA the Service Provider's rights and benefits in all its contracts concerning the Works, 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 its employment under the Work Order.
- (c) the Service Provider must consent to a novation to RTA or its nominees of all subcontracts and its other contracts concerning the Works, as required by RTA and must procure at the time of entering into each subcontract and other contracts, the consent in writing of all of its subcontractors, suppliers and consultants to the novation. RTA may at any time make payments and may deduct, withhold or set off any amount to be paid under the novated contracts from amounts otherwise payable to the Service Provider or from any security.
- (d) the Service Provider must do everything and sign all documents necessary to give effect to this clause, and it irrevocably appoints RTA as its attorney to do this in its name if it fails to do so.

- (e) If, the cost of appointing others to complete the Works exceeds the amount that would have been paid to the Service Provider to complete the Works, then the difference will be a debt due by the Service Provider to RTA.
- (f) RTA may make provisional assessments of the amounts payable to RTA under paragraph (e).

13. TERMINATION BY RTA FOR CONVENIENCE

13.1 RTA may terminate Work Order for convenience

RTA may in its absolute discretion, terminate the Work Order by giving 5 Business Days notice to the Service Provider, for its convenience and without the need to give reasons.

13.2 The Service Provider's obligations

- (a) The Service Provider must comply with any Directions of RTA 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 RTA to have the Works completed.

13.3 Payments on termination for convenience

- (a) After termination under clause 13.1, subject to its rights under the Contract, including any right of set off under the General Conditions, RTA must pay the Service Provider:
 - (i) the Value Completed for all Works carried out (as determined under clause 10) 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 the Works which it is legally liable to accept, but only if on payment these unfixed Materials become the property of RTA, 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 mitigate costs;
 - (iv) an amount of 2% of the unpaid portion (after taking into account the amount payable under paragraph (a)(i)) of the Ordered Work Price; and
 - (v) costs reasonably incurred by the Service Provider in the expectation of completing the Works and not included in any other payment by RTA.
- (b) The payments referred to in paragraph (a) are in full compensation for termination under this clause 13, and the Service Provider has no claim for damages or other entitlement whether under the Contract or otherwise.

14. TERMINATION UNDER THE GENERAL CONDITIONS

14.1 Termination

If the Contract is terminated under clauses 28 or 29 of the General Conditions, all Work Orders are terminated with effect at the date of termination of the Contract, and the relevant clauses of the General Conditions will apply.

15. INTERPRETATION

15.1 Definitions

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

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

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

Completion means the state of the Works or a Milestone (as applicable) being complete, except for Defects not known. This includes, without limitation:

- (a) the supply to RTA of all subcontractor's warranties, or work-as-executed drawings; and
- (b) certificates, authorisations, approvals and consents from relevant Authorities and service providers.

Completion Date means the date (or the last day of the period) specified in the Work Order 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 8.1.

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 General Conditions.

Defect Notice means a notice issued by RTA under clause 7.4(b) or 11.2(a) instructing that specified Defects be made good within a given period.

Defects Liability Period means:

- (a) the warranty period specified in the relevant specification referred to or incorporated in the Work Order; or
- (b) 12 months,

(whichever is greater), commencing on the Actual Completion Date.

Design means the design of the Works to be carried out by the Service Provider, including the completion of any of RTA's design work which is described in RTA's Documents, to the extent specified in the Work Order; 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, as referred to in clause 6.4(b).

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

Final Payment Claim means a Payment Claim given by the Service Provider to RTA under clause 10.7(a).

Final Payment Schedule means a Payment Schedule given by RTA to the Service Provider under clause 10.7(b).

General Conditions means clauses 1 to 35 of the RMCC entered into on [1 October 2008] between RTA and the Service Provider.

Milestone means a part of the Works specified as such in the Work Order.

Milestone Payment means a payment to the Service Provider on Completion of a Milestone.

Ordered Work Price means the price specified in the Work Order which is the agreed price for performing the Works, subject to adjustment in accordance with the General Conditions.

Progress Payment means a payment by RTA in response to a Payment Claim, on account of the Ordered Work Price.

Provisional Quantity means the quantity of an item of work which is specified in the Work Order, but the quantity of which or whether that item of work will actually be required is not known definitively at the date of the Work Order.

Reimbursement of Actual Costs means the sum of actual Direct Cost plus Indirect Cost multiplied by the applicable work order rate.

RTA's Documents means the design and other documents prepared by RTA for the Work Order and provided to the Service Provider at the date of the Work Order and included in the Work Order Documents, and any modified or further such documents later provided by RTA to the Service Provider for the Work Order.

Service Provider's Documents means:

- (a) drawings, specifications, calculations and other documents and information, meeting the requirements of clause 6.2, which the Service Provider must produce to Design and construct the Works in accordance with the General Conditions; and
- (b) documents which become Contractor's Documents under the General Conditions, including RTA's Documents checked, accepted and adopted under clause 6.3.

Service Provider's Work Order Default means a substantial breach of the Work Order by the Service Provider, including, without limitation, any of the following:

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

Schedule of Rates means any schedule in the Work Order Terms stated to be a Schedule of Rates, and which shows rates payable for carrying out items of work described in the schedule.

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

Site means the lands and other places to be made available by RTA to the Contractor for the purpose of executing the Works, and including any existing buildings, services or other improvements, as specified in the Work Order.

Site Conditions means any physical conditions of the Site (including sub-surface conditions, but excluding weather conditions or physical conditions which are a consequence of weather conditions) encountered in the execution of the Works.

Temporary Work means temporary structures, amenities, physical services and other work, including Materials, plant and equipment used in or in relation to the carrying out of the Works 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.

Value Completed means the value of work (including Design) carried out by the Service Provider and incorporated into the Works, as referred to in clause 10.6.

Work Order means the document which is addressed to the Service Provider, and RTA's Documents as its Exhibits, the terms of which is incorporated into the Work Order Terms.

Work Order Documents means all documents listed in, or attached to the Work Order.

Work Order Information means information provided by RTA with a Work Order which is designated as "Work Order Information".

Work Order Terms means this document.

Works means the work to be Designed and constructed by the Service Provider, as referred to in clause 1.1 to 1.5, including all work and items of the type referred to in clause 1.1 and Variations, but excluding Temporary Work; it means the Works as a whole and also any part of the Works unless stated otherwise or the context requires otherwise.